

What are we going to cover today?

GST-free
Consumer Health Products
&
Health Minister Determinations
&
Allied Health Services

Once upon a time ... we had a Sales Tax

Classifications under the old Sales Tax system (1930 to 2000), with exemptions and rates of 12%, 22%, and 32%, were inconsistent, out of date and it was getting impossible to administer

So, as a matter of public policy, lobbying and politics, It was decided to fix that by introducing a new broad based single rate GST of 10% in 2000

Even though Australia introduced its GST a number of years after NZ introduced its GST with virtually no exemptions, Australia decided to carry forward a number of the old Sales Tax exemptions into the GST law by making some goods and services GST-free, which is what we'll be discussing today

You need to know this because old pre-2000 Sales Tax principles, ATO Rulings and Court judgements are relevant

Where do we start?

Everything is subject to 10% GST unless that law says it's not. The proof:

A New Tax System (Goods and Services Tax) Act

Section 9

You make a taxable supply if:

- (a) you make the supply for * consideration; and
- (b) the supply is made in the course or furtherance of an * enterprise that you carry on;
- (c) the supply is * connected with the indirect tax zone; and
- (d) you are * registered, or * required to be registered.

However, the supply is not a * taxable supply to the extent that it is * GST-free or * input taxed.

GST-free provisions we won't cover

There is a wide range of 'medical and health' related goods, services and other supplies that are GST-free that is simply too broad to cover today, ranging from hospital services, doctor consults, aged and home care, NDIS, SDA to prescription medicines, etc

Three broad GST-free provisions we will cover

Medical aids and appliances (Consumer Health Products)

Section 38-45

Schedule 3

GST Regulation 38-45.01

Other GST-free health goods (Ministerial Determinations)

Section 37-47

Other health services (Allied Health Services)

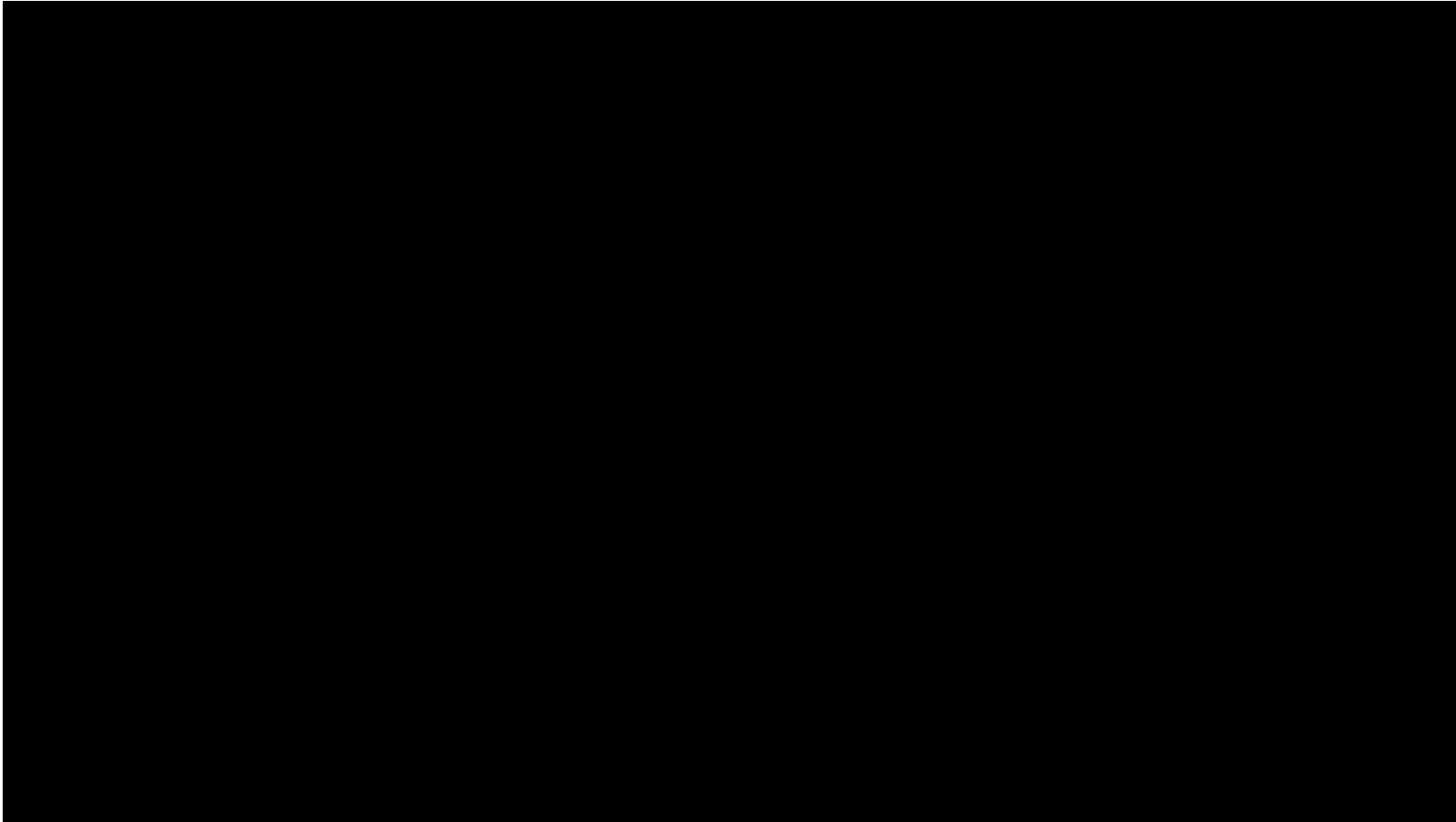
Section 38-10

Do GST-free 'health related' goods and services have to be 'good' for you?

Not necessarily. Sometimes they:

- only have to be a type of product or service designed for and used by people who are ill or disabled
- don't in any way have to treat or alleviate the condition at all
- are only intended to ensure that the benefit of the GST-free status is derived by the person suffering, or by any person who is paying for the relevant goods and services, or by a person who is supplying the relevant goods and services
- just seems to be the right thing to do

Do GST-free 'health related' goods and services have to be 'good' for you?



Statutory interpretation rules

The Words

Consider the purpose and the context of the words

Section 15AB Acts Interpretation Act- ordinary meaning of text, and purpose or object underlying the Act

The Words

Take out the emotion and ignore what you would like, what you would have written and what would have been written in 2024

Section 38.45

Medical aids and appliances

(1) A [supply](#) is [GST-free](#) if:

(a) it is covered by Schedule 3 (medical aids and appliances), or specified in the regulations; and

(b) the [thing](#) supplied is specifically designed for people with an illness or disability, and is not widely used by people without an illness or disability.

Section 38.45

Three tests

There are 3 tests that ALL must be satisfied:

“specifically designed for people with an illness or disability”

“not widely used by people without an illness or disability”

“the supplies must be specified items listed in Schedule 3”

Section 38.45

First test

Specifically designed for ...

An objective view of the design features and characteristics of the product indicates whether its essential character is that it is specifically designed for people with an illness or disability.

The designer's or manufacturer's intention of how the particular product is to be used. Indicators of the designer's or manufacturer's intention include an objective consideration of how the product is marketed and the type of outlets at which the product can be purchased

Section 38.45

Second test

For people with an illness or disability and is not widely used by people without an illness or disability”

Interpretation difficulties arise, including limited ATO guidance of what is and is not an ‘illness’ or a ‘disability’, the use of a negative test (supplies *not widely used*), and the use of an unusual term *widely* (rather than mainly or principally)

With an illness or disability- ignore preventative and diagnostic goods and services (eg masks and RATS)

Section 38.45

Second test GSTD 2021/2

GSTD 2021/2 Goods and services tax: adjustable beds, pressure management mattresses and pressure management overlays

33. The Commissioner will accept that an adjustable bed, pressure management mattress or pressure management overlay is not widely used by people without an illness or disability if you:

- supply adjustable beds to bed retailers and less than 25% of sales by volume of the particular product are supplied to standard bed retailers, or
- are a bed retailer and you acquired the product from a supplier who has given you a written statement confirming they supply less than 25% of that product by volume to standard bed retailers, or
- are a manufacturer of adjustable beds who does not supply retailers and less than 25% of your sales by volume are standard beds.

Section 38.45

Second test GSTD 2021/2

35. The Commissioner will not apply compliance resources to verify compliance with your GST reporting obligation for your supply of an adjustable bed, pressure management mattress or pressure management overlay if:

- you satisfy paragraph 33 of this Determination
- the percentage in paragraph 33 of this Determination is calculated using sales data for the first six months of the most recently-ended income year to determine whether the product is not widely used in the following income year
- the particular product is new to the market and the projected sales for the first six months in which the product is for sale are used to determine whether the product is not widely used
- you keep records of how you satisfy paragraph 33 of this Determination, and
- there is no evidence of avoidance, fraud or evasion.

Section 38.3:

Third test: Schedule 3

Medical aids and appliances

Note 1:

[GST-free](#) supplies of medical aids and appliances are dealt with in section 38-[45](#).

Note 2:

The second column of the table is not operative (see section 182-15).

Section 182.15. Schedules 1, 2 and 3 The second columns of the tables in Schedules 1, 2 and 3 are not operative. In interpreting an item in those tables, or any other operative provision, those columns may only be considered for a purpose for which an * [explanatory section](#) may be considered under [subsection](#) 182-10(2).

Section 38.3

Third test: Schedule 3

http://classic.austlii.edu.au/au/legis/cth/consol_act/antsasta1999402/sch3.html

Section 38.3: Schedule 3

Some examples

Item 22: Category- Contenance: Aid or Appliance- protection for beds (eg adult size mattress protectors but not cot size mattress protectors)

Item 37: Category- Diabetes: Aid or Appliance- needles and syringes (eg virtually all medical style/quality needles, but need not be anything to do with diabetes)

Item 47: Category- Hearing/Speech: Aid or Appliance- visual/tactile alerting devices (eg loud door bells for the hearing impaired and large telephone keypads for the sight impaired)

Item 58: Category- Mobility Disability: Aid or Appliance- motor vehicle modifications (only the modification)

Section 38.3: Schedule 3

Some examples

Item 62: Category- Bedding for Disabilities: Aid or Appliance- (eg all electronically operated adjustable beds)

Item 82: Category- Positioning for Disabilities: Aid or Appliance-night-time positioning equipment modifications (eg therapeutic pillows- note that ordinary beds and mattresses are 'night-time positioning equipment', and therapeutic pillows, but not ordinary pillows, are modifications to them)

Item 143: Category-Vision: Aid or Appliance- tactile or braille books, magazines or newspapers

Section 38.45

Spare parts

(2) A [supply](#) is [GST-free](#) if the [thing](#) supplied is supplied as a spare part for, and is specifically designed as a spare part for, another [thing](#) the [supply](#) of which would be [GST-free](#) under [subsection](#) (1).

Section 38.45

Exception/Election

(3) However, a [supply](#) is not [GST-free](#) under [subsection](#) (1) or (2) 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.

GST Regulation 38-45.01

38-45.01(1) For the purposes of paragraph [38-45\(1\)\(a\)](#) of the Act, supplies of the medical aids and appliances mentioned in the following table are specified.

38-45.01(2) Section [182-15](#) of the Act applies in relation to the second column of the table in subsection (1) of this section as if that column were the second column of the table in Schedule [3](#) to the Act.

Note:

The second column in the table in subsection (1) of this section and the second column of the table in Schedule 3 to the Act are both headed “Category”

GST Regulation 38-45.01

Medical aids and appliances		
Item	Category	Medical aid or appliance
1	Advanced wound care	(a) alginate; and (b) hydro colloids; and (c) hydro gel; and (d) polyurethane film; and (e) polyurethane foam
2	Communication aids for people with disabilities	(a) tracheostomy appliances and accessories; and (b) laryngotomy appliances and accessories
3	Continence	skin bond
4	Daily living for people with disabilities	(a) artificial ears; and (b) nose prostheses
5	Hearing/speech	hearing loops
6	Infusion systems for the delivery of a measured dose of a medication	(a) infusion sets; and (b) infusion pumps

GST Regulation 38-45.01

7	Mobility of people with disabilities — physical: orthoses	compression garments
8	Mobility of people with disabilities — physical: prostheses	supplements and aids associated with mammary prostheses
9	Mobility of people with disabilities — physical: seating aids	postural support seating
10	Mobility of people with disabilities — physical: walking aids	accessories associated with walking frames or specialised ambulatory orthoses
11	Personal hygiene for people with disabilities	customised modifications and accessories for the aids or appliances mentioned in items 111 to 121 of Schedule 3 to the Act
12	Respiratory appliances	tilt tables
13	Stoma	stoma products including all bags and related equipment for patients with urostomies

Section 38.47

Other GST-free health goods

- (1) A supply is GST-free if it is a supply of goods of a kind that the * Health Minister, by determination in writing, declares to be goods the supply of which is GST-free.
- (2) However, a supply is *not* GST-free under subsection (1) 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.

Section 177.10 (4)

Ministerial Determination

The * [Health Minister](#) may, by legislative instrument, make a determination for the purposes of:

(b) [subsection](#) 38-47(1)

Ministerial Determination Feminine hygiene products

A New Tax System (Goods and Services Tax) (GST-free Health Goods) Determination 2018

5 GST-free health goods

For subsection 38-47(1) of the Act, the goods of the kind specified in Schedule 1 to this instrument are declared to be goods the supply of which is GST-free

From 1 January 2019, sales of the following goods are GST-free:

maternity pads, menstrual cups, menstrual pads and liners, menstrual underwear, tampons, other similar products specifically designed to absorb or collect lochia, menses or vaginal discharge

Section 38.10

Other health services

(1) A [supply](#) is [GST-free](#) if:

(a) it is a service of a kind specified in the table in this [subsection](#), or of a kind specified in the regulations; and

(b) the supplier is a * [recognised professional](#) in relation to the [supply](#) of services of that kind; and

(c) the [supply](#) would generally be accepted, in the profession [associated](#) with [supplying](#) services of that kind, as being necessary for the appropriate treatment of the * [recipient](#) of the [supply](#).

Section 38.10

Other health services

(2) However, a [supply](#) of a pharmacy service is *not* [GST-free](#) under [subsection](#) (1) unless it is:

- (a) a [supply](#) relating to a [supply](#) that is [GST-free](#) because of section 38-50; or
- (b) a service of conducting a medication review.

(3) A [supply](#) of [goods](#) is [GST-free](#) if:

(a) it is made to a [person](#) in the course of [supplying](#) to the [person](#) a service the [supply](#) of which is [GST-free](#) under [subsection](#) (1) (other than a service referred to in item 8, 9, 12 or 15 of the table in [subsection](#) (1)); and

(b) it is made at the [premises](#) at which the service is supplied.

Section 38.10

Other health services

(4) A [supply](#) of [goods](#) is [GST-free](#) if:

(a) it is made to a [person](#) in the course of [supplying](#) to the [person](#) a service referred to in item 8 or 9 of the table in [subsection](#) (1); and

(b) it is supplied, and used or consumed, at the [premises](#) at which the service is supplied.

(5) A [supply](#) is [GST-free](#) if it is provided by an ambulance service in the course of the treatment of the * [recipient](#) of the [supply](#).

Section 38.10

Other health services, but ...

Health services	
Item	Service
1	Aboriginal or Torres Strait Islander health
2	Acupuncture
3	Audiology, audiometry
4	Chiropody
5	Chiropractic
6	Dental
7	Dietary
8	Herbal medicine (including traditional Chinese herbal medicine)
9	Naturopathy

Section 38.10

Other health services

Health services	
Item	Service
10	Nursing
11	Occupational therapy
12	Optometry
13	Osteopathy
14	Paramedical
15	Pharmacy
16	Psychology
17	Physiotherapy
18	Podiatry
19	Speech pathology
20	Speech therapy
21	Social work



Hi, my name is Ken

I am a GST Specialist, Advisor and Mentor empowering Boards, Executives and Business Owners to convert complex GST issues into tangible business opportunities using a proven methodology and keeping them safe

DON'T TAKE CHANCES BY ROLLING THE DICE ON GST

