

# TAX TALKS

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## 77 | Medical Services and GST

Are medical services GST-free? Yes they almost always are – with very few exceptions. The question is though what qualifies as a medical service.

### Medical Services and GST

Medical practitioners provide medical services to help. Whether these services are GST-free or not depends on whether an exemption in Subdiv 38-B applies.

*All legal references in this article are to the A New Tax System (Goods and Services Tax) Act 1999 – in short GST Act – unless otherwise specified.*

### Exemptions in Subdiv 38-B

The exemptions in Subdiv 38-B fall into five groups – hospital – aged care – disability – medical services – and other health services.

Hospital treatment (s38-20) as well as residential (s38-25), home (s38-30) and flexible aged care (s38-35) as well as disability services – be it disability support provided to NDIS participants (s38-38) or specialist disability services (s38-40) – are all GST-free. However, the GST status of these services depends on other legislation to define the scope of GST-free services. And so are a chapter in itself.

Outside of hospitals, aged care and disability support, there are two other exemptions. And these are s38-7 for medical services and s38-10 for other health services.

Any medical service is GST-free. Any. Apart from the exceptions in s38-7 (2). That is a huge exemption. So it all depends on whether something counts as a medical service. Whatever qualifies as a medical service is exempt with very few exceptions.

### Medical Services

There are two ways a service can qualify as a medical service as defined in s195-1. The service is either covered by Medicare (test # 1) or it meets a set of conditions (test # 2). That's it. There is nothing else.

#### Test # 2

For test # 2 a health service provided by or on behalf of a medical or approved pathology provider must be necessary for the appropriate treatment of the patient receiving the supply.

## By or On Behalf

The service must be provided by a medical or approved pathology practitioner or on their behalf. On behalf means that the service becomes part of the practitioner's supply. A referral is not enough.

The definition of medical practitioner and approved pathology practitioner in s195-1 refers to the *Health Insurance Act 1973*. For a medical practitioner think of a GP, medical specialist or dentist.

## Appropriate Treatment

The service must be accepted in the profession as being necessary for the appropriate treatment of the recipient.

While the GST Act doesn't define the term 'appropriate treatment', there is a legally binding public ruling labelled '[Health Industry Partnership](#)' in which the Commissioner defines the term.

*10. ...'appropriate treatment' will be established where the recognised professional assesses the recipient's state of health and determines a process to pursue, in an attempt to preserve, restore or improve the physical or psychological wellbeing of that recipient insofar as that recognised professional's particular area of training allows and will include subsequent supplies for the determined process.*

## Recipient of Supply

The recipient of the supply must be the one receiving the treatment. If somebody else receives the supply, then the service doesn't qualify as a medical service.

*If for example an insurance company forces the insured to undergo a medical examination, then the insurance company receives the supply, not the individual. And the insurance company doesn't receive a medical service, but a different service.*

But there is s38-60. If a health service would have been GST-free under Subdiv 38-B apart from the issue of supply, then s38-60 fixes this for three types of schemes.

- 1 – Insurance like private health insurance s38-60 (1)
- 2 – Compulsory third party schemes like workers comp s38-60 (2) and 3 – Government agencies like Medicare and NDIS s38-60 (3)

Section 38-60 only applies to services that would already be GST-free if it wasn't for the issue of supply.

*So if the insurance company ends up paying the medical treatment, then the insurance company is still the recipient of the supply. But thanks to s38-60 the service is GST-free.*

## Exceptions

Pretty much anything that qualifies as a medical service is GST-free. But there are two exceptions in s38-7 (2). These two are Reg 14 services and cosmetic procedures.

*s38-7 (2): ...a medical service is not GST-free ...f: (a) it is ...a professional service ...within the meaning of regulation 14 of the Health Insurance Regulations ... or (b) it is rendered for cosmetic reasons and is not a professional service for which medicare benefit is payable ...*

## Reg 14

Reg 14 of the Health Insurance Regulations 1975 version lists a number of professions that are not covered by Medicare such as chelation, human chorionic gonadotrophin, hyperbaric oxygen and microwave (UHF radiowave) cancer therapies. However, the Health Insurance Regulations 1975 have been superceded by

Health Insurance Regulations 2018 and these new regulations no longer list a relevant regulation 14. So we need to leave this one to the experts.

## Cosmetic Procedures

Examples of cosmetic procedures are long and varied ranging from the removal of tatoos over lip injections to breast enlargements. All cosmetic services are subject to GST.

## Summary

And so this is it. A medical service is either GST-free in a hospital, aged care or disability setting. Or it qualifies as a medical service in s38-7 passing either test # 1 or test # 2 and staying clear of the exceptions in s38-7 (2).

## MORE

[Are Allied Health Services GST-Free](#)

[Medical Reports and GST](#)

[GST for Psychologists](#)

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