



## TAXATION MANAGEMENT

### (including Goods and Services Tax)

*Please Refer to the 2005 Deed Glossary for Defined Terms*

A Scheme Agent must be registered under the New Tax System and have an Australian Business Number (ABN).

Each Scheme Agent has also been separately registered as a GST and PAYG branch of the Nominal Insurer for the Claims and Policy activities undertaken on behalf of the Nominal Insurer. Only these transactions are the subject of this operational instruction.

In respect of these transactions, the Scheme Agent will be required to comply with Australian taxation laws in the same way as any other registered entity, and with other requirements of the Law that may apply to entities that make payments of Wages. These taxation obligations include the GST Laws, and obligations of a 'large withholder' under the *Taxation Administration Act 1953* (Cwth) – as the total amount of PAYG remittances of the Nominal Insurer is in excess of \$1 million per year.

A Scheme Agent is expected to be aware of the legislative requirements and keep up-to-date with changing Australian Taxation Office (ATO) requirements. This operational instruction is not taxation advice and does not exempt the Scheme Agent from examining the applicable taxation guidelines and rulings to determine the treatment that should be adopted.

WorkCover will advise a Scheme Agent when it becomes aware of changes to ATO policies specifically relating to Workers Compensation.

GST will normally apply to Workers Compensation insurance in the same way that it applies to general insurance.

A Scheme Agent must have appropriate and adequate systems and training programs in place to manage GST obligations, including systems to ensure that the Nominal Insurer receives the full extent of Input Tax Credits (ITC) to which it is entitled.

### **New Tax System Registration**

An entity that has an annual turnover in excess of \$75,000 (or \$150,000 if the entity is a Not For Profit organisation) is required to register for the GST and seek an Australian Business Number. An entity with a lower turnover is also able to register for GST.

### **GST Payable on Premiums**

Tax Invoices issued in respect of taxable supplies made by the Scheme Agent on behalf of the Nominal Insurer must set out the GST branch ABN registration number. The ABN of the Scheme Agent is not to be shown on these invoices.

The legislation requires the Employer to notify the Scheme Agent of its ITC entitlement when a Claim is made, and if the Employer fails to do this, or understates the entitlement, the Employer retains the GST liability on Claim payments to the extent of the understatement.

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A Scheme Agent is required to have review mechanisms to ensure that where an Employer advises that they are not entitled to a full ITC, that this view is soundly based. Review mechanisms should include:

- (a) declared Wages are less than the level of payments required of an Employer for it to be required to be registered under the New Tax System
- (b) Policy is for domestic purposes
- (c) ensuring that the WorkCover Industry Classification (WIC) that the Employer is included in is one that normally is not entitled to a full ITC or is in an industry such as banking where the ITC entitlement is between 0% and 100%.
- (d) questioning any Policy where the Employer has advised that their ITC entitlement is 10% as this may indicate that the Employer has confused the ITC rate with the GST tax rate

An Employer's ITC can change during the period of a Policy in line with changes to its operations. However, provided the Employer has not advised of a change to its ITC, the rate applying at the start of the Policy period should be assumed to apply for all Claims in the forthcoming 12 months.

Accordingly, it is essential that a Scheme Agent seeks an Employer's ITC entitlement rate and advises the Employer of the consequences of non-notification whenever their Policy is renewed.

In addition to the mandatory Tax Invoice requirements, the annual Workers Compensation renewal documents will:

- (a) require the Employer to advise its ITC entitlement, if less than 100 percent;
- (b) advise, in the event of non-notification of a lower ITC entitlement, that a Premium based on 100 percent entitlement will apply; and
- (c) advise the consequences of non-notification.

Employers that do not have a 100 percent ITC entitlement may be entitled to a reduced Premium. Details of these adjustments are set out in the applicable Insurance Premiums Order.

**Invitations to Renew a Policy**

An invitation to renew a policy does not result in a GST liability and is not a Tax Invoice.

An Employer has the right to change scheme agents up to the date that the Policy term commences. After this date the Scheme Agent has the expectation that the Policy will be renewed.

As most Employers have the right to pay Premiums either as a lump sum with a discount or by instalments and often have the right to choose to pay by monthly or quarterly instalments, the Scheme Agent is not able to issue a Tax Invoice till the earlier of an instalment being paid or a Premium being written.

The Scheme Agent may where an Employer is entitled to pay Premiums by instalments include with the invitation to renew a schedule setting out the amounts and dates that up to four monthly instalments or one quarterly instalment is to be paid. For this to become an eligible Tax Invoice the schedule needs to meet the ATO Tax Invoice requirements. Specifically it needs to contain the amount of the instalment, the amount of GST included in that instalment, the date that the instalment is to be paid and prominently state: "This will become a Tax Invoice once the instalment is paid."

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## Premium instalments

Where an Employer elects to pay the Premium by instalments, the period in which the GST liability arises is determined as follows:

- § If the Scheme Agent had a schedule of payments on the invitation to renew and that schedule had printed on it "This will become a Tax Invoice once the instalment is paid", then the GST liability arises in the period when the next instalment for the instalment option selected by the Employer is due
- § If the Scheme Agent issues a Tax Invoice for each instalment prior to the due date, the GST liability arises when the invoice is issued
- § Otherwise the GST liability arises when the payment is received, even if after this date the Scheme Agent issues a Tax Invoice for the instalment that has been paid

The above tests are cascading once a test is met the GST arises.

Normally the first instalment is recognised on a cash received basis.

If an Employer has not paid the first instalment by the due date (one month after the commencement of the Policy term) then their right to pay by instalments is lost and it can be assumed for taxation purposes that the Employer has elected to pay the Premium in full.

## Impact of Premium being Written

The writing of a Premium only results in a GST liability if the Employer is not entitled to pay the Premium in instalments. If an Employer is not able to pay by instalments the Scheme Agent is to issue a Tax Invoice to the Employer for the full amount of the Premium. The transaction is to be included in the BAS return for the month that the Tax Invoice was issued.

For those Employers able to pay Premium by instalments once the initial Premium for the year has been determined, the remaining instalments for the year can then be determined. The Scheme Agent is required to issue a schedule of instalments that contains the amount of the instalment, the amount of GST included in that instalment and the date that the instalment is to be paid. This schedule is to clearly indicate that it replaces all previous schedules of instalments issued to the Employer for that policy renewal year.

To avoid the necessity to issue a Tax Invoice in advance of each instalment or a Tax Invoice after each payment is received, the Scheme Agent should ensure that the Schedule is a complying Tax Invoice that contains the words "This will become a Tax Invoice once the instalment is paid".

However where a Premium is written and the level of that Premium now enables an Employer who was not previously entitled to pay by quarterly instalments to pay by monthly instalments, then the Employer is to be provided with two schedules of instalments, one for quarterly payments and the other for monthly payments. The Scheme Agent should ensure that the Schedule is a complying Tax Invoice that contains the words "This will become a Tax Invoice once the instalment is paid". Whichever instalment the Employer selects then becomes the basis for determining when a GST liability arises.

The above procedures also apply to where an Employer who was not previously able to pay by instalments is now able to pay by instalments (either quarterly, monthly or either) due to the increase in the amount of the written Premium.

## Impact of Instalment Payment Defaults

If an Employer fails to pay an instalment within the required timeframe they will default on their rights to pay by instalments. The Scheme Agent must then issue an Invoice for the balance of the Premium outstanding and attribute GST when the Tax Invoice is issued.

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### **Payment of Premium in Full (including with a Discount)**

Where an Employer does not have the right to pay by installments or has by not paying the first (or subsequent installments) by the due date lost the right to pay by installments, then a Tax Invoice is to be issued once the Premium is written.

If the Employer pays the full amount within the timeframe specified for an early payment discount the Scheme Agent is to issue a GST Adjustment note (Credit Note) meeting ATO requirements to the Employer and include the adjustment note in its BAS relating to the month that the discount was granted.

Payment in Full discounts can also arise where an Employer has been paying the Premium by installments but upon receiving the notice of written Premium and the early payment discount that is available, determines to pay the full amount. In such circumstances a GST adjustment note is also to be issued and accounted for in the same manner as outlined above.

### **Premium payments more than the instalment amount**

If an Employer in error pays an amount greater than the invoiced instalment amount, the Scheme Agent is only required to attribute the GST component as detailed in the instalment notice and the Employer will only be able to claim that GST component. These excess amounts should be held in the suspense or unallocated cash account until the next instalment notice is due. This amount can then be allocated to the next relevant instalment.

However if the Employer pays instalments in advance of the due dates then the GST on these instalments is to be recognised in the BAS return in the month that the cash is received.

### **Premium Instalment not paid**

If an Employer does not pay an instalment by the due date the Employer loses their rights to pay Premium by instalments and the remaining amount becomes due.

A Scheme Agent must issue a Tax Invoice for the balance of the Premium and advise the Employer that the schedule of instalments previously issued to them is withdrawn. The Tax Invoice for the remaining Premium is to be included in the BAS return for the month that the invoice was issued.

### **Premium Instalments less than the instalment amount**

If an Employer pays less than the instalment amount and despite being requested to do so by the Scheme Agent does not rectify this within an agreed period, the Employer loses their rights to pay Premium by instalments and the remaining amount becomes due.

The Scheme Agent is to issue an invoice to the Employer for the under paid instalment amount. This invoice is not subject to GST as the Tax Invoice relating to the full amount of the instalment has already been included in the Employers and the Scheme Agents BAS return.

The Scheme Agent must also issue a Tax Invoice for the balance of the instalments not previously due and advise the Employer that the Schedule of instalments previously issued to them is withdrawn. The Tax Invoice for these remaining Premium instalments is to be included in the BAS return for the month that this Tax Invoice was issued.

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## GST on Premium Hindsight Adjustments

Hindsight Premium adjustments are subject to GST if they relate to periods post-30 June 2000. A Scheme Agent must issue a Tax Invoice for any additional Premium or a GST Adjustment Note (Credit Note) for any refund due to the Employer. GST is Payable to (or claimable from the ATO) in the BAS relating to the month that the Tax Invoice/Adjustment Note is issued.

Additional Premiums incurred for Policy periods pre-30 June 2000 are not subject to GST (even if they are demanded after 30 June 2000), as they relate to a supply made pre-GST. A Scheme Agent must recover these Premiums with no inclusion or impact of GST.

Details of these procedures and treatments for such pre 2000 policies are summarised below.

Recovery of balance of Premium relating to:	Treatment
A taxable supply of a Workers Compensation insurance Policy (Policy period <b>post</b> -30 June 2000).	This is an increasing adjustment. A Scheme Agent must issue an adjustment notice showing the amended Premium and GST component.
A non-taxable supply of a Workers Compensation insurance Policy (Policy period <b>pre</b> -30 June 2000).	Relates to supply made pre-GST and, therefore, no GST impact. A Scheme Agent must issue an adjustment notice showing the amended Premium.
A taxable supply of a Workers Compensation insurance Policy that straddles 30 June 2000 (only part of Premium is subject to GST).	<p>This is an increasing adjustment. A Scheme Agent must issue an adjustment notice showing amended Premium and GST component.</p> <p>The algorithm for calculating GST on straddle policies is:</p> <p><u>Days after 30/6/00</u> x Prem x 1/11 365 (or 366)</p> <p>The use of 365 or 366 days in pro-rata calculations depends on whether the renewal was before or after 29 February 2000.</p>

## Late payment fees

Late payment fees are not subject to GST as they are considered to be a financial supply. For further information, refer to ATO GST Ruling GSTR 2000/19 'Goods and Services Tax: making adjustment under Division 19 for adjustment events' as amended effective from 17 December 2003.

## Wage audit costs

The recovery of the Wage audit costs is considered a reimbursement of the cost and is not subject to GST. A Scheme Agent must recover the audit costs net of any ITC entitlement claimed from the ATO in respect to these costs. This applies to audits of all Policy periods regardless of the 30 June 2000 GST implementation date.

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## Business Activity Statement (BAS) returns

A Scheme Agent will complete a BAS return for its GST branch of the Nominal Insurer. If any penalties are imposed on the GST branch for non-compliance with taxation legislation including General Interest Charges (GIC) due to for example late lodgement of BAS returns or late payments, then as detailed under the contract these amounts are to be paid by the Scheme Agent from their own funds and not from the Scheme.

## GST on Claims Payments

A Scheme Agent must be fully conversant with the requirements under the New Tax System. In particular, they need to be fully conversant with Divisions 11 and 78 of the taxation legislation and Australian Tax Office rulings/determinations (including GSTR 2006/9 and GSTR 2006/10).

A Scheme Agent is able to claim an ITC on the GST paid for goods and services provided in respect to a Claim under Division 11 of the GST Law when it:

- (a) engages the supplier
- (b) instructs the supplier about the supply
- (c) enters into a contractual relationship with the supplier for the right to have the supply made to the insured, and accepts liability to pay for the supply of the goods, services or anything else to the insured.

A Scheme Agent must ensure, when purchasing goods and services that are subject to GST, that to the maximum extent possible suppliers are engaged so the Scheme Agent is able to claim the GST paid as an ITC in the branch BAS return.

Where an Employer is not entitled to claim GST on Premiums as for example the Employer is not registered for GST (i.e. the ITC rate of the Employer is nil), the Scheme Agent is under Division 78 of the GST law entitled to claim a decreasing adjustment on those claim costs (excluding GST if applicable) that it has not been able to claim an ITC under Division 11. Claims under Division 78 can be made irrespective if GST was payable on those costs (for example weekly benefits).

Where an Employer's ITC is less than 100% the Scheme Agent is entitled to a pro rata decreasing adjustment equivalent to the ITC percentage rate of the Employer less 100. (For example if the Employer has an ITC of 68.7% the Decreasing Adjustment available to the Scheme Agent is 31.3% of GST rate applicable to the claims costs (excluding GST if applicable) that the Scheme Agent has not been able to claim under Division 11.)

## GST on Bad Debts Written off

Where a Scheme Agent has determined that a debt or part of a debt is unable to be recovered they are to ensure that any GST included in that bad debt is claimed in the BAS return for the month when the debt was written off.

Should any bad debts be subsequently recovered then the GST included in that debt should be determined on a pro rata basis relative to the amount of the debt that was written off. This GST amount is then to be included in the BAS return relating to the period that the debt was recovered.

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## Premium Forms

A Scheme Agent must ensure that all Premium forms issued, including instalment notices, meet the relevant New Tax System requirements and they must seek approval from WorkCover before making any changes to any WorkCover-approved forms. For further information, see operational instruction 4.2.

## References

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Operational instruction 4.2

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