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5 April 2002

Our Reference: GST/CHM/CWXXXXXX
Contact Officer: XXXXX
Contact Phone: XXXXX
Your Reference:

XXXXXXXXXX
Department of Human Services
GPO Box 4057
MELBOURNE VIC 3001

Dear XXXXX

RE: GST and Medical Services

You wrote to us on 20 February 2002 asking:

1. Are fees charged, by Victorian private sector health service providers and other organisations, to individuals under the *Victorian Health Records Act 2001* (the VHR Act) for inspecting their health information GST-free?
2. Are fees charged, by Victorian private sector health service providers and other organisations, to individuals under the VHR Act for viewing their health information, with no explanation of contents GST-free?
3. Are fees charged, by Victorian private sector health service providers and other organisations, to individuals under the VHR Act for receiving a copy of their health information GST-free?
4. Are fees charged, by Victorian private sector health service providers and other organisations, to individuals under the VHR Act for receiving an accurate summary of their health information GST-free?
5. Are fees charged by health service providers to review another organisation's decision to refuse an individual access to their health information on the grounds that such access would pose a serious threat to the life or health of that individual and access whether the refusal is justified GST-free?
6. Are fees charged by health service providers under subsection 32(4) of the VHR Act to an individual for the provision of an explanation of their health information GST-free?

7. Are fees charged by Victorian public and private sector health service providers under the VHR Act to provide a copy of an individual's health information to another health service provider, at the request of the individual GST-free?
8. Are fees charged by Victorian public and private sector health service providers under the VHR Act to provide an accurate summary of the individual's health information to another health service provider, at the request of the individual GST-free?

You advised us of the following facts:

The *Victorian Health Records Act 2001* (the VHR Act) creates a scheme to regulate the collection and handling of health information in Victoria. The VHR Act:

- gives individuals a legally enforceable right of access to their health information which is contained in records held by private sector health service providers and other organisations; and
- establishes Health Privacy Principles (HPP) that apply to health information collected and handled in both the public and private sectors. These HPP are set out in Schedule 1 to the VHR Act.

No person other than the individual concerned (or their guardian or other authorised representative) has the ability to require access under this Act.

Paragraph 100(1)(a) of VHR Act states "The Governor in Council may make regulations for or with respect to prescribing maximum fees for providing access to health information under this Act." For this purpose the draft *Health Records Regulations 2002* (the draft Regulations) have been written. It is noted however, that the VHR Act and the draft Regulations do not require that an organisation charge fees to individuals to access their health records, they merely prescribe the maximum fees that may be charged to an individual to access their health records.

You have sought advice on whether GST is applicable to the kinds of accesses made under HPP 11 and Part 5 of the VHR.

The kinds of accesses prescribed in Part 5 of the VHR Act and the maximum fees applicable thereto, are set out in Schedule 1 to the draft Regulations and are summarised below.

1. Inspecting health information or print out of health information stored in electronic form, with opportunity to take notes of contents

The total of the following amounts:

- (a) \$5 per quarter hour (or part of a quarter hour) in respect of supervision time of inspection; and
- (b) the organisation's reasonable costs incurred in assessing and collating the health information, not exceeding \$20; and
- (c) if it is necessary to use equipment that is not in the organisations' possession to inspect the health information, the organisations' reasonable costs incurred in obtaining the equipment; and
- (d) if the health information is contained in a document not stored at the organisation's usual place of business, \$10.

It is noted that the assessing function discussed in (b) involves a health provider assessing the contents of an individual's health records to determine whether providing the individual access would constitute a serious threat to the life or health of that individual.

2. *Viewing health information, with no explanation of contents*

The total of the following amounts:

- (a) \$5 per quarter hour (or part of a quarter hour) in respect of supervision time of inspection; and
- (b) the organisation's reasonable costs incurred in assessing and collating the health information, not exceeding \$20; and
- (c) if it is necessary to use equipment that is not in the organisations' possession to inspect the health information, the organisations' reasonable costs incurred in obtaining the equipment; and
- (d) if the health information is contained in a document not stored at the organisation's usual place of business, \$10.

3. *Receiving a copy of health information*

The total of the following amounts:

- (a) if a copy is in the form of black and white A4 pages, 20 cents per page; and
- (b) if a copy is in a form other than a black and white A4 page, the organisation's reasonable costs incurred in providing the copy; and
- (c) the organisation's reasonable costs incurred in assessing and collating the health information, not exceeding \$20; and
- (d) if the health information is contained in a document not stored at the organisation's usual place of business, \$10.

4. *Receiving an accurate summary of health information*

The total of the following amounts:

- (a) if the organisation is a health service provider and an accurate summary does not exist before the request is made, an amount calculated by reference to the time taken to prepare the accurate summary based on the usual fee of the health service provider for a consultation of a comparable duration, not exceeding \$80; and
- (b) if the organisation is not a health service provider and an accurate summary does not exist before the request is made, the organisation's reasonable costs incurred calculated by reference to the time taken to prepare the accurate summary, not exceeding-
 - (i) \$25 per quarter hour (or part of a quarter hour) spent preparing the accurate summary; or
 - (ii) \$80, whichever is the lessor; and
- (c) if the health information is contained in a document not stored at the organisation's usual place of business, \$10.

5. *Provision of a "second opinion"*

Section 26 of the VHR Act provides that a Victorian private sector health service provider may refuse to give an individual access to their health information if the

organisation believes on reasonable grounds that providing access would pose a serious threat to the life or health of that individual.

In such cases, the individual may choose to nominate another health service provider to independently access whether the organisation's grounds for refusal were justified. Subsection 42(1) of the VHR Act sets out the role of the nominated health service provider. The maximum amount that may be charged under the draft Regulations to individuals for this kind of service is the reasonable cost incurred by the nominated health service provider in performing the functions set out in subsection 42(1) of the VHR Act, not exceeding \$40 per quarter hour or part of a quarter hour spent performing those functions, or \$200, whichever is the lessor.

6. Section 32(4) of the VHR Act

Section 29(1)(d) states "If a request to view the health information is accompanied by a request to have its content explained and the organisation is required, or has agreed, to provide that explanation, by explaining its content immediately or giving to the individual a written notice stating –

- (a) if the organisation is a suitably qualified health service provider and is willing to do so, that the organisation will be available to explain the health information at a date, time and place in Victoria specified in the notice; or
- (b) in any other case, the name and address of a suitable health service provider who will be available in Victoria by arrangement with the individual, to explain the health information.

Subsection 32(4) of the VHR Act provides that the maximum amount that may be charged to individuals for this kind of access is a fee that does not exceed the amount of the health practitioner's usual fee for a consultation of a comparable duration.

The kinds of accesses prescribed in HPP 11 and the maximum fees applicable thereto, are set out in Schedule 2 to the draft Regulations and are summarised below. It is noted that HPP 11 applies to both Victorian public and private sector health service providers.

7. Provision by a health service provider of a copy of health information to another health service provider

The total of the following amounts:

- (a) if the copy consists of at least 20 black and white A4 pages, 20 cents per page; and
- (b) if the copy is in a form other than a black and white A4 page, the health service provider's reasonable costs incurred in providing the copy.

8. Provision by a health service provider of an accurate summary of health information to another health service provider

The total of the following amounts:

- (a) an amount calculated by reference to the time taken to prepare the accurate summary based on the usual fee of a consultation of a comparable duration, not exceeding \$80, but only if-
 - (i) an accurate summary does not exist before the request is made; and
 - (ii) it takes the health service provider at least 30 minutes to prepare an accurate summary.

Additional Information provided in your letter of 18th March 2002

You advised in your letter of 18th March 2002 that a request by a patient for a copy or print out of their health record, or an accurate summary of information contained in that record, usually results from a medical or other health service being provided to the patient by the practitioner. This kind of access, or the provision of an explanation or inspection of the information to the patient, may be beneficial in helping a patient understand their condition and their treatment options.

You also advised that the making of information available to another health service provider sometimes results from a patient changing residence and therefore changing their health service provider. Continuity of care is assisted if the new provider is aware of the patient's previous treatment history.

We have made the following decision:

1. No, fees charged by Victorian private sector health service providers and other organisations, to individuals under the *Victorian Health Records Act 2001* (the VHR Act) for inspecting their health information are not GST-free.
2. No, fees charged by Victorian private sector health service providers and other organisations, to individuals under the VHR Act for viewing their health information, with no explanation of contents are not GST-free.
3. No, fees charged by Victorian private sector health service providers and other organisations, to individuals under the VHR Act for receiving a copy of their health information are not GST-free.
4. No, fees charged by Victorian private sector health service providers and other organisations, to individuals under the VHR Act for receiving an accurate summary of their health information are not GST-free.
5. No, fees charged by health service providers to review another organisation's decision to refuse an individual access to their health information on the grounds that such access would pose a serious threat to the life or health of that individual and access whether the refusal is justified are not GST-free.
6. Yes, fees charged pursuant to subsection 32(4) of the VHR Act by a medical practitioner (as defined in the Health Insurance Act 1973), or a recognised professional in one of the professions itemised in the table to subsection 38-10(1) of the GST Act to an individual for the provision of an explanation of their health information is GST-free.
7. No, fees charged by Victorian public and private sector health service providers under the VHR Act to provide a copy of an individual's health information to another health service provider, at the request of the individual are not GST-free.
8. No, fees charged by Victorian public and private sector health service providers under the VHR Act to provide an accurate summary of the individual's health

information to another health service provider, at the request of the individual are not GST-free.

Why we have made this decision:

Taxable Supplies

Section 9-40 states "You must pay the GST payable on any taxable supply that you make".

'9-5 Taxable supplies

You make a taxable supply if:

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

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

Therefore where all the requirements of paragraphs (a) to (d) above are satisfied, the supplier is liable to remit GST to the ATO, unless the supply is GST-free or input taxed.

It is considered that the provisions dealing with input taxed supplies are not relevant to the types of supplies mentioned in your letter.

GST-free Supplies

Subsection 9-30 states:

'9-30 Supplies that are GST-free or input taxed

(1) A supply is GST-free if:

- (a) it is GST-free under Division 38 or under a provision of another Act; or
- (b) it is a supply of a right to receive a supply that would be GST-free under paragraph (a).'

Subdivision 38-B of the GST Act provides for supplies of certain health goods and services to be GST-free. In determining whether supplies of the kind described in your letter are GST-free under Subdivision 38-B, it is necessary to determine the nature of the supply made.

In the current case, the individual is paying to access their health information. The fees charged are calculated with reference to the various activities undertaken by the health service provider in granting that access. However, if such a supply is analysed in a commonsense way, it can be seen that the supply is essentially the provision of one thing: a supply of access to health information.

A supply of access to health information is not a supply of treatment or care and therefore does not come within any of the GST-free health provisions in the GST Act. Such supplies by a registered entity are taxable and subject to GST.

However, where a request to view health information is accompanied by a request to have its contents explained, the provision of the explanation will be GST-free where the requirements of subsection 38-7(1) or subsection 38-10(1) are satisfied.

GST-free Medical Services

A supply of a medical service is GST-free where the requirements of subsection 38-7(1) of the GST Act are satisfied.

Subsection 38-7(1) states:

38-7 Medical Services

(1) A supply of a medical service is GST-free.'

Section 195-1 defines 'medical service' as:

'medical service means:

- a service for which a medicare benefit is payable under Part II of the *Health Insurance Act 1973*; or
- any other service supplied by or on behalf of a medical practitioner or approved pathology practitioner that is generally accepted in the medical profession as being necessary for the appropriate treatment of the recipient of the supply.'

This definition requires determination of whether a service is a 'medical service' by addressing the first limb and the second limb in the alternative. That is, where a service is not a 'medical service' under the first limb, as it is not a service for which a medicare benefit is payable under Part II of the *Health Insurance Act 1973* (HIA Act), it is necessary to determine whether the service is a 'medical service' under the second limb.

Therefore, if a medicare benefit is payable under Part II of the HIA Act to the medical practitioner for the provision of an explanation of an individual's health information, the supply will be GST-free.

However, if no medicare benefit is payable, the supply must be addressed under the second limb of the definition of a 'medical service'.

The second limb of the definition of 'medical service' contains a number of elements. All of these elements must be satisfied before a service will be a medical service under the second limb.

The first element is that the service must be supplied by or on behalf of a medical practitioner (defined in section 195-1 of the GST Act as a person who is a medical practitioner for the purposes of the Health Insurance Act 1973) or an approved pathology practitioner (defined in section 195-1 of the GST Act as a person who is an approved pathology practitioner for the purposes of the Health Insurance Act 1973).

The second element requires that the services supplied be generally accepted in the medical profession as being necessary for the appropriate treatment of the recipient of the supply.

Section 195-1 of the GST Act defines 'recipient' in relation to a supply to mean the entity to which the supply was made.

It is considered that for a supply to be 'generally accepted', the particular service being provided and the circumstances in which it is provided must be generally accepted by the medical profession. That is, it will be the medical profession that ultimately determines what services will be generally accepted.

'Appropriate treatment' is established where a practitioner 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 the recipient and includes subsequent supplies for the determined process.

For example, a consultation undertaken for the purpose of providing an individual with an explanation of the information contained in their health records is considered to be 'appropriate treatment for the recipient of the supply'. The medical practitioner is not merely providing access to health information, but rather is providing a medical explanation of the individual's health condition and treatment options.

Therefore, a supply of an explanation of an individual's health information by a medical practitioner will be GST-free where a Medicare benefit is payable under Part II of HIA Act, or the medical profession generally accepts the service as being necessary for the appropriate treatment of the recipient of the supply.

GST-free Health Services

A supply of a health service is GST-free where the requirements of subsection 38-10(1) of the GST Act are satisfied.

Subsection 38-10(1) states:

'38-10 Other health services

- (1) A supply of a health service is GST-free where:
 - (a) it is a service of a kind specified in the table to subsection 38-10(1), 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.'

For the purposes of paragraph 38-10 (1)(a) of the GST Act, the service must be of a kind specified in the table in the subsection.

Table to Subsection 38-10(1)

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

For the purposes of paragraph 38-10(1)(b) of the GST Act, a recognised professional must provide the service.

Section 195-1 defines a recognised professional as:

'recognised professional: a person is a recognised professional, in relation to the supply of a service of a kind specified in the table in subsection 38-10(1), if:

- (a) the service is supplied in a State or Territory in which the person has a permission or approval, or is registered, under a State law or Territory law prohibiting the supply of services of that kind without such permission, approval or registration; or
- (b) the service is supplied in a State or Territory in which there is no State or Territory law requiring such permission, approval or registration, and the person is a member of a professional association that has uniform national registration requirements relating to the supply of services of that kind; or
- (c) in the case of services covered by item 3 in the Table – the service is supplied by an accredited service provider within the meaning of section 4 of the Hearing Services Administration Act 14997.'

For the purposes of paragraph 38-10(1)(c) of the GST Act, it is necessary to interpret what is meant by 'generally accepted' and 'appropriate treatment of the recipient'.

For the ATO's interpretation of the meaning of these words refer to 'GST-free medical service', above.

It is considered that a consultation undertaken for the purpose of providing an individual with an explanation of the information contained in their health records is considered to be 'appropriate treatment for the recipient of the supply'. The health practitioner is not merely providing access to health information, but rather is providing an explanation of the individuals health condition and treatment options.

Therefore, a supply of an explanation of an individual's health information by a recognised professional in one of the professions itemised in the GST Act will be GST-free where their profession generally accepts the service as being necessary for the appropriate treatment of the recipient of the supply.

I have attached explanatory notes on the effect, duration of this advice and your review rights.

Please contact XXXXX on XXXXX if you have any further queries regarding this matter.

Yours faithfully

(XXXXXX)
for Rick Matthews
DEPUTY COMMISSIONER OF TAXATION
Goods & Services Tax
Encl.

EXPLANATORY NOTES

Effect

This general advice sets out the ATO view about the operation of the GST law that may apply to an entity's circumstances. To the extent that this general view applies to an entity's circumstances, the Commissioner will be bound by that advice. If an entity wishes for specific advice dealing with its individual circumstances it should apply for a private ruling using the 'Application for GST Private Ruling' form available at www.taxreform.ato.gov.au or by calling the Tax Practitioner Information Line on 13 72 86.

Duration

You may rely on this advice until it is withdrawn, overridden by a public ruling or there is a change in the legislation affecting the treatment of the subject matter of this advice for GST purposes.

Review Rights

You have a right to have this advice informally reviewed under the Taxpayers' Charter. If you want to do this, you should contact the person handling your case or the Tax Office where the decision was made. The review is normally conducted by a tax officer who was not involved in making the original decision.

This advice cannot, however, be reviewed under the *Taxation Administration Act 1953*, as it is not a reviewable decision under subsection 62(2). Nor can it be reviewed under the *Administrative Decisions (Judicial Review) Act 1977*.

Freedom of Information

The *Freedom of Information Act 1982* provides right of access to certain documents relating to this decision held by the Australian Taxation Office. Requests for access under this Act must be in writing and, if possible, made on a *Request under the Freedom of Information Act 1982* form, available at any Taxation Office. Charges apply for this service. In certain circumstances, access may be denied, however, there are rights of review should you disagree with this decision. Please do not hesitate to contact the Australian Taxation Office with regard to any matters concerning Freedom of Information.