

EXPLANATORY STATEMENT

Issued by the Minister for Health and Ageing

A New Tax System (Goods and Services Tax) Act 1999

GST-free Supply (Drugs and Medicinal Preparations) Determination 2025

The purpose of the *GST-free Supply (Drugs and Medicinal Preparations) Determination 2025* (this Determination) is to extend the GST-free treatment that applies to supplies of packs containing 25 or less tablets (small packs) of analgesics containing aspirin, ibuprofen and paracetamol, effective from 1 October 2025. Small packs of analgesics can be sold outside pharmacy settings, such as supermarkets, as they are not restricted for supply under the *Standard for the Uniform Scheduling of Medicines and Poisons*, which is implemented under State and Territory legislation. Since the commencement of the GST-regime in 2000, these items have been made GST-free in the interest of consistency, as larger packs of analgesics sold in pharmacies (whether or not through the Pharmaceutical Benefits Scheme (PBS)) have been GST-free.

Subsection 38-50(5) of the *A New Tax System (Goods and Services Tax) Act 1999* (the Act) provides a supply of a drug or medicinal preparation is GST-free if:

- a. it is an analgesic that has a single active ingredient the supply of which as a drug or medicinal preparation would be GST-free under subsection (2) if it were supplied in a larger quantity; and
- b. it is of a kind the supply of which is declared by the Health Minister to be GST-free, by determination in writing.

Subsection 38-50(2) of the Act provides supply of a drug or medicinal preparation is GST-free if, under a State law or a Territory law in the State or Territory in which it is supplied, the supply of the drug or medicinal preparation to an individual for private or domestic use or consumption is restricted but may be made by a medical practitioner, dental practitioner or pharmacist; or any other person permitted by or under that law to do so.

Paragraph 177-10(4)(c) of the Act provides authority for the Minister of Health and Ageing to make a determination for the purposes of paragraph 38-50(5)(b) of the Act. Beyond meeting the requirements in paragraph 38-50(5)(a), the Act does not specify any further conditions, such as consultation, that needs to be met before the power to make the determination may be exercised.

Small packs of analgesics containing aspirin and paracetamol were granted GST-free status by the *GST-free Supply (Drugs and Medicinal Preparations) Determination 2000 (No. 2)*. That instrument was succeeded by the *GST-free Supply (Drugs and Medicinal Preparations) Determination 2004 (No. 2)*, which extended GST-free status to small packs of analgesics containing ibuprofen. The *GST-free Supply (Drugs and Medicinal Preparations) Determination 2015* (the 2015 Instrument) renewed the grant of GST-free status to small packs and is set to sunset on 1 October 2025. This Determination is substantially the same as the 2015 Instrument and extends the GST-free status beyond 1 October 2025. This

Determination will repeal the 2015 Instrument on the same day that the 2015 Instrument is due to sunset.

This Determination is a legislative instrument that is subject to disallowance under section 42 of the *Legislation Act 2003*. This Determination is subject to sunseting under the *Legislation Act 2003*.

Consultation

The 2000 and 2004 instruments referred to above were endorsed by the Federal Treasurer and all the State and Territory Treasurers in accordance with clause 34 of the then Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations (IGA). Further consultation with State and Territory Treasurers on this Determination was unnecessary and not undertaken as this Determination does not substantially alter existing arrangements and continues to give effect to the agreement made under the IGA with respect to small packs of analgesics.

The Office of Information Analysis advised that the Department of Health, Disability and Ageing is able to self-assess and certify that the 2015 Instrument is operating efficiently and effectively in lieu of an Impact Analysis (OIA25-09631). The certification letter will be published on the Office of Impact Analysis website.

Before this Determination was remade, the Department of Health, Disability and Ageing undertook a public consultation on its website for the proposal to remake the sunseting 2015 Instrument. 137 responses stated their support out of 139 total responses received for the remaking of the 2015 Instrument on the same terms.

Explanation of the Provisions

An Explanation of the Provisions is set out at [Attachment A](#).

Statement of Compatibility with Human Rights

A Statement of Compatibility with Human Rights is at [Attachment B](#).

EXPLANATION OF THE PROVISIONS

Section 1 - Name

1. This section provides that this Determination is the *GST-free Supply (Drugs and Medicinal Preparations) Determination 2025*.

Section 2 – Commencement.

2. This section provides the whole of this Determination commences on the day on 1 October 2025.

Section 3 – Authority

3. This section provides that this Determination is made under paragraph 177-10(4)(c) of the *A New Tax System (Goods and Services Tax) Act 1999*.

Section 4 – Definitions

4. This section defines Act in this Determination to mean the *A New Tax System (Goods and Services Tax) Act 1999*.
5. The note at the end of this section states that a number of expressions used in this Determination are defined in the dictionary of the *A New Tax System (Goods and Services Tax) Act 1999*. The dictionary is at division 195 of the *A New Tax System (Goods and Services Tax) Act 1999*.

Section 5 – Schedules

6. This section provides that each instrument that is specified in a Schedule to this Determination is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Section 6 – GST-free supplies

7. This section provides that for the purposes of paragraph 38-50(5)(b) of the Act, the supply of a drug or medicinal preparation is GST free if the drug or medicinal preparation meets all of the following criteria:
 1. is required, under the *Therapeutic Goods Act 1989*, to be registered or listed, or is included in a class of goods required to be registered or listed
 2. contains aspirin, paracetamol or ibuprofen; and
 3. is intended to be taken by mouth.

Subsection 38-50(5) of the Act provides a supply of a drug or medicinal preparation is GST-free if the requirements of paragraph 38-50(5)(a) are met and the drug or medicinal preparation is of a kind the supply of which is declared by the Health Minister to be GST-free for the purposes of paragraph 38-50(5)(b), by determination in writing.

Schedule 1 – Repeals

GST-free Supply (Drugs and Medicinal Preparations) Determination 2015

Item 1 - This item repeals the whole of the *GST-free Supply (Drugs and Medicinal Preparations) Determination 2015* as this Determination continues the grant of GST-free status to small packs of analgesics containing aspirin, ibuprofen and paracetamol, beyond 1 October 2025.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

GST-free Supply (Drugs and Medicinal Preparations) Determination 2025

The *GST-free Supply (Drugs and Medicinal Preparations) Determination 2025* (this Determination) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of this Determination

The purpose of this Determination is to renew the GST-free status of small packs of analgesics containing aspirin, ibuprofen and paracetamol.

A *New Tax System (Goods and Services Tax) Act 1999* provides that drugs and medicines are GST-free if they are supplied under the Pharmaceutical Benefits Scheme (PBS). Small packs of analgesics containing aspirin and paracetamol were made GST-free by the *GST-free Supply (Drugs and Medicinal Preparations) Determination 2000 (No. 2)*. That instrument was succeeded by the *GST-free Supply (Drugs and Medicinal Preparations) Determination 2004 (No. 2)*, which extended the GST-free status to small packs of analgesics containing ibuprofen. The *GST-free Supply (Drugs and Medicinal Preparations) Determination 2015* (the 2015 Instrument) renewed the grant of GST-free status to small packs and is set to sunset on 1 October 2025. This Determination is substantially the same as the 2015 Instrument and extends the GST-free status beyond 1 October 2025.

Human rights implications

This Determination engages Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), specifically the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

The Right to Health

The right to the enjoyment of the highest attainable standard of physical and mental health is contained in Article 12(1) of the ICESCR. The UN Committee on Economic Social and Cultural Rights (the Committee) has stated that the right to health is not a right for each individual to be healthy, but is a right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health.

The Committee reports that the ‘highest attainable standard of health’ takes into account the country’s available resources. This right may be understood as a right of access to a variety of

public health and health care facilities, goods, services, programs, and conditions necessary for the realisation of the highest attainable standard of health.

Analysis

This Determination renews the GST-free status of small packs of analgesics containing aspirin, ibuprofen and paracetamol. Analgesics are medications used in the management and treatment of pain. By ensuring that the small packs of analgesics containing aspirin, ibuprofen and paracetamol continue to be GST-free, makes the packs more affordable than applying GST to the item to anyone who requires management and treatment of pain that these analgesics offer. This assists in achieving the highest attainable standard of physical and mental health for everyone.

Conclusion

This Determination is compatible with human rights because it assists in achieving the highest attainable standard of physical and mental health for everyone.

**The Hon Mark Butler MP
Minister for Health and Ageing**