

## **Question on notice no. 119**

### **Portfolio question number: 119**

#### **2017-18 Additional estimates**

#### **Economics Committee, Treasury Portfolio**

**Senator David Leyonhjelm:** asked the Department of the Treasury on 28 February 2018—

Senator LEYONHJELM: [] I'm now switching to a GST matter. Section 38.45 of the GST Act makes medical aids and devices GST-free provided they are not widely used by people without an illness or disability. As a consequence of that, pads are GST-free but sanitary pads are not. It also means collection devices for urine and faeces are GST-free but tampons are not. Is the Treasury aware of these specific distinctions in tax treatment?

[]

Senator LEYONHJELM: Thank you for that. That's news. I was under the impression that the original instrument made by the then-health minister, Nicola Roxon, the GST-free Supply (Health Goods) Determination 2011, determined that things like condoms, lubricants, folic acid, sunscreens, and nicotine patches and gums are GST-free. I was working on the assumption that, if the minister can introduce an instrument to do that, the minister could introduce an instrument to vary it or add something to it. Is that not right?

Ms Mrakovcic: We may be speculating at this point. I would have thought that there would be perhaps some supporting documentation or agreement with the states and territories that was reached outside that, because the GST is in fact a Commonwealth law administered by the Commonwealth, but for the agreement, we are relying on in some cases or in my case! a very old memory.

Senator LEYONHJELM: I sympathise.

Ms Mrakovcic: My suspicion is that, at the time that the GST was set up, somebody went through all of these things and came to a view as to whether they were on the GST or the GST-free list. To go back 18 or 19 years whenever it was designed and come to a view as to why those decisions were taken is difficult for us, but we know that it is generally the case that you would get the agreement of the six states and two territories to changes to the GST, because in fact all of the revenue flows through to the states. Although the health minister or other ministers may be responsible for the legislation, I think there would be agreement taken outside that context, but it would be best for us to take the question on notice and give you a complete answer.

Senator LEYONHJELM: I think that would be good. I'd appreciate that. Finally, to summarise: is it within the power of the ATO or the minister to reclassify menstruation as a disability, which would then facilitate sanitary pads and tampons to become GST-free? You can take that one on notice too.

Ms Mrakovcic: We will take that on notice.

**Answer —**

See attachment.

**Senate Economics Legislation Committee**

**ANSWERS TO QUESTIONS ON NOTICE**

**Treasury Portfolio**

Additional Estimates

2017 - 2018

**Division/Agency:** Individuals and Indirect Tax Division

**Question No:** 119

**Topic:** GST-Free Items

**Reference:** Hansard page 92-93 (28 February 2018)

**Senator:** David Leyonhjelm

**Question:**

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**Answer:**

Under the *Intergovernmental Agreement on Federal Financial Relations* (IGA), any proposals that change the GST base require the unanimous agreement of the State and Territories, endorsement by the Commonwealth Government, and (where relevant) passage of legislation through both Houses of Parliament.

The Health Minister is empowered under s 38-47 of the *A New Tax System (Goods and Services Act) 1999* to make a determination in relation to making certain health supplies GST free. However, as stated in Schedule A to the IGA, a proposal to vary the GST base by way of a Ministerial determination under the GST Act requires the unanimous agreement of the States and Territories prior to proceeding to a Ministerial determination.

Former Treasurer, Joe Hockey, raised the removal of GST on feminine hygiene products at the Council on Federal Financial Relations meeting on 21 August 2015. As no unanimous agreement was reached at the time, the proposal did not proceed.