

BACKGROUND

The QBCC is the regulator of the building industry in Queensland, issuing licences to contractors, providing a free dispute resolution service and administering a home warranty scheme to provide insurance cover for residential construction work in Queensland.

Under the home warranty scheme, licensed contractors must pay a premium for residential construction work they carry out.

The scheme provides home owners with cover for loss where a licensed contractor does not complete the contracted works or fails to rectify defective work.

SCHEME CHANGES

From 28 October 2016 the Scheme will be changed in various ways. These changes include:

- everything previously insurable under the home warranty scheme, will continue to be insurable;
- the scheme has been expanded to cover other additional items; and
- a consumer will be able to increase the amount of cover by payment of an additional premium;

In addition to these changes, **an important change has also been made in relation to the payment of the insurance premium under the Scheme.**

This change has important GST implications for licenced contractors.

SCHEME CHANGES AND GST

Prior to 28 October 2016, the contractor had a statutory obligation to pay the premium, yet the owner is the party that receives the benefit of the insurance. This arrangement is somewhat unusual in the insurance industry – normally the person who pays the premium gets the benefit of cover. As the contractor paid the premium (including a GST amount) most contractors claimed back the GST component in their GST return process.

From 28 October 2016, the amendments to the Act require that the licensed contractor collects and pays the premium *on behalf of the consumer* to the QBCC.

As the contractor is collecting the premium and making payment to the QBCC on behalf of the consumer, this change has two main GST implications:

- Tax invoices

The QBCC will issue a tax invoice to the consumer and will no longer issue a tax invoice to contractors. For administrative purposes contractors will receive a receipt acknowledging that the QBCC has received the relevant premium monies from the contractor.

- Entitlement to GST credits

As the contractor makes the payment of the premium on behalf of the consumer, the contractor is unlikely to be entitled to claim back the GST component of the premium. This is because one of the criteria to claim back GST credits (officially referred to as 'input tax credits' in the GST Act) is that the payer is liable to pay the monies in their own right. Where the payer (ie contractor) is acting on behalf of another party (ie consumer), the other party (ie the consumer) is usually entitled to the GST credit (if other requirements are met) not the payer.

As the application of GST legislation is somewhat complex and we recommend you speak with your accountant or seek your own tax advice. To assist you in these discussions we have prepared some general GST FAQs below.

FREQUENT ASKED QUESTIONS (FAQS)

GST FAQs

As a result of the Scheme changes certain GST processes for licensed contractors will need to be changed. The frequently asked questions below aim to outline the key components of these changes together with relevant background information and legislative references .

IMPORTANT NOTE: QBCC provides the GST guidance below for general information purposes only and to assist contractors with seeking advice from their accountants or tax advisers regarding the implications of the Scheme change.

What is the main change to the Scheme that impacts the GST obligations of the contractors?

Prior to 28 October, 2016, contractors were required to 'pay' premium to the QBCC in respect of insured works (under section 68B of the QBCC Act). That

is, the contractor was liable to pay the premium to the QBCC, irrespective of whether they had charged this premium to the consumer. Most contractors separately itemised the premium amount and on-charged the premium to consumers.

Generally, many contractors:

- claimed back the GST component of the premium on their GST return as the insurance premium was a business expense for the contractor; and
- on-charged to customers the GST exclusive amount of the premium (ie the expense net of input tax credits) plus GST on the basis that the insurance was part of their GST taxable supply to the customer, and remitted the GST collected to the ATO under their GST return.

The net result was that contractors would include GST in respect of the premium on their GST return as both a GST receivable amount (in relation to the payment of the premium to the QBCC) and a GST payable amount (in relation to on-charging the premium to the consumer).

From 28 October, 2016, the role of the contractor changed so that the contractor becomes required to collect the premium from the consumer and pay it to the QBCC on behalf of the consumer. As the contractor is merely collecting the premium and passing it on to the QBCC, the payment of the premium will no longer be an expense of the contractor's business from a GST perspective.

As a result, under the new Scheme, the contractor should:

- not claim back the GST component of the premium on their GST return as the premium has been paid to the QBCC on behalf of the consumer; and
- not remit GST to the ATO in relation to on-charging the premium to consumers as the premium is not consideration for a supply made by the contractor.

The net result will be that the premium (and the GST component of the premium) will not be included in the contractor's GST return as either GST payable or GST receivable.

Under the new Scheme do contractors need to pay GST to the ATO on the premium collected from consumers?

No. Under the new Scheme QBCC has been advised that the collection of premium from the consumer will not constitute a taxable supply made by the contractor to the consumer under section 9-5 of the GST Act. This is because the contractor is collecting the premium and passing it on to the QBCC on behalf of the consumer (as deemed by the amendment to section 68A of the QBCC Act).

As a result, the contractor will not be required to pay GST to the ATO in respect of on-charging the premium to the consumer. The contractor will pass on the entire GST inclusive value of the premium collected to the QBCC in order to comply with the amendments to section 68B of the QBCC Act.

Under the new Scheme are contractors entitled to claim back the GST component of the premium that has been passed on to the QBCC?

No. Under the new Scheme QBCC has been advised that a contractor's collection and subsequent payment of the premium to the QBCC (as required by the amendment to section 68B of the QBCC Act) will no longer meet the requirements of a 'creditable acquisition' under Section 11-5 of the GST Act. This is because the contractor is collecting the premium and passing it on to the QBCC on behalf of the consumer (as deemed by the amendment to section 68A of the QBCC Act).

As a result, the contractor will not be entitled to claim an input tax credit (generally referred to as a 'GST credit') when completing their GST return.

Will the QBCC continue to issue tax invoices in respect of the premium paid?

The QBCC will issue a tax invoice to the consumer and will no longer issue a tax invoice to contractors. For administrative purposes, contractors will receive a receipt acknowledging that the QBCC has received payment of the relevant premium monies from the contractor.

¹Legislative references to the *Queensland Building Services Authority Act 1991* are referred to as 'QBCC Act'. Legislative references to the GST legislation (*A New Tax System (Goods And Services Tax) Act 1999*) are referred to as 'GST Act'.

What does QBCC recommend contractors do to ensure they treat the insurance premium collection and payment process correctly under the new Scheme?

QBCC recommends that contractors implement the following process in relation to premiums collected under the new Scheme:

- Ensure you collect the relevant premium from the consumer and pay this premium to the QBCC on behalf of the consumer within the required timeframes.
- Ensure your internal accounting systems are reviewed to ensure they do not automatically:
 - claim back the GST component of premiums collected; or
 - charge GST to the consumer or remit GST to the ATO in relation to the premium amount collected.

- Ensure your finance and accounting staff understand that QBCC will no longer issue a tax invoice to contractors in respect of the payment of premiums, however, a payment receipt will be issued.

Contractors are reminded that premiums paid under the old Scheme (ie where building works commenced prior to 28 October 2016) will be subject to the contractor’s existing GST processes.

What is the difference between the method of accounting for premiums under the existing Scheme and new Scheme?

While contractors are reminded to seek their own accounting and tax advice regarding the changes to the Scheme, the key GST differences between the accounting approach to be adopted under the existing and new Scheme are summarised in the worked example below.

WORKED EXAMPLE

SCENARIO A

John is a builder and enters in a building contract for work in September 2016 (prior to the commencement of the new Scheme).

The value of the building contract is \$55,000 and the premium payable in respect of John’s building work is \$1,100 (including GST of \$100). As part of the terms of John’s building contract he passes on the cost of the insurance premium to the consumer.

The price of the building contract including GST is:

TABLE 1A

DESCRIPTION	AMOUNT	GST	TOTAL AMOUNT
Building works	\$50,000	\$5,000	\$55,000
Home Warranty Scheme Insurance premium (recharge of John’s expense)	\$1,000	\$100	\$1,100
Total payable by consumer	\$51,000	\$5,100	\$56,100

This building contract was John’s only income for September 2016.

John's costs for running his business in September 2016 were:

TABLE 2A

DESCRIPTION	AMOUNT	GST	TOTAL AMOUNT
Contract labour	\$10,000	\$1,000	\$11,000
Fuel, Telephone, Other business expenses	\$5,000	\$500	\$5,500
Home Warranty Insurance Premium	\$1,000	\$100	\$1,100
Total Expenses	\$16,000	\$1,600	\$17,600

John completes his GST Return for the September 2016 period and includes the following amounts at the relevant labels:

TABLE 3A

LABEL	AMOUNT	CALCULATION
1A - GST Payable	\$5,100	Total GST relating to supplies/services provided to consumers as shown in Table 1A. This includes GST relating to the income received in connection with the recharge of the Home Warranty Insurance Premium.
1B - GST Receivable	\$1,600	Total GST paid to suppliers relating to John's business expenses as shown in Table 2A. This includes GST relating to the expense incurred by John in paying the Home Warranty Insurance Premium as required by section 68B of the QBCC Act (prior to amendments).
Net GST Position	\$3,500	

SCENARIO B

John commences a similar building contract in November 2016 to which the new Scheme applies. John's business expenses were also the same in November 2016 as they were in September 2016.

Due the new Scheme requirements, while the value of the building contract is \$55,000 (including GST) John is deemed to collect the insurance premium of \$1,100 (including GST of \$100) and pay it to the QBCC on behalf of the consumer.

John's building contract notes that, in accordance with Section 68B of the QBCC Act, he acts on behalf of the consumer in collecting and paying the premium to QBCC.

As such, the price of the building contract including GST is:

TABLE 1B

DESCRIPTION	AMOUNT	GST	TOTAL AMOUNT
Building works	\$50,000	\$5,000	\$55,000
Contract value	\$50,000	\$5,000	\$55,000
Collection and payment of Home Warranty Scheme Insurance premium on behalf of consumer	\$1,000	\$100	\$1,100
Total payable by consumer	\$51,000	\$5,100	\$56,100

This building contract was John's only income for November 2016. John's costs for running his business in November 2016 were:

TABLE 2B

DESCRIPTION	AMOUNT	GST	TOTAL AMOUNT
Contract labour	\$10,000	\$1,000	\$11,000
Fuel, Telephone, Other business expenses	\$5,000	\$500	\$5,500
Total Expenses	\$15,000	\$1,500	\$16,500
Monies collected and paid on behalf of consumer:			
Home Warranty Insurance Premium	\$1,000	\$100	\$1,100

John completes his GST Return for the November 2016 period and includes the following amounts at the relevant labels:

TABLE 3B

LABEL	AMOUNT	CALCULATION
1A - GST Payable	\$5,000	Total GST relating to supplies/services provided to consumers as shown in Table 1B. This does not include GST relating to the Home Warranty Insurance Premium as John was collecting the premium and paying it to the QBCC on behalf of the consumer. The premium is not income to John's business from a GST perspective.
1B - GST Receivable	\$1,500	Total GST paid to suppliers relating to John's business expenses as shown in Table 2B. This does not include GST relating to the Home Warranty Insurance Premium as John was collecting the premium and paying it to the QBCC on behalf of the consumer. The premium is not an expense of John's business from a GST perspective.
Net GST Position	\$3,500	

Need more information?

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