

GSTE 2017/1 - Explanatory statement -



Explanatory Statement

Correcting GST Errors Amendment Determination 2017 (No.1)

General Outline of the Determination

1. The Determination is made under subsection 17-20(1) of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).
2. The Determination amends *Goods and Services Tax: Correcting GST Errors Determination 2013* (F2013L00754).
3. Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any determination of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such determination.
4. The Determination is a Legislative Instrument for the purposes of the *Legislation Act 2003*.

Date of effect

5. The Determination commences on 1/03/2017.
6. The amendments will apply to a tax period, in which a taxpayer corrects an error or errors from an earlier tax period that starts on or after the commencement date of the Determination.

What is the Determination about

7. The purpose of the Determination is to amend *Goods and Services Tax: Correcting GST Errors Determination 2013* (the Correcting GST Errors Determination):
 - (i) to clarify that you cannot correct an error from an earlier tax period by requesting an amendment of a GST return of a later tax period; and
 - (ii) to ensure that credit errors from an earlier tax period can only be corrected in a later tax period if the GST return for the later tax period is lodged within the period of review for the earlier assessment in which the error was made.

Background

8. The Commissioner of Taxation has made a determination under subsection 17-20(1) of the GST Act to allow an error made in an earlier tax period to be corrected in a later tax period in specified circumstances. This allows you to

minimise your compliance costs and avoid liabilities to any general interest charge or administrative penalty that might be payable. Our administrative costs are also reduced as it will reduce the number of requests for amendments that require processing.

9. Newly inserted Clause 5A does not change the scope of the Correcting GST Errors Determination. It clarifies that you cannot request an amendment of a GST return to include an error from an earlier tax period. You make the correction in the next GST return you lodge. This achieves the intent of the Determination to minimise compliance and administrative costs.
10. Clause 5(b) is amended to ensure that the Correcting GST Errors Determination is aligned with Parliament's intended scope of subsection 17-20(1) of the GST Act. With effect from 1 July 2012, amendments were made to section 17-20 of the GST Act to remove the restriction that errors can only be corrected in a later GST return if the error related to an immediately preceding tax period. Paragraph 2.6 of the *Explanatory Memorandum to Indirect Tax Laws Amendment (Assessment) Bill 2012* provides:

The Commissioner has the discretion to determine the circumstances in which a taxpayer may account for errors in relation to net amounts or net fuel amounts for prior tax periods and fuel tax return periods, as long as the error is corrected during the relevant period of review.

11. Paragraph 17-20(2A)(b) of the GST Act was inserted in 2012 as follows:

(b) if the earlier tax period started on or after 1 July 2012- the tax period mentioned in subsection (1) starts during the *period of review for the *assessment of the *net amount.

12. The Correcting GST Errors Determination adopted the wording from paragraph 17-20(2A)(b) of the GST Act for the time limit to correct credit errors.
13. However, the Commissioner became aware that under clause 5(b) of the Correcting GST Errors Determination prior to this amendment, credit errors may in certain circumstances be corrected outside the four year period of review. This is because the credit error time limit refers to when the later tax period starts rather than when the GST return for the later tax period is lodged. See for example:

A taxpayer lodges their monthly July 2012 GST return on 21 August 2012.

The period of review (POR) for the assessed net amount for the July 2012 GST return started on 21 August 2012 and ended on 22 August 2016.

In December 2016, the taxpayer discovers a credit error in the July 2012 GST return and the August 2016 GST return has not yet been lodged. Prior to the amendment to clause 5(b) of the Correcting GST Errors Determination, the taxpayer would have been entitled to correct the credit error in their August 2016 GST return when lodged in December 2016 notwithstanding that the POR for the July 2012 GST return has ended. Following the amendment, the credit error may only be corrected in a GST return lodged within the POR of the July 2012 GST return, that is the GST return with the correction must be lodged on or before 22 August 2016.

Consultation

14. Subsection 17(1) of the *Legislation Act 2003* requires, before the making of a determination, that the rule-maker is satisfied that appropriate and reasonably practicable consultation has been undertaken.
15. A draft of the Determination and explanatory statement was published on the ATO Legal Database at ato.gov.au on 28 September 2016 to 20 October 2016, seeking feedback and comments. The ATO Legal Database sends emails and news feeds to direct subscribers such as tax professionals and other industry stakeholders.
16. The consultation process was announced on “What we are consulting about” at ato.gov.au. In addition, we notified the GST Stewardship Group members of the opportunity to be involved in the consultation. The members of the GST Stewardship Group comprises of senior Australian Taxation officers and external members from business, academic and professional bodies.
17. The response from the consultation process was limited but was supportive of the amendments. The Determination is made with no changes from the draft Determination.

Legislative references:

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

Acts Interpretation Act 1901

Legislation Act 2003

Taxation Administration Act 1953

Statement of compatibility with Human Rights

This Statement is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Correcting GST Errors Amendment Determination 2017 (No.1)

This Legislative Instrument 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 the Legislative Instrument

The purpose of the Legislative Instrument is to amend *Goods and Services Tax: Correcting GST Errors Determination 2013* to:

- clarify that you cannot correct an error from an earlier tax period by requesting an amendment in a later tax period; and
- ensure that credit errors from an earlier tax period can only be corrected in a later tax period if the GST return for the later tax period is lodged within period of review of the error.

This is to ensure the concession provided for in the Legislative Instrument aligns with Parliament's intended scope for the Instrument's governing provision.

Human rights implications

The Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

The Legislative Instrument is compatible with human rights as it does not raise any human rights issues.