

PAR 2017/2 - Explanatory statement -



Explanatory Statement

Goods and Services Tax: (Particular Attribution Rules for Retention Payments) Determination 2017

General outline of determination

1. This determination is made under subsection 29-25(1) of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).
2. Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument 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.
3. This determination sets out particular attribution rules for a taxable supply or creditable acquisition made under a contract that provides for retention of some or all of the consideration until certain conditions of the contract (certain conditions) are met.
4. The determination is a legislative instrument for the purposes of the *Legislation Act 2003*.

Date of effect

5. This determination commences on the day after its registration on the Federal Register of Legislation.

What is this determination about

6. Sections 29-5 and 29-10 of the GST Act set out the rules for attributing GST and input tax credits on your taxable supplies and creditable acquisitions.
7. This determination sets out special attribution rules for entities that report on a non-cash basis. These circumstances involve a taxable supply or creditable acquisition made under a contract that provides for retention of some or all of the consideration until certain conditions are met.

What is the effect of this determination

Particular attribution rules for GST payable on a taxable supply

8. Where you make a taxable supply under a contract that provides for some or all of the consideration to be retained by the recipient until certain conditions are met, the GST payable on the **non-retained consideration** is attributable, to the earlier of, the tax period in which:
 - (a) any part of the consideration is received for the supply; or
 - (b) the tax period in which you issue a tax invoice relating to the supply.
9. The **GST payable on a retention amount** under the contract is attributed to the earlier of the tax period in which:
 - (a) the **retained amount** is received; or
 - (b) an **invoice for the retention amount** is issued.

Particular attribution rules for input tax credits on a creditable acquisition

10. Where you make a creditable acquisition, under a contract that provides for some or all of the consideration to be retained by you until certain conditions are met, the input tax credit on the **non-retained consideration** is attributable to the earlier of, the tax period in which:
 - (a) you provide any consideration for the acquisition; or
 - (b) an invoice relating to the acquisition is issued.
11. The **input tax credit on a retention amount** is attributed to the earlier of the tax period in which:
 - (a) you provide the retained amount; or
 - (b) an invoice for the retained amount is issued.
12. Compliance Cost Impact: Minor – there will be no or minimal impact for both implementation and ongoing compliance costs. The legislative instrument is minor or machinery in nature.

Background

13. This determination replaces *A New Tax System (Goods and Services Tax) Act 1999 (Particular Attribution Rules for Retention Payments) Determination (No. 1) 2000* (F2006B11652). The previous determination is repealed on the commencement of the determination.
14. The determination is substantially the same as the previous determination that it replaces (F2006B11652). There is a minor change to the definition of the term '**invoice for the retention amount**'. This change provides that the invoice for the **retention amount** is the document issued notifying of

obligation to pay upon certain conditions being met or following the expiry of the defects liability period.

15. There is also a minor change to the definition of '**retention amount**' to recognise that there may be multiple retention amounts, or a retention amount may be paid, received or invoiced in parts.

Consultation:

16. 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.

17. Broad consultation has been undertaken. The draft determination and draft explanatory statement were published on the ATO Legal database at ato.gov.au seeking feedback and comments for a period of two weeks. Notice of the draft determination was also published to ato.gov.au and subscription alerts issued. Tax professionals and tax associations regularly review both the Legal database and ato.gov.au and further promulgate advice of new drafts issued in their internal news bulletins. The major legal publishers also publish news of the drafts in their key tax alerting services - such as the Weekly Tax Bulletin (published by Thomson Reuters Australia) and Tax Tracker and Tax Week (published by CCH Australia). Additionally, draft determinations and draft explanatory statements have been published on the ATO Consultation Hub. Links to these drafts were published organisations and newsletters such as the Taxation News (Chartered Accountants Australia and New Zealand) weekly bulletin. No comments have been received to date.

Legislative references:

A New Tax System (Goods and Services Tax) Act 1999
Acts Interpretation Act 1901
Legislation Act 2003
Human Rights (Parliamentary Scrutiny) Act 2011

Statement of Compatibility with Human Rights

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

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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 Bill/Legislative Instrument

Sections 29-5 and 29-10 of the GST ACT set out the rules for attributing GST and input tax credits on your taxable supplies and creditable acquisitions. This determination sets out special attribution rules for entities that report on a non-cash basis. This involves a taxable supply or creditable acquisition made under a contract that provides for the retention of some or all of the consideration until certain conditions are met.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms as all it does it set out special attribution rules for entities that report on a non-cash basis.

Conclusion

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