

***PAR 2017/8 - Explanatory statement -***



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## Explanatory Statement

### Goods and Services Tax: Particular Attribution Rules Where Total Consideration is Not Known Determination 2017

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#### General outline of determination

1. The 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. The determination sets out particular rules for attributing GST on taxable supplies and input tax credits on creditable acquisitions where the supply or acquisition occurs before the total consideration is known.
4. The determination is a legislative instrument for the purposes of the *Legislation Act 2003*.

#### Date of effect

5. This determination will commence retrospectively on 1 April 2017. This is to allow for reasonable and appropriate consultation to be completed.
6. Subsection 12(2) of the *Legislation Act 2003* allows a retrospective application date for a Legislative Instrument. This determination aims to reduce compliance costs. A commencement date after 1 April 2017 would create unexpected compliance obligations for the intervening period. To provide certainty to taxpayers who have relied upon the previous determination and continue to rely on this determination and protect the rights of all affected taxpayers the retrospective application date is reasonable and appropriate. The retrospective application date will not adversely affect the rights of any person and will not impose a liability on any person for any act or omission before this instrument's registration date.

#### What is the determination about?

7. Sections 29-5 and 29-10 of the GST Act set out rules for attributing GST and input tax credits on your supplies and acquisitions.
8. As the context requires, sections 29-5 and 29-10 of the GST Act have regard to whether you have:

- (a) issued or received an invoice
  - (b) received or paid consideration (and to what extent), and
  - (c) whether you account on a cash or non-cash basis.
9. This determination provides rules for attribution of GST and input tax credits where the total consideration is not known because ascertainment of that total consideration depends on a future event or events not within the control of the supplier

### **What is the effect of this determination?**

*Particular attribution rule for GST payable on a taxable supply occurring before the supplier knows the total consideration*

10. Where, in a tax period, you make a taxable supply and issue an invoice which states an amount of consideration before you know the total consideration for that supply, the GST is attributable to that tax period to the extent of:
- (a) If no consideration is received in that tax period - the amount of consideration stated on the invoice
  - (b) If the consideration received in that tax period is less than or equal to that stated on the invoice - the amount of consideration, or
  - (c) If the consideration received is more than the amount stated in the invoice – the amount of consideration received.
11. Where in a tax period you make a taxable supply before you know total consideration and you have not issued an invoice for the supply, the GST is attributable to that tax period but only to the extent of the consideration received.
12. In subsequent tax periods, GST on any increase in consideration for the supply is to be attributed to the earlier of the tax period in which an invoice (or amended invoice) is issued for the supply or the tax period in which any of the additional consideration is received.

*Particular attribution rule for input tax credits arising from a creditable acquisition occurring before the recipient knows the total consideration*

13. Where, in a tax period, you make a creditable acquisition before you know the total consideration, if an invoice has been issued, the input tax credit is attributable to that period to the extent of:
- (a) If no consideration is provided in that tax period - the amount of consideration on the invoice
  - (b) If the consideration provided in that tax period is less than or equal to that stated on the invoice - the amount of consideration stated in the invoice, or
  - (c) If the consideration is higher than stated on the invoice – the amount of the consideration you provided.
14. Where in a tax period you make a creditable acquisition, before you know the total consideration and an invoice has not been issued, the input tax credit is

attributable to that tax period but only to the extent of the consideration provided.

15. In subsequent tax periods, attribute the input tax credit on any increase in consideration to the earlier of the tax period in which an invoice (or amended invoice) is issued, or the tax period in which any additional consideration is provided.
16. This determination is substantially the same as the previous determination that it replaces. An entity that satisfied the requirements of the previous determination will satisfy the requirements of this determination.
17. Compliance cost impact: Minor – there will be no or minimal impact for both implementation and ongoing compliance costs. The determination is minor or machinery in nature

## **Background**

18. The determination repeals and replaces *A New Tax System (Goods and Services Tax) (Particular Attribution Rules Where Total Consideration Not Known) Determination (No. 1) 2000 - F2006B11593* (previous determination), registered on 17 November 2006. This determination is repealed from 1 April 2017.

## **Consultation**

19. 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.
20. Broad consultation has been undertaken. The draft determination and draft explanatory statement were published on the ATO Legal database at [ato.gov.au](http://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](http://ato.gov.au) and subscription alerts issued. Tax professionals and tax associations regularly review both the Legal database and [ato.gov.au](http://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* (GST Act)  
*Acts Interpretation Act 1901*  
*Legislation Act 2003*  
*Human Rights (Parliamentary Scrutiny) Act 2011*

## **Statement of Compatibility with Human Rights**

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

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The 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 attribution of GST and input tax credits depends on rules which may be difficult to reconcile in a circumstance where you do not know the total consideration receivable, or payable, because it depends on a future event not within the supplier's control. The legislative instrument clarifies how much GST or input tax credit you must attribute and to which tax period.

#### **Human rights implications**

The legislative instrument does not engage any of the applicable rights or freedoms. It provides how much GST or input tax credit you must attribute and to which tax period in circumstance where you do not know the total consideration receivable, or payable, because total consideration depends on a future event or events not entirely within supplier's control.

#### **Conclusion**

The legislative instrument is compatible with human rights as it does not raise any human rights issues.