

WAN 2017/1 - Explanatory statement -



Explanatory Statement

Goods and Services Tax: Waiver of Adjustment Note Requirement Determination 2017– for Decreasing Adjustments from Intangible Supplies from Offshore

General outline of determination

1. This determination is made under subsection 29-20(3) 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 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.
3. This determination waives the requirement to hold an adjustment note in order to attribute a decreasing adjustment to a tax period where the decreasing adjustment arises from an adjustment event that relates to an intangible supply from offshore that is a taxable supply under section 84-5 of the GST Act.
4. This 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 will allow 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. Under subsection 29-20(3) of the GST Act, you can only attribute a decreasing adjustment from an adjustment event in the first tax period when you hold an adjustment note for the adjustment (unless the adjustment is \$75 or less).

8. However, the Commissioner may determine in writing, the circumstances under which the requirement for an adjustment note for a decreasing adjustment does not apply.
9. This determination waives the requirement to hold an adjustment note for a decreasing adjustment where an entity has a decreasing adjustment that arises from an adjustment event that relates to an intangible supply from offshore that is a taxable supply under section 84-5 of the GST Act.

What is the effect of the determination?

10. At the time of lodging a GST return, an entity with a decreasing adjustment arising from an adjustment event that relates to an intangible supply from offshore that is a taxable supply under section 84-5 of the GST Act can attribute the decreasing adjustment without holding an adjustment note.
11. This determination overcomes the practical difficulties that a recipient faces in obtaining an adjustment note for an adjustment that arises from an adjustment event that relates to an intangible supply from offshore that is a taxable supply under section 84-5 of the GST Act.
12. 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.
13. Compliance cost impact: Minor – there will be no or minimal impact for both implementation and ongoing compliance costs. This determination is minor or machinery in nature.

Background

14. This determination replaces *A New Tax System (Goods and Services Tax) Waiver of Requirement to hold an Adjustment Note for a decreasing Adjustment Determination 2000 - F2006B11575*, registered on 14 November 2006 (previous determination). The previous determination is repealed from 1 April 2017.

Consultation

15. 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.
16. 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 in 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 statement 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 Legislative Instrument

Adjustment notes are generally issued by a supplier under the basic rules for GST. The legislative instrument allows an entity that has a decreasing adjustment relating to an intangible supply from a non-resident supplier to attribute any decreasing adjustments without holding an adjustment note provided that certain conditions are met.

Human rights implications

The legislative instrument does not engage any of the applicable rights or freedoms. It allows for the attribution of decreasing adjustments without holding an adjustment note.

Conclusion

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