

# ***LI 2023/10 - Explanatory statement -***



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## Explanatory Statement

# A New Tax System (Goods and Services Tax): Waiver of Tax Invoice Requirement (Acquisitions from Property Managers) Determination 2023

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### General outline of determination

1. This determination is made under subsection 29-10(3) of the *A New Tax System (Goods and Services Tax) Act 1999* (the Act).
2. This determination waives the requirement for a recipient making a creditable acquisition through a property manager to hold a tax invoice when they hold a document that meets the requirements prescribed in this determination.
3. This determination replaces *A New Tax System (Goods and Services Tax) Waiver of Tax Invoice Requirement (Acquisitions from Property Managers) Legislative Instrument 2013*.
4. The determination is a legislative instrument for the purposes of the *Legislation Act 2003*.
5. 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 and 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 instrument.

### Date of effect

6. This determination commences on the day after it is registered on the Federal Register of Legislation.

### Effect of this determination

7. This determination applies to a recipient making a creditable acquisition through a property manager.
8. This determination waives the requirement for a recipient to hold a tax invoice before an input tax credit for a creditable acquisition made through a property manager (on behalf of a principal) is attributable to a tax period. It applies when the recipient holds a document that meets the information requirements specified in the determination.
9. The waiver applies in circumstances where, instead of a tax invoice, a recipient holds a document that contains the identity and Australian business number (ABN) of the supplier's property manager, and that otherwise satisfies the requirements in paragraphs 29-70(1)(a) and 29-70(1)(c) of the Act, other than subparagraph 29-70(1)(c)(i). This instrument has the effect of allowing the input tax credit for a creditable acquisition to be attributed at the time the recipient gives a GST return to the Commissioner for the tax period.

## **Compliance cost assessment**

10. Compliance cost impact: Minor – There will be no additional impacts as the instruments are minor and machinery in nature OBPR22-03758.

## **Background**

11. Generally, when a recipient makes a creditable acquisition, an input tax credit for the acquisition is not attributable to a tax period until they hold a tax invoice. A tax invoice is a document that meets the requirements in subsection 29-70(1) of the Act.
12. In some cases, the necessity for the recipient to hold a document that meets the requirements in subsection 29-70(1) of the Act may impose a disproportionate burden on a supplier or recipient, particularly if the document that they do hold has most of the required features of a tax invoice.
13. A supplier's property manager (when an agent at common law) may issue tax invoices in respect of supplies made or facilitated on behalf of the principal. Where the document contains the property manager's identity and ABN rather than the supplier's, the document would not meet the tax invoice requirements set out in subsection 29-70(1) of the Act.
14. Property managers may act on behalf of the principal, in terms of being authorised to manage the real property of the principal, making or facilitating supplies on behalf of the principal, and issuing tax invoices in respect of supplies of that real property made or facilitated on behalf of the principal.
15. Where a property manager issues a tax invoice for a supply made on behalf of the supplier that contains the property manager's identity and ABN rather than the supplier's, the document would not meet the tax invoice requirements set out in subsection 29-70(1) of the Act. In these situations, under subsection 29-10(3) of the Act, an input tax credit for a creditable acquisition would not be attributable to a tax period until the recipient held a document that complied with the tax invoice requirements. It does not matter that the property manager for the supplier may have transacted with the recipient either by disclosing the property manager relationship but without naming the supplier, or by not disclosing either the property manager relationship or the identity of the supplier.
16. The Commissioner has a discretion under subsection 29-70(1B) of the Act to treat a document as a tax invoice where not all the requirements in subsection 29-70(1) of the Act are met. However, the Commissioner's discretion under subsection 29-70(1B) of the Act is administrative and can only be exercised on a case-by-case basis.
17. As such, the Commissioner makes this instrument under subsection 29-10(3) of the Act to ensure that taxpayers do not have to change their administrative practices formed in reliance on past legislative instruments and rulings that are now either withdrawn or repealed.

## **Consultation**

18. Subsection 17(1) of the *Legislation Act 2003* requires that the Commissioner be satisfied that appropriate and reasonably practicable consultation has been undertaken before he makes a determination.

19. Public consultation was undertaken on this instrument for a period of 3 weeks from 25 November 2022 to 16 December 2022 inclusive.
20. The draft instrument and draft explanatory statement were published on the ATO Legal database, which is publicly available. Publication was advertised via the 'What's new' page on that website, and via the 'Open Consultation' page on ato.gov.au. Major tax and superannuation publishers and associations monitor these pages and include the details in the daily and weekly alerts and newsletters that they provide to their subscribers and members.
21. No comments were received as part of the consultation process.

**Legislative references**

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

*Acts Interpretation Act 1901*

*Human Rights (Parliamentary Scrutiny) Act 2011*

*Legislation Act 2003*

## **Statement of compatibility with Human Rights**

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**

A taxpayer must generally hold a tax invoice to be able to claim an input tax credit under the *A New Tax System (Goods and Services Tax) Act 1999* (the Act). A tax invoice is a document that meets certain requirements under the Act. This determination waives the requirement under the Act to hold a tax invoice before an input tax credit can be claimed in a tax period. This waiver will only apply if the conditions set out in the determination are met. The purpose of this waiver is to reduce the compliance burden for recipients and suppliers.

#### **Human rights implications**

This legislative instrument does not engage any of the applicable rights or freedoms because it merely waives the requirement to hold a tax invoice in certain circumstances, and replaces it with a requirement to hold a different document or documents that meet alternative conditions.

#### **Conclusion**

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