

# ***LI 2023/11 - Explanatory statement -***



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## Explanatory Statement

# A New Tax System (Goods and Services Tax): Waiver of Tax Invoice Requirement (Creditable Acquisition of Taxi Travel) 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 of taxi travel to hold a tax invoice when they hold a document (for the supply of taxi travel) 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 (Creditable Acquisition of Taxi Travel) Legislative Instrument 2013*.
4. This 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 the recipient of an acquisition of taxi travel.
8. This determination waives the requirement for a recipient to hold a tax invoice for an input tax credit to be attributed to a tax period for a creditable acquisition, if the recipient holds a document that meets the information requirements specified in this determination.
9. The document must contain the taxi driver's licence or accreditation number and the taxi driver's Australian business number (ABN) and otherwise meet the requirements in paragraphs 29-70(1)(a) and 29-70(1)(c) of the Act, other than the identity requirement in subparagraph 29-70(1)(c)(i).
10. This includes situations covered by Division 111, where a recipient reimburses an employee (or associate), an agent, an officer of a company or a partner for taxi travel related to their activities in that role.

### ***Creditable acquisition of a supply of taxi travel***

11. Where a recipient makes a creditable acquisition of taxi travel, the document issued by the taxi driver, for example a CabCharge or EFTPOS receipt, will not be a tax invoice if it does not contain enough information to clearly ascertain the identity of the taxi driver.
12. The document will usually contain the taxi driver's licence or accreditation number (issued by a State or Territory government regulatory body authorising a person to drive a taxi) instead of the taxi driver's identity. This is because of a limitation of the EFTPOS terminal which links to the taxi meter, for which the taxi driver's licence or accreditation number is the unique identifier.
13. This means that an input tax credit for a creditable acquisition of the taxi travel would not be attributable to a tax period until the recipient holds a tax invoice, which the recipient may never be able to obtain.
14. This instrument recognises this difficulty. Where a recipient holds a document that contains the taxi driver's licence or accreditation number and ABN, and otherwise satisfies the requirements in paragraphs 29-70(1)(a) and 29-70(1)(c) of the Act, this instrument has the effect of allowing the input tax credit for a creditable acquisition of the taxi travel to be attributed to the tax period at the time the recipient gives a GST return to the Commissioner for the tax period.

### **Compliance cost assessment**

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

### **Background**

16. 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.
17. In some cases, the necessity for the recipient to hold a document that meets the requirements in subsection 29-70(1) may impose a disproportionate burden on a supplier or a recipient, particularly if the document that they do hold has most of the required features of a tax invoice.
18. 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.
19. 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**

20. 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.
21. Public consultation was undertaken on this instrument for a period of 3 weeks from 25 November 2022 to 16 December 2022 inclusive.
22. 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.
23. 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**

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