

LI 2023/12 - Explanatory statement -



Explanatory Statement

A New Tax System (Goods and Services Tax): Waiver of Tax Invoice Requirement (Creditable Acquisition Following a Sale of a Reversionary Interest in Commercial Premises) Determination 2023

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 lessee or sub-lessee (as recipient) of commercial premises to hold a tax invoice in certain circumstances when they hold documents that meet the information requirements prescribed in this instrument.
3. This determination replaces *A New Tax System (Goods and Services Tax) Waiver of Tax Invoice Requirement (Creditable Acquisition by a Lessee or Sub-Lessee Following a Sale of a Reversion in Commercial Premises) 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 that is a lessee or sub-lessee of commercial premises following the sale of the reversionary interest in those premises by the former owner to the current owner.
8. The determination applies to both a lessee or a sub-lessee of commercial premises as the term 'reversionary interest' has been defined to include both the freehold interest sold subject to a lease, and a leasehold estate assigned subject to a sub-lease.
9. This determination waives the requirement for a recipient to hold a tax invoice for a creditable acquisition for an input tax credit to be attributed to a tax

period, if the recipient holds a document or documents that meet the information requirements specified in the determination.

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. This determination has been developed to reduce the administrative burden on taxpayers. It applies to circumstances that can occur following the sale of a reversionary interest in commercial premises, where the recipient might not have a document that complies with the tax invoice requirements outlined in subsection 29-70(1) of the Act.
14. The purchaser of a reversionary interest in a commercial premises (the current owner in the context of this instrument) makes a supply to the lessee under paragraph 9-10(2)(g) of the Act by way of entering into an obligation to honour the terms of the lease. Where the requirements in section 9-5 of the Act are satisfied, this supply is a taxable supply. Following the sale of the interest, a new lease agreement does not need to be entered into between the current owner and the recipient. The previously existing lease or sub-lease agreement may continue in operation.
15. A lease agreement for the commercial premises or other document issued by the owner that originally granted the lease or sub-lease can be a tax invoice if it satisfies the requirements in subsection 29-70(1) of the Act. However, such documents cannot be a tax invoice for the period of the lease following the sale of the reversionary interest in the commercial premises, because the documents would not have been issued by the current owner of the commercial premises. As such, the documents would not contain the identity and ABN of the current owner. Therefore, following the sale of the interest, the recipient might not have a document that complies with the tax invoice requirements.
16. The Commissioner has a discretion under 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.