

LI 2023/13 - Explanatory statement -



Explanatory Statement

A New Tax System (Goods and Services Tax): Waiver of Tax Invoice Requirement (Acquisition of a Motor Vehicle Under a Novated Lease Arrangement) 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 an employer making a creditable acquisition of a motor vehicle by way of a lease through a full or split full novation arrangement to hold a tax invoice, where the document meets particular requirements.
3. This determination replaces *A New Tax System (Goods and Services Tax) Waiver of Tax Invoice Requirement (Acquisition of a Motor Vehicle Under a Full or Split Full Novated Lease Arrangement) 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 a recipient of a creditable acquisition of a motor vehicle by way of a lease through a full or split full novation arrangement.
8. This determination waives the requirement for an employer to hold a tax invoice for a creditable acquisition for an input tax credit to be attributed to a tax period when the employer holds documents that together meet the information requirements specified in the determination.
9. These documents are the tripartite agreement (or deed of novation) and the tax invoice issued to the employee under the original lease. The documents must satisfy the requirements in paragraphs 29-70(1)(a) and 29-70(1)(c) of the Act, other than subparagraph 29-70(1)(c)(ii).

10. This determination does not apply to creditable acquisitions covered by Division 111 of the Act, in circumstances where an employer reimburses an employee, officer or partner for expenses they incur. There is a special provision made for the purposes of subsection 29-10(3) under section 111-15 of that Division of the Act.

Compliance cost assessment

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

Background

12. A full or split full novation arrangement is a tripartite arrangement whereby an employer, their employee and a finance company agree to transfer to the employer all, or some, of the rights and obligations in a motor vehicle lease entered into between the employee and the finance company. The result is that the lease between the employee and the finance company is rescinded (contractually extinguished) and replaced by a new novated lease arrangement in which the employer becomes the lessee of the motor vehicle for the novation period.
13. Where the novated lease of the motor vehicle by the finance company to the employer is a taxable supply, the employer may have an input tax credit entitlement for the GST included in the lease charges if the acquisition of the motor vehicle by way of lease is a creditable acquisition for the employer.
14. 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.
15. In some cases, the requirement 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 a recipient, particularly if the document that they do hold has most of the required features of a tax invoice.
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.
18. This determination intends to give effect to the same general treatment as when the Commissioner exercised the discretion under GSTA TPP 056 *Goods and services tax: Where an employee novates a lease to his or her employer, can an invoice to the employee be treated as being received by the employer through its agent (the employee)?* (withdrawn), to treat tripartite agreements and tax invoices issued to an employee in a novated lease arrangement as a tax invoice for the employer.

Consultation

19. 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.
20. Public consultation was undertaken on this instrument for a period of 3 weeks from 25 November 2022 to 16 December 2022 inclusive.
21. 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.
22. No comments were received as part of the consultation process.

Legislative references

Acts Interpretation Act 1901

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

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.