

LI 2023/20 - Explanatory statement -



Explanatory Statement

A New Tax System (Goods and Services Tax): Recipient Created Tax Invoice Determination 2023

General outline of instrument

1. This instrument is made under subsection 29-70(3) of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).
2. It allows a specific class of tax invoice, called a recipient created tax invoice (RCTI), to be issued by recipients of taxable supplies that meet the requirements set out in the instrument.
3. The instrument applies to recipients that are:
 - (a) government related entities;
 - (b) large business entities; and
 - (c) business entities.
4. The instrument 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 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 instrument.

Date of effect

6. The instrument commences on the day after it is registered on the Federal Register of Legislation.

Effect of instrument

7. Under paragraph 29-70(1)(a) of the GST Act, tax invoices are to be issued by the entity that makes a taxable supply.
8. However, subsection 29-70(3) of the GST Act grants the Commissioner the power to specify a class of tax invoices (RCTIs) that may be issued by the recipient of the taxable supply, rather than the supplier.
9. This instrument permits government related entities, large business entities and business entities to issue an RCTI where certain requirements are satisfied.
10. One of the key requirements is that both a recipient and a supplier of the taxable supply must be registered for GST when the RCTI is issued. The other requirements include that the recipient must:
 - a) issue a document that complies with certain requirements in section 29-70 (about tax invoices) or section 29-75 (about adjustment notes) of the GST Act;
 - b) issue the RCTI to the supplier within 28 days from when either the taxable supply is made by the supplier or the value of the taxable supply is determined by the recipient;

- c) retain the original or a copy of the RCTI for five years;
- d) have a written agreement with the supplier, including one embedded within the RCTI, that meets certain requirements outlined in the instrument; and
- e) reasonably comply with its obligations under taxation laws.

11. A business entity is defined in the instrument to mean an entity that carries on an enterprise and is registered for GST. A business entity can only issue an RCTI for a taxable supply if it determines the value of the taxable supply acquired from the supplier.

12. A government related entity is defined in section 195-1 of the GST Act, and includes a government entity as defined in section 41 of *A New Tax System (Australian Business Number) Act 1999*.

13. A large business entity is defined in the instrument to include an entity that meets the large business entity tax turnover condition. It also includes members of GST groups, or entities that satisfy the membership requirements of a GST group or proposed GST group, where they include a member that meets the large business entity turnover condition. The definition also covers joint venture operators where either the joint venture operator or a participant of the GST joint venture meets the large business entity turnover condition.

14. The large business entity turnover condition is based on an entity's GST turnover, modified to include input taxed supplies. A business will meet the condition if that turnover is at, or above, the tax period turnover threshold as defined in subsection 27-15(3) of the GST Act. As at the time of making this instrument, this turnover threshold is \$20 million.

15. Where a recipient satisfies the definition of more than one type of entity to which the instrument applies, they can choose which requirements they will comply with. For example, if an entity is both a business entity and a large business entity, it can choose to only comply with the requirements that apply to a large business entity to issue an RCTI.

16. This instrument replaces 51 instruments; 50 of these are listed in Schedule 1 of the instrument, and the other instrument is the *Goods and Services Tax: Classes of Recipient Created Tax Invoice Determination (No.1) 2012*, which sunsetted on 1 April 2023. The Commissioner will not initiate any compliance action with respect to transactions affected by the instrument that sunsetted for the period from 1 April 2023 until the day after this instrument is registered.

Compliance cost assessment

17. Compliance cost impact: Minor – There will be no additional regulatory impacts as the instrument is minor and machinery in nature OBPR22-03747.

Background

18. Subsection 29-70(3) of the GST Act allows the Commissioner to determine classes of tax invoices that may be issued by a recipient rather than the supplier. This instrument determines that tax invoices for taxable supplies received by three types of GST registered recipients may be issued by the recipient rather than the supplier, where certain requirements are met.

19. This instrument will enable taxpayers to self-assess their eligibility to issue RCTIs more easily and simply. This is in response to industry requests that the instrument apply to a broader range of recipients.

20. Where a recipient of a taxable supply could issue an RCTI under one of the 51 instruments that are being replaced, they will continue to be able to issue an RCTI provided that the requirements listed in section 7 of the instrument are satisfied.

21. For example, a recipient of a taxable supply of agricultural products who was eligible to issue an RCTI under *Goods and Services Tax: Recipient Created Tax Invoice Determination 2017 for Agricultural Products, Government Related Entities and Large Business Entities* (F2017L00348) registered on 30 March 2017 will continue to be eligible to issue an RCTI provided that the requirements listed in section 7 of the instrument are satisfied.

22. The requirements that the recipient needs to satisfy were determined by the Commissioner after considering a number of factors, including the GST turnover of the recipient and compliance risks. These factors reflect a balance between facilitating the practical use of RCTIs by businesses and maintaining the integrity of the GST system. Enabling these entities to issue RCTIs will streamline invoicing and payment processes for both recipients and their suppliers.

Consultation

23. Subsection 17(1) of the *Legislation Act 2003* requires that a rule-maker undertake an appropriate level of consultation before making a legislative instrument.

24. The draft instrument and draft explanatory statement were published to the ATO Legal database. Publication was advertised via the 'What's new' page on that website. Major tax and superannuation publishers and associations monitor these pages and include the details in the daily and weekly alerts and newsletters to their subscribers and members.

25. Public consultation was undertaken from 17 November 2022 until 31 January 2023 due to requests from taxpayers for a longer consultation period. Nine external submissions were received from stakeholders from various industries.

26. Across the board, industry supported consolidating 51 instruments into one instrument, and the introduction of a new broad class of tax invoices that can be issued by recipients.

27. Industry raised some concerns about certain wording in the draft instrument. The instrument was amended to address these concerns.

Legislative references

Acts Interpretation Act 1901

A New Tax System (Australian Business Number) Act 1999

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

Generally, the supplier of a taxable supply is responsible for issuing a tax invoice that meets the requirements of subsection 29-70(1) of the GST Act. If certain requirements are met, the recipient of a taxable supply may issue a type of tax invoice, called a RCTI. This disallowable legislative instrument sets out the requirements that must be met by a recipient of a taxable supply for them to be eligible to issue an RCTI. These requirements are in addition to the requirements for tax invoices expressly mentioned in subsection 29-70(1) of the GST Act.

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms because it merely allows for the streamlining of invoicing and payment practices.

Conclusion

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