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Explanatory Statement

A New Tax System (Goods and Services Tax) (Correcting GST Errors) Determination 2023

General outline of the instrument

1. This instrument is made under subsection 17-20(1) of the A *New Tax System (Goods and Services Tax) Act 1999* (GST Act).

2. The instrument allows you to correct GST errors that were made in working out your net amount for an earlier tax period in specified circumstances. You correct the GST error by including the amount of the error in working out the net amount for your current tax period (that is, by correcting the mistake made in the earlier tax period in a later tax period).

3. This instrument replaces *Goods and Services Tax: Correcting GST Errors Determination 2013.*

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

Effect of this instrument

7. This instrument allows an error that has been made in working out a net amount for an earlier tax period to be corrected by including the amount of the error in working out the net amount for a later tax period.

8. Where the circumstances in the instrument are met, you may choose to correct an error by including the error amount in a GST return in a later tax period, instead of requesting the Commissioner to amend the assessment for the earlier tax period.

9. This instrument can only be used to correct an error from an earlier tax period by including the error amount in the calculation for the net amount for the original assessment in a current tax period. You cannot correct an error by requesting an amendment to your assessment for a later tax period.

10. This instrument:

(a) only applies to errors relating to an amount of GST, an input tax credit or a GST adjustment

(b) does not apply to any error that results in the net amount for an earlier tax period being incorrect due to the operation of the *A New Tax System (Wine Equalisation Tax) Act 1999* or the *A New Tax System (Luxury Car Tax) Act 1999,* and

(c) does not apply to errors that were made in working out a net amount for a tax period that started before 1 July 2012.

Compliance cost assessment

11. Compliance cost impact: Minor – There will be no additional regulatory impacts as the instrument is minor and machinery in nature OIA23-05239.

Background

12. Generally, when you make an error that results in your assessed net amount for a tax period being incorrect, you will need to request an amendment to the assessment to correct the error.

13. This instrument provides an alternative mechanism to allow errors made in earlier periods to be corrected in a later tax period.

What is an error?

14. An error is a mistake that you have made in working out your net amount for a tax period that would, if it was the only mistake made, have resulted in the assessed net amount for that tax period being overstated (a credit error) or understated (a debit error). Where multiple errors have been made in working out a net amount for an earlier tax period, each individual error must be examined to determine if it is a debit or credit error.

15. An error must result in the assessed net amount for the relevant tax period being incorrect – for example, by understating or omitting GST payable on a taxable supply, over claiming input tax credits, or omitting or incorrectly calculating an increasing or decreasing adjustment.

16. Where the assessed net amount for the period would not be incorrect despite the mistake, no error will have been made for the purposes of the instrument. This can occur due to the operation of other provisions of the GST Act including:

(a) Division 142, which provides that any excess GST included in your assessed net amount for the earlier tax period remains payable, or

(b) subsection 29-10(4), which has the effect that any input tax credits that you did not take into account in your GST return for an earlier tax period are no longer attributable to that earlier tax period (that is, they are attributable to a later tax period).

Errors and GST adjustments

17. If a change occurs in a later tax period that results in an increasing or decreasing adjustment under the GST Act to adjust an amount included in an earlier tax period, you have not made an error in that earlier tax period. For example, an adjustment that arises because of a change in the extent of creditable purpose under Division 129 of the GST Act and attributed in accordance with section 129-90 of the GST Act in a later tax period is not an error.

18. However, where you overlooked an adjustment or incorrectly worked out the amount of the adjustment in an earlier tax period, you have made an error. This error could be corrected under this instrument where the specified circumstances are met.

Excluded errors

19. The instrument specifically excludes certain types of mistakes because allowing such mistakes to be treated as errors that could be corrected in a later tax period would be inconsistent with the operation of Division 93 of the GST Act and section 105-65 in Schedule 1 to the *Taxation*

Administration Act 1953 (TAA) (which has been repealed but continues to apply to amounts of overpaid GST in relation to tax periods starting on or before 30 May 2014).

20. The instrument specifically excludes errors that relate to:

(a) an input tax credit, where your entitlement to that input tax credit has been extinguished under Division 93 of the GST Act, and

(b) an amount where the Commissioner need not refund the amount under section 105-65 in Schedule 1 to the TAA

from being errors for the purposes of the instrument.

When an error may be corrected

21. Section 6 of the instrument provides that an error made in working out the net amount for an earlier tax period may only be corrected in a later tax period if:

(a) the error relates to an amount of GST, an input tax credit or any GST adjustment

(b) the earlier tax period in which the mistake was made started on or after 1 July 2012, and you lodge the GST return for the later tax period within the period of review for the assessment of the net amount of the earlier tax period

(c) at the time of lodging your GST return for the later tax period, the error does not relate to any current compliance activity or, if it does relate to any current compliance activity, the Commissioner has notified you in writing that the error can be corrected under the instrument

(d) you have not corrected the error, to any extent, in working out your net amount for another tax period, and

(e) where the error is a debit error, the conditions in section 7 are met.

Period of review

22. To maintain the integrity of the time limits for amending assessments, you cannot correct an error made in an earlier tax period unless the GST return for the later tax period is lodged within the period of review for the assessment of net amount for the earlier tax period.

23. The period of review starts on the day the Commissioner gives you a notice of assessment and ends 4 years from the day after the notice of assessment is given (subsection 155-35(2) in Schedule 1 to the TAA). A notice of assessment is generally made on the day you lodge your GST return with the Commissioner.

Compliance activity can impact on correcting an error

24. Generally, if you are subject to compliance activity that covers the tax period in which the error was made, or the error relates to the subject matter of compliance activity, you cannot use this instrument to correct the error.

25. However, the Commissioner can notify you in writing that you can use the instrument to correct an error despite current compliance activity. The Commissioner may do this in circumstances where the compliance activity is of such a nature that it would still be appropriate for you to have the choice to apply this instrument. In such circumstances, the Commissioner may consider that it is a more streamlined and cost-effective process for both the taxpayer and the Commissioner for you to correct an error identified during compliance activity.

Choosing how to correct an error

26. While the instrument allows you to correct errors made in working out a net amount for an earlier tax period in a later tax period, you are not obliged to do so. You can choose to correct the error by requesting an amendment to the assessment for the earlier tax period in which the error was made. If you do this, paragraph 6(e) clarifies that you cannot also apply the instrument to correct the error.

27. Paragraph 6(e) also ensures that you cannot apply the instrument more than once to correct the error. For example, where you partially correct a debit error because the relevant debit error value limit is exceeded, that error has already been corrected in working out your net amount for another tax period. You cannot apply the instrument to correct any part of that error again.

Debit errors

28. While paragraphs 6(a) to 6(e) apply to all errors, paragraph 6(f) requires the additional conditions outlined in section 7 to be satisfied before you can correct a debit error in a later tax period. A debit error can only be corrected if:

(a) the debit error was not the result of recklessness or intentional disregard of the GST law

(b) it will be corrected in a GST return that will be lodged within the 'debit error time limit' specified in the table in section 7, and

(c) the net sum of the debit errors does not exceed the 'debit error value limit' specified in the table in section 7.

29. These additional conditions apply to each debit error. In working out whether the relevant debit error can be corrected in the tax period, and to what extent, all three conditions must be satisfied. If any of the conditions are not satisfied (for example, because the error is not less than the relevant debit error value limit or the debit error time limit has expired), the debit error cannot be corrected by applying this instrument.

Recklessness or intentional disregard

30. The terms 'recklessness' and 'intentional disregard' have the same meaning as used in Subdivision 284-B in Schedule 1 to the TAA.

31. The Commissioner's published views on the terms 'recklessness' and 'intentional disregard' are contained in Miscellaneous Taxation Ruling MT 2008/1 *Miscellaneous tax: Penalty relating to statements: meaning of reasonable care, recklessness and intentional disregard.*

Debit error time limit

32. If your current GST turnover is less than $20 million, an error must be corrected in a GST return that is lodged within 18 months after the due date of the GST return for the tax period in which the error was made. If your current GST turnover is at or above $20 million, the time limit is 12 months.

Debit error value limit

33. Debit errors can only be corrected to the extent that the 'net sum of the debit errors' is within the 'debit error value limit' that corresponds with your current GST turnover in the table.

34. The net sum of the debit errors is defined as the sum of any debit errors, less the sum of any credit errors, which you include in the net amount for the tax period in which you seek to correct the

relevant debit error. This formula allows you to offset credit errors against your debit errors in working out whether you fall within the relevant debit error value limit.

35. Where the amount determined after applying the formula is less than the relevant debit error value limit (including where it results in a negative value, which would occur where the sum of the credit errors exceeds the sum of the debit errors), you can correct the debit error by applying this instrument.

36. Where the net sum of the debit errors exceeds the debit error value limit, you will only be able to correct the debit error or errors up to the relevant debit error value limit. Where there is an amount over the relevant debit error value limit, you must request the Commissioner amend the assessment for the earlier tax period to the extent of that amount.

37. The debit error value limit applies to the entity that is required to give the GST return to the Commissioner and is liable to pay the GST or entitled to the GST refund. For example, it applies to the representative member of the GST group (rather than each individual member) and the GST joint venture operator of a GST joint venture.

Example

Tim's Auto Pty Ltd has a current GST turnover of $5 million and lodges its GST returns quarterly. As part of its year-end review for the 2023 income year (conducted at the end of August 2023), it identifies 2 debit errors made in the previous year:

(a) an error of $7,000 that occurred in the September 2022 tax period, and

(b) a second error of $8,000 that also occurred in the September 2022 tax period.

The errors were not as a result of recklessness or intentional disregard of the GST law and Tim's Auto Pty Ltd would like to correct these errors in their current tax period, the September 2023 tax period. Therefore, the requirements of paragraph 7(a) and (b) are satisfied.

However, as the net sum of the debit errors ($7,000 + $8,000 = $15,000) exceeds the relevant debit error value limit of $12,500, Tim's Auto Pty Ltd can only correct the debit errors up to $12,500 in the current tax period. Tim's Auto Pty Ltd decides to correct the first error of $7,000 and $5,500 (out of the $8,000) of the second error.

The balance of $2,500 of the second error must be corrected in the earlier tax period in which the error was made. Tim's Auto Pty Ltd will need to request the Commissioner amend its assessment for the September 2022 tax period to increase its assessed net amount by $2,500.

Alternatively, Tim's Auto Pty Ltd may choose not to apply this instrument but request the Commissioner amend its assessment for the September 2022 tax period to increase its assessed net amount by $15,000.

Consultation

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

39. 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.

40. Public consultation was undertaken from 13 July 2023 until 2 August 2023. Two submissions were received during consultation.

(a) The submissions supported the concession in the instrument that the Commissioner can notify an entity that they can use the instrument to correct an error despite the entity being subject to ATO compliance activity.

(b) The submissions also raised suggestions to make the effect of the instrument more concessionary (by increasing the debit error value and time limits, and amending the GST turnover definition for the purposes of this instrument).

41. The ATO considered the suggestions in the submissions. However, no changes were made in response to the suggestions. This is because the ATO considers that the instrument strikes an appropriate balance between reducing the cost of compliance and maintaining the integrity of the GST system (in particular, the attribution rules, the general interest charge and potential penalties forgone by the Commissioner). More specifically, the increase in the debit error value amounts, relative to the amounts provided for in the 2013 determination that this instrument replaces, reflect the impact of inflation over the last 10 years.

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
Taxation Administration Act 1953

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

This instrument allows taxpayers to correct GST errors that they made in an earlier tax period in certain circumstances. This will help reduce compliance costs for taxpayers as they will not need to request the Commissioner to amend their assessment for an earlier tax period to correct certain errors in circumstances covered by the instrument. It will also reduce the likelihood of taxpayers being subjected to any related general interest charges or penalties.

Human rights implications

This instrument does not engage any of the applicable rights or freedoms. It merely specifies the circumstances in which taxpayers may correct GST errors that were made in working out their net amount in an earlier period without having to request the Commissioner to amend their assessment for that earlier period.

Conclusion

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