

LI 2023/4 - Explanatory statement -



Explanatory Statement

A New Tax System (Goods and Services Tax): Waiver of Tax Invoice Requirement (Acquisitions under an Agency Relationship) 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. The determination waives the requirement for a recipient making a creditable acquisition through their agent or insurance or reinsurance broker, or by way of a supply made through the supplier's agent, to hold a tax invoice when they hold a document that meets the requirements prescribed in the determination.
3. This determination replaces *A New Tax System (Goods and Services Tax) Waiver of Tax Invoice Requirement (Acquisitions under an Agency Relationship) 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 of a creditable acquisition made through their agent, insurance or reinsurance broker, or by way of a supply made through the supplier's agent.
8. This determination waives the requirement for a recipient to hold a tax invoice for an input tax credit attributable to a tax period for a creditable acquisition, if the recipient holds a document that meets the information requirements specified in the determination (including that it contains the agent's identity and/or Australian business number (ABN)).
9. This waiver applies in circumstances where a recipient or their agent holds a document issued by the supplier, supplier's agent or recipient's insurance or reinsurance broker, that contains the identity and ABN of the supplier's agent or insurance or reinsurance broker, and also meets the requirements in

paragraphs 29-70(1)(a) and 29-70(1)(c) of the Act, other than subparagraphs 29-70(1)(c)(i) and (ii) as applicable.

10. This determination does not apply to documents relating to reimbursements governed by Division 111 of the Act.

Agency relationships that do not meet the tax invoice requirements under subsection 29-70(1) of the Act

Acquisition of a thing or things that the supplier has supplied through an agent

11. Where an agent issues a document for a supply made on behalf of the supplier that contains the agent's, rather than the supplier's, identity and ABN, the document does not meet the tax invoice requirements set out in subsection 29-70(1) of the Act. It does not matter that the agent for the supplier may have transacted with the recipient either by disclosing the agency relationship but without naming the supplier or by not disclosing either the agency relationship or the supplier's identity.

Acquisition of a thing or things in a single dealing from an agent for multiple suppliers (including a supply made on the agent's own account)

12. In a single dealing with a recipient, an entity may be an agent for more than one principal, or the entity may make a supply as an agent together with a supply on its own account. In these situations, the tax invoice would need to contain enough information to clearly ascertain the identity and ABN of each supplier, and the price for each separate taxable supply.

Acquisition of insurance through an insurance broker

13. Under Division 153 of the Act, the supply of an insurance policy by an insurer through an insurance broker acting on behalf of a recipient is to be treated as if the supply were made through the insurance broker as an agent of the insurer. This enables the insurance broker to issue a tax invoice on behalf of the insurer. However, if the insurance broker issues a tax invoice for a supply made on behalf of the insurer that contains the insurance broker's identity and ABN rather than the insurer's, the document would not meet the tax invoice requirements set out in subsection 29-70(1) of the Act.

Acquisition of a thing or things through the recipient's agent

14. An input tax credit for a creditable acquisition a recipient acquires through an agent is attributable to a tax period if their agent holds the tax invoice. If, however, the agent holds a document for an acquisition of a thing or things made on behalf of the recipient, where the total price of the thing or things acquired is at least \$1,000 (or such higher amount specified in the regulations), and the document contains the agent's identity or ABN rather than the recipient's, the document would not meet the tax invoice requirements set out in subsection 29-70(1) of the Act. It does not matter that the agent for the recipient may have transacted with the supplier or their agent either by disclosing the agency relationship but without naming the recipient, or by not disclosing either the agency relationship or the recipient.

Acquisition of a thing or things through a recipient's agent for multiple recipients in a single dealing

15. A supplier may issue a single tax invoice for a supply made to an agent for more than one recipient, or a supply made to the agent on its own account and at least one other principal. In these situations, where the total price for the supply is at least \$1,000 (or such higher amount specified in the regulations), the tax invoice would need to contain enough information to clearly ascertain the identity or ABN of each recipient.

Compliance cost assessment

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

Background

17. 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.
18. 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 a recipient, particularly if the document that they do hold has most of the required features of a tax invoice.
19. Division 153 of the Act sets out special rules to address tax invoice requirements under agency relationships. The rules reflect the position at common law that a supply or acquisition made by an agent on behalf of a principal is taken to be a supply or acquisition made by the principal. To reflect this principle, if a supplier makes a taxable supply through an agent, the agent can issue a tax invoice for the supplier.
20. In some agency relationships, where a supplier dealt with an agent on behalf of the recipient, an input tax credit for a creditable acquisition cannot be attributable to a tax period as the recipient does not hold a document that complies with the tax invoice requirements, as required under subsection 29-10(3) of the Act.
21. 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.
22. As such, the Commissioner makes this determination 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

23. 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.

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

Legislative references

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

A New Tax System (Goods and Services Tax) Regulations 2019

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 specified in 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 for recipients of taxable supply 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.