

LI 2023/5 - Explanatory statement -



Explanatory Statement

A New Tax System (Goods and Services Tax): Waiver of Tax Invoice Requirement (Acquisitions from or by a Beneficiary of a Bare Trust) 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 recipient or a beneficiary of a bare trust to hold a tax invoice when they hold a document that meets the requirements prescribed in this instrument.
3. This determination replaces *A New Tax System (Goods and Services Tax) Waiver of Tax Invoice Requirement (Acquisitions from or Acquisitions by a Beneficiary of a Bare Trust) Legislative Instrument 2013*.
4. This determination is a legislative instrument under 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 makes a creditable acquisition from a beneficiary through the trustee of a bare trust, or a beneficiary that makes a creditable acquisition from a third party through the trustee of a bare trust.
8. This determination waives the requirement for a recipient or a beneficiary of a bare trust to hold a tax invoice in order to attribute an input tax credit to a tax period when the recipient, beneficiary or their agent (including the trustee) holds a document that meets the information requirements specified in this instrument.

Supplies by a beneficiary of a bare trust

9. In some circumstances a beneficiary, rather than the trustee of a bare trust, may make taxable supplies or creditable acquisitions. If the trustee issues or

holds tax invoices it does so on behalf of the beneficiary in those circumstances. Goods and Services Tax Ruling GSTR 2008/3 *Goods and services tax: dealings in real property by bare trusts* explains the ATO view on the GST treatment of supplies of real property involving beneficiaries of bare trusts or similar trusts.

10. Where a beneficiary of a bare trust makes a taxable supply, subparagraph 29-70(1)(c)(i) of the Act requires that the tax invoice issued by the beneficiary contains enough information to enable the beneficiary's identity and Australian business number (ABN) to be clearly ascertained from the document. A trustee of a bare trust will often issue documents intended to be tax invoices on behalf of the beneficiary.
11. A document issued by the trustee, for the supply made by the beneficiary, that contains the identity and ABN of the bare trust or the trustee of the bare trust as a supplier (rather than the beneficiary's details) will not satisfy the information requirements for a tax invoice.
12. The waiver applies where the recipient instead holds a document containing the identity and ABN of the bare trust or the trustee of the bare trust, and that meets the requirements in paragraphs 29-70(1)(a) and 29-70(1)(c) of the Act, other than subparagraph 29-70(1)(c)(i).

Acquisitions by a beneficiary of a bare trust

13. Under subparagraph 29-70(1)(c)(ii) of the Act, if a beneficiary of the bare trust makes a creditable acquisition where the total price of the thing or things acquired is at least \$1,000 (or a higher amount specified by the regulations), the document held by the beneficiary needs to contain enough information to enable the beneficiary's identity or ABN to be clearly ascertained.
14. Where the beneficiary makes the acquisition and a document issued by a supplier contains only the identity or ABN of the bare trust or the trustee of the bare trust, the document will not satisfy the information requirements for a tax invoice under subsection 29-70(1) of the Act.
15. The waiver applies where the beneficiary makes an acquisition but the beneficiary or the trustee of the bare trust instead holds a document containing the identity or ABN of the bare trust or of the trustee as the recipient, and the document meets the requirements in paragraphs 29-70(1)(a) and 29-70(1)(c) of the Act, other than subparagraph 29-70(1)(c)(ii).

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. 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 discretion under subsection 29-70(1B) of the Act is administrative and can only be exercised on a case-by-case basis.
20. 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

21. 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.
22. Public consultation was undertaken on this instrument for a period of 3 weeks from 25 November 2022 to 16 December 2022 inclusive.
23. 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.
24. 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

Related Rulings / Determinations

GSTR 2008/3 Goods and services tax: *dealings in real property by bare trusts*

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