

LI 2023/6 - Explanatory statement -



Explanatory Statement

A New Tax System (Goods and Services Tax): Waiver of Tax Invoice Requirement (Acquisitions by Recipients Using Electronic Purchasing Systems) 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 making a creditable acquisition using electronic purchasing systems to hold a tax invoice when they hold a document that meets the requirements prescribed in this determination.
3. This determination replaces *A New Tax System (Goods and Services Tax) Waiver of Tax Invoice Requirement (Acquisitions by Recipients Using Electronic Purchasing Systems) 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 making a creditable acquisition when that acquisition is made through an electronic purchasing system.
8. This determination waives the requirement for a recipient to hold a tax invoice for a creditable acquisition, when the recipient holds documents relating to an electronic purchasing system that together meet the requirements of this determination.

Compliance cost assessment

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

Background

10. 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.
11. A supplier is required to issue a tax invoice, unless it is a recipient created tax invoice issued by a recipient under subsection 29-70(3) of the Act. A recipient created tax invoice must comply with the requirements in subsection 29-70(1) of the Act.
12. 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 recipient, particularly if the document that they hold has most of the required features of a tax invoice.
13. An electronic purchasing system allows a recipient to make creditable acquisitions, arrange and record supplies, and issue documents that are intended to be recipient created tax invoices. These systems may create a document that complies with the requirements for a tax invoice, apart from the requirement to be able to clearly ascertain what is supplied, including the quantity (if applicable) and the price of what is supplied, but refer to another document from which this information could be obtained (such as a purchase order).
14. These systems produce a summary document of the taxable supplies acquired from a supplier that satisfies the requirements of subsection 29-70(1) of the Act, other than the requirement in subparagraph 29-70(1)(c)(iii).
15. As a result, a summary document produced by an electronic purchasing system and issued by a recipient would not satisfy the requirements of subsection 29-70(1) of the Act. An input tax credit for a creditable acquisition would therefore not be attributable to a tax period until the recipient held a document that complied with the requirements for a tax invoice.
16. However, where a recipient holds another document referred to in the summary document (such as a purchase order), and those documents together meet the requirements in paragraph 29-70(1)(c) of the Act, this instrument would relieve the recipient of the obligation to hold a tax invoice.
17. The Commissioner has a discretion under 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.
18. 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

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

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

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 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

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