

# ***LI 2023/7 - Explanatory statement -***



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## Explanatory Statement

# A New Tax System (Goods and Services Tax): Waiver of Tax Invoice Requirement (Acquisitions Where Total Consideration Not Known) Determination 2023

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### 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 to hold a tax invoice in certain circumstances, where the total price of an acquisition cannot be ascertained at the time the acquisition is made, and they hold documents that meet particular requirements.
3. This determination replaces *A New Tax System (Goods and Services Tax) Waiver of Tax Invoice Requirement (Acquisitions Where Total Consideration Not Known) Legislative Instrument 2013*.
4. This 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 if:
  - (a) the total price was not known at the time they made an acquisition, and the supplier issued a document specifying an interim amount of consideration payable; and
  - (b) the total price was subsequently known, and the supplier issued a further document specifying the remainder of the consideration payable rather than the total price.
8. This determination waives the requirement for a recipient to hold a tax invoice for a creditable acquisition for an input tax credit to be attributable to a tax period if the recipient holds a document or documents that meets the information requirements contained in this determination.

9. The *Goods and Services Tax: Particular Attribution Rules Where Total Consideration is Not Known Determination 2017* (F2017L00425), as it currently exists, sets out particular attribution rules for supplies and acquisitions where some consideration is received (or provided), or an invoice is issued, before the total consideration for a supply or acquisition is known because it depends on a future event or events. The effect of these attribution rules is to defer attribution of the GST payable on the supply, or entitlement to an input tax credit, in respect of the amount that is not yet known.
10. The particular attribution rules also provide for an input tax credit for a creditable acquisition to be attributed to a tax period, but only to the extent that the consideration is provided, or an invoice is issued, before the total consideration is known. When the recipient knows the total consideration, the input tax credit for the creditable acquisition is also attributable to that tax period, but only to the extent that the input tax credit has not been previously attributed to an earlier tax period.
11. However, under subsection 29-10(3) of the Act, an input tax credit is not attributable to a tax period unless the recipient holds a tax invoice. In these circumstances, a supplier cannot produce a document that meets the information requirements for a tax invoice under subsection 29-70(1) of the Act before the total consideration is known, as subparagraph 29-70(1)(c)(iii) requires that the price of what is supplied to be able to be clearly ascertained from the document. As a result, an input tax credit for the acquisition would not be attributable to a tax period in accordance with the particular attribution rules set out in the *Goods and Services Tax: Particular Attribution Rules Where Total Consideration is Not Known Determination 2017*.
12. To give effect to those particular attribution rules this determination waives the requirement for an entity to hold a tax invoice in particular circumstances. It allows an input tax credit for a creditable acquisition to be attributed at the time the recipient gives a GST return for the tax period to the Commissioner, where the recipient holds a document 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)(iii), and shows either:
  - (a) where the total price is unknown, an interim amount of consideration payable or paid; or
  - (b) where the total price is known, the remainder of the consideration payable rather than the total price of the supply.
13. Section 8 of this determination provides that the determination is repealed at the start of 1 October 2027. This ensures that the repeal date of this determination is consistent with the sunset date for *Goods and Services Tax: Particular Attribution Rules Where Total Consideration is Not Known Determination 2017*.

### **Compliance cost assessment**

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

### **Background**

15. 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.

16. 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.
17. 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.
18. As such, the Commissioner makes this instrument 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*

### **Related Rulings / Determinations**

F2017L00425 *Goods and Services Tax: Particular Attribution Rules Where Total Consideration is Not Known Determination 2017*

## **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 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**

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