

LI 2023/8 - Explanatory statement -



Explanatory Statement

A New Tax System (Goods and Services Tax): Waiver of Tax Invoice Requirement (Offer Documents and Renewal Notices) 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 to hold a tax invoice when the recipient holds an offer document or a renewal notice 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 (Offer Documents and Renewal Notices) 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 that holds an offer document or a renewal notice.
8. This determination waives the requirement for a recipient to hold a tax invoice for a creditable acquisition if the recipient holds an offer document, or a renewal notice, that meets the information requirements specified in this determination.

Documents that are merely offers

9. A supplier may issue a prospective recipient a document that offers to make a supply. This may, for example, include subscriptions to trade magazines, access to online databases, membership of trade or professional associations, or offers to attend training courses, seminars, or conferences. When they issue the document, the supplier does not know whether the recipient will

accept the offer or the supply will proceed. In addition, the offer may give the prospective recipient a choice of supplies or pricing options that may make the final price unknown when the offer is issued. Due to these uncertainties, the offer document cannot be a tax invoice when it is issued.

10. This determination reduces the administrative burden on suppliers by waiving the requirement to issue another document if the offer is accepted. Accordingly, where a recipient or their agent holds an offer document, this instrument allows the input tax credit for a creditable acquisition to be attributed at the time the recipient gives their GST return to the Commissioner in certain circumstances.
11. This determination only applies to offers made to multiple parties (for example, a substantial number of members of an association, or a mailing list of subscribers). This determination does not apply to offers made by a supplier to a single recipient, such as a 'quote' given by a professional or tradesperson.
12. The offer document must also contain enough information to be able to determine the supplies offered to be acquired or to be renewed, to the extent to which each supply is a taxable supply, and the price and GST payable when the offer or renewal is accepted by the recipient.

Renewal notices (including insurance renewal notices)

13. When a supplier issues a renewal notice, they do not know whether they will make the supply. As a result of this uncertainty, the document cannot be a tax invoice.
14. This determination is intended to save suppliers from having to issue another document when a renewal occurs. Accordingly, where a recipient or their agent holds a renewal notice, and it otherwise satisfies the requirements in paragraphs 29-70(1)(a) and 29-70(1)(c) of the Act, other than subparagraphs 29-70(1)(c)(iii) and 29-70(1)(c)(vi), this determination would relieve the recipient of the obligation to hold a tax invoice.

Compliance cost assessment

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

Background

16. 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 that meets the requirements in subsection 29-70(1) of the Act.
17. 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 the tax invoice.
18. 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.

19. 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

20. 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.
21. Public consultation was undertaken on this instrument for a period of 3 weeks from 25 November 2022 to 16 December 2022 inclusive.
22. 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.
23. 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.