

LI 2023/9 - Explanatory statement -



Explanatory Statement

A New Tax System (Goods and Services Tax): Waiver of Tax Invoice Requirement (Acquisitions from or by a Partnership) 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 partnership 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 Partnership) 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 partner in their capacity as a partner of a partnership, or to a partnership that makes a creditable acquisition through a partner of that partnership.
8. This determination waives the requirement for a recipient or a partnership to hold a tax invoice in order to attribute an input tax credit to a tax period, if the recipient or partnership holds a document that meets the information requirements specified in this instrument.

Supplies by a partnership

9. A supply made by a partner in their capacity as a partner of a partnership is treated as a supply by the partnership under subsection 184-5(1) of the Act. Accordingly, where a partner makes a supply or supplies in their capacity as a partner in a partnership, subparagraph 29-70(1)(c)(i) of the Act requires that

the tax invoice issued by the partnership contains enough information to enable the partnership's identity and Australian business number (ABN) to be clearly ascertained from the tax invoice.

10. A document that contains the identity and ABN of a partner as the supplier in such circumstances will not satisfy the information requirements for a tax invoice.
11. To be eligible for the waiver under this determination, the recipient must hold a document containing the identity of the partner and the ABN of the partnership and meet the requirements in paragraphs 29-70(1)(a) and 29-70(1)(c) of the Act, other than subparagraph 29-70(1)(c)(i).
12. This instrument does not apply to documents relating to reimbursements governed by Division 111 of the Act.

Acquisitions by a partnership

13. In most cases, where a partner makes a creditable acquisition in their capacity as a partner of a partnership, the partnership must hold a tax invoice before attributing an input tax credit to a tax period. Where the total price is at least \$1,000 (or such higher amount specified in regulations made for the purposes of section 29-70 of the Act), subparagraph 29-70(1)(c)(ii) of the Act requires that the tax invoice contain the identity or ABN of the recipient.
14. Where the recipient is a partnership, the details required to be clearly ascertained from the document will be the identity or ABN of the partnership. Where a document issued to the partnership contains only the identity or ABN of a partner, the document will not satisfy the information requirements of a tax invoice under subsection 29-70(1) of the Act.
15. To be eligible for the waiver under this determination, the partnership must hold a document containing the identity of a partner as the recipient or the ABN of the partnership, 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)(ii).
16. Where the tax invoice is for a supply or supplies where the total price is less than \$1,000, the fact that the document contains the identity of a partner and not the identity of the partnership is not relevant. The Act does not require that information to be clearly ascertainable from a tax invoice for a supply or supplies at such a price. However, the partnership would have to maintain records that the acquisition was made by a partner in their capacity as a partner of the partnership.
17. This determination does not apply to documents held by a partner for an acquisition that the partnership reimburses and to which Division 111 applies.

Compliance cost assessment

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

Background

19. Generally, when a recipient makes a creditable acquisition, an input tax credit for the acquisition is not attributable to a tax period until the recipient holds a tax invoice that meets the requirements in subsection 29-70(1) of the Act.

20. 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.
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 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 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 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 this 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.