

***LI 2024/22 - Explanatory Statement -***



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## Explanatory Statement

# A New Tax System (Goods and Services Tax): Waiver of Tax Invoice Requirement (Motor Vehicle Incentive Payment Made to Motor Vehicle Dealer) Determination 2024

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### General outline of instrument

1. This instrument is made under subsection 29-10(3) of the *A New Tax System (Goods and Services Tax) Act 1999* (the Act).
2. This instrument waives the requirement for a recipient of a supply of a motor vehicle, in certain circumstances, to hold a tax invoice before the relevant input tax credit will be attributable to a tax period. It applies where the recipient makes a creditable acquisition of a motor vehicle from a motor vehicle dealer and, in addition to the consideration payable by the recipient, the motor vehicle dealer receives or is entitled to receive third-party consideration in the form of a motor vehicle incentive payment.
3. This instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.
4. 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 or 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

5. This instrument commences on the day after it is registered on the Federal Register of Legislation.

### Effect of this instrument

6. Under subsection 29-10(3) of the Act, an input tax credit for a creditable acquisition is not attributable to a tax period unless the recipient holds a tax invoice. Subsection 29-10(3) allows the Commissioner to determine, by legislative instrument, circumstances in which the requirement to hold a tax invoice does not apply.
7. This instrument waives the requirement for a recipient to hold a tax invoice before an input tax credit for a creditable acquisition is attributable to a tax period when the recipient holds a document that meets the requirements in this instrument.
8. The instrument applies where a recipient makes a creditable acquisition of a motor vehicle from a motor vehicle dealer, and the dealer receives (or is entitled to receive) a motor vehicle incentive payment for the supply of that motor vehicle to the recipient in addition to the consideration payable by the recipient.
9. For the purposes of the instrument, 'motor vehicle incentive payment' is limited to incentive payments that are third-party consideration from a motor vehicle manufacturer, distributor or importer, where the incentive payment forms part of the total consideration for the supply of the motor vehicle to the recipient.

10. Instead of a tax invoice, the recipient must hold a document that meets the information requirements set out in section 7 of the instrument.

11. This requires that the document satisfies the requirements of paragraphs 29-70(1)(a) and 29-70(1)(c) of the Act, other than:

- (a) the requirement in subparagraph 29-70(1)(c)(iii), that the document contains enough information for the price of the supply to be clearly ascertained; and
- (b) the requirement in subparagraph 29-70(1)(c)(vi), that the document contains enough information for the amount of GST (if any) payable in relation to each supply to be clearly ascertained.

12. Instead of these 2 requirements, the document must contain enough information to enable the following to be clearly ascertained:

- (a) the amount of consideration payable by the recipient of the supply; and
- (b) the amount of GST payable in relation to the consideration payable by the recipient.

## Background

13. 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.

14. In some cases, the requirement for the recipient to hold a document that meets the requirements in subsection 29-70(1) of the Act may impose a disproportionate burden or other commercial difficulties on a supplier or recipient, particularly if the document that they hold has most of the required features of a tax invoice.

15. When a recipient purchases a motor vehicle from a motor vehicle dealer, the document that the recipient receives for that supply only sets out the consideration payable by the recipient and the amount of GST payable in relation to that consideration. In certain scenarios, a motor vehicle dealer may receive a motor vehicle incentive payment from the manufacturer, distributor, or importer for the sale (supply) of a motor vehicle. Certain motor vehicle incentive payments, for example fleet rebates and run-out model support, are third-party consideration provided by the manufacturer to the motor vehicle dealer for the supply of the motor vehicle to the recipient. These incentive payments form part the consideration for the supply of a motor vehicle.

16. The recipient generally will not know that such third-party consideration has been provided by the manufacturer to the motor vehicle dealer, because this information is commercially sensitive. Therefore, the recipient generally will not know that the document they hold does not meet the requirements in subparagraphs 29-70(1)(c)(iii) and 29-70(1)(c)(vi) of the Act and that the document is not a valid tax invoice.

17. This instrument will allow a motor vehicle dealer to issue a document to the recipient of the supply of a motor vehicle that just shows the price (including relevant GST) they paid without needing to reveal commercially sensitive information about any third-party consideration in the form of an incentive payment. Furthermore, the recipient will be allowed to claim input tax credits relating to the amount they paid the motor vehicle dealer where they hold a document that meets most of the requirements for being a tax invoice other than not taking into account the incentive payment the dealer receives.

18. This instrument repeals and replaces the instrument titled *A New Tax System (Goods and Services Tax) Waiver of Tax Invoice Requirement (Motor Vehicle Incentive Payment Made to Motor Vehicle Dealer) Legislative Instrument 2014*, which would otherwise sunset on 1 October 2024. The instrument has the same substantive effect as the one it is replacing.

## **Compliance cost assessment**

19. Compliance cost impact: Minor – There will be no additional regulatory impacts as the instrument is minor and machinery in nature (The Office of Impact Analysis reference: OIA24-07513).

## **Consultation**

20. Subsection 17(1) of the *Legislation Act 2003* requires the Commissioner to be satisfied that appropriate and reasonably practicable consultation has been undertaken before they make an instrument.

21. Public consultation was undertaken for a period of 4 weeks commencing on 9 May 2024 on drafts of this instrument and explanatory statement.

22. The draft instrument and draft explanatory statement were published on the ATO Legal database and publicised on the database's 'What's new' page. Major tax and superannuation publishers and associations commonly monitor these pages and usually include the details in the daily and weekly alerts and newsletters to their subscribers and members.

23. No feedback was received on the draft instrument and explanatory statement during the consultation period.

## **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**

Generally, a taxpayer must 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 specified in the Act. This instrument waives the requirement to hold a tax invoice in certain circumstances. It applies to the recipient of a supply of a motor vehicle, where the motor vehicle dealer receives a motor vehicle incentive payment from a third party (such as a motor vehicle manufacturer, distributor or importer) in addition to the consideration provided by the recipient. The requirement to hold a tax invoice is only waived where the recipient holds a document that meets the requirements of this instrument.

#### **Human rights implications**

This instrument does not engage any of the applicable rights or freedoms because it merely waives the requirement to hold a tax invoice where the recipient holds an alternative document that meets the requirements of the instrument.

#### **Conclusion**

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