

COMMONWEALTH OF AUSTRALIA

A NEW TAX SYSTEM (GOODS AND SERVICES TAX) ACT 1999

DETERMINATION

Under subsection 29-10(3) of the *A New Tax System (Goods and Services Tax) Act 1999* I make the following determination:

Citation

1. This determination is the *A New Tax System (Goods and Services Tax) Act 1999 Waiver of Tax Invoice Requirement Determination (No. 1) 2004 – Decision of a Court or Tribunal*.

Commencement

2. This determination commences on the date the *A New Tax System (Goods and Services Tax) Act 1999* commenced.

Circumstances where the requirement for a tax invoice does not apply

3. The circumstances set out in clause 4 are circumstances in which the requirement for a tax invoice under subsection 29-10(3) of the Act does not apply.

4. The circumstances are that all the following requirements are satisfied:

- (a) (i) under Part IVC of the *Taxation Administration Act 1953* you have applied to the Tribunal for review of an objection decision or appealed against an objection decision to a Court, and in making the objection decision the Commissioner decided that you have not made a creditable acquisition, and the grounds of the objection include that you have made a creditable acquisition and are entitled to an input tax credit; or
- (ii) you have sought declaratory orders from a Court that you have made a creditable acquisition and are entitled to an input tax credit; or
- (iii) you or the Commissioner has appealed against a decision of the Tribunal or Court that resulted from a proceeding covered by clause 4(a)(i) or appealed against a decision of the Court that resulted from a proceeding covered by clause 4(a)(ii); and
- (b) the Court or Tribunal has found that you have made a creditable acquisition and are entitled to an input tax credit.

Situations where a tax invoice is still required

5. However, clause 3 does not apply in any of the following circumstances:
- (a) a settlement occurs before the Court or Tribunal gives a decision; or
 - (b) the Court or Tribunal dismisses the application without proceeding to determine the matter; or
 - (c) the Court or Tribunal makes a decision in accordance with terms agreed to by the parties without making a finding that you have made a creditable acquisition and are entitled to an input tax credit; or
 - (d) the Court remits the decision to the Tribunal, or the Court or Tribunal remits the decision to the Commissioner, for reconsideration; or
 - (e) the Court makes an order under the *Administrative Decisions (Judicial Review) Act 1977*; or
 - (f) any other circumstance in which the Court or Tribunal does not make a finding as to whether you have made a creditable acquisition and are entitled to an input tax credit; or
 - (g) the period within which an appeal against the Court or Tribunal decision may be lodged has not expired or an appeal has been lodged and the Court has not found that you have made a creditable acquisition and are entitled to an input tax credit.

Definitions

6. In this determination:

the Act means the *A New Tax System (Goods and Services Tax) Act 1999*.

Tribunal means the Administrative Appeals Tribunal, including the Small Taxation Claims Tribunal.

Other expressions in this determination have the same meaning as in the Act.

Dated this 24th day of February 2004.

Bruce Quigley

Deputy Chief Tax Counsel
Delegate of the Commissioner