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## Explanatory Statement

# Goods and Services Tax: Accounting on a cash basis Determination 2017 – Industrial Trade Unions

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### General outline of Instrument

1. This determination is made under paragraph 29-40(1)(c) of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).
2. Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any determination 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 determination.
3. This determination specifies **industrial trade union** enterprises as being a kind of enterprise for which a choice to account on a cash basis under section 29-40 of the GST Act may be made.
4. This determination is a legislative instrument for the purposes of the *Legislation Act 2003*.

### Date of effect

5. This determination will commence retrospectively on 1 April 2017. This is to allow for reasonable and appropriate consultation to be completed.
6. Subsection 12(2) of the *Legislation Act 2003* allows a retrospective application date for a Legislative Instrument. This determination aims to reduce compliance costs. A commencement date after 1 April 2017 would create unexpected compliance obligations for the intervening period. To provide certainty to taxpayers who have relied upon the previous determination and continue to rely on this determination and protect the rights of all affected taxpayers the retrospective application date is reasonable and appropriate. The retrospective application date will not adversely affect the rights of any person and will not impose a liability on any person for any act or omission before this instrument's registration date.

### What is this determination about?

7. Section 29-40 of the GST Act provides that an entity can choose to account for GST on a cash basis where the conditions specified in subsection 29-40(1) are satisfied.
8. The determination specifies **industrial trade unions** as being a kind for which a choice to account on a cash basis under section 29-40 of the GST Act may be

made. An **industrial trade union** may elect to account for GST on a cash basis even when it does not satisfy any one of the conditions in subsection 29-40(1).

### **What is the effect of the determination?**

9. This determination specifies **industrial trade unions** as being a kind of enterprise for which a choice to account on a cash basis under section 29-40 of the GST Act may be made.
10. This determination is substantially the same as the previous determination it replaces. An entity that satisfied the requirements of the previous determination will satisfy the requirements of this determination.
11. Compliance cost impact: Minor – there will be no or minimal impact for both implementation and ongoing compliance costs. The determination is minor or machinery in nature.

### **Background**

12. The determination replaces *A New Tax System (Goods and Services Tax) Act 1999 Accounting on a cash basis Determination – Industrial Trade Unions - F2006B11576* (previous determination), registered on 14 November 2006. The previous determination is repealed from 1 April 2017.

### **Consultation**

13. Subsection 17(1) of the *Legislation Act 2003* requires, before the making of a determination, that the rule-maker is satisfied that appropriate and reasonably practicable consultation has been undertaken.
14. Broad consultation has been undertaken. The draft determination and draft explanatory statement were published on the ATO Legal database at [ato.gov.au](http://ato.gov.au) seeking feedback and comments for a period of two weeks. Notice of the draft determination was also published to [ato.gov.au](http://ato.gov.au) and subscription alerts issued. Tax professionals and tax associations regularly review both the Legal database and [ato.gov.au](http://ato.gov.au) and further promulgate advice of new drafts issued in their internal news bulletins. The major legal publishers also publish news of the drafts in their key tax alerting services - such as the *Weekly Tax Bulletin* (published by Thomson Reuters Australia) and *Tax Tracker* and *Tax Week* (published by CCH Australia). Additionally, draft determinations and draft explanatory statements have been published on the ATO Consultation Hub. Links to these drafts were published organisations and newsletters such as the *Taxation News* (Chartered Accountants Australia and New Zealand) weekly bulletin. No comments have been received to date.

### **Legislative references**

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

*Acts Interpretation Act 1901*

*Legislation Act 2003*

*Human Rights (Parliamentary Scrutiny) Act 2011*

## Statement of Compatibility with Human Rights

This statement is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### **Goods and Services Tax: Accounting on a cash basis Determination 2017 – Industrial Trade Unions**

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, to elect to account for GST on a cash basis, an entity must satisfy one of the requirements in paragraphs 29-40(1)(a), 29-40(1)(ab) or 29-40(1)(b) of the *A New Tax System (Goods and Services Tax) Act 1999*. This legislative instrument determines **industrial trade union** enterprises as being enterprises of a kind for which an election to account on a cash basis may be made.

#### **Human rights implications**

This legislative instrument does not engage any of the applicable rights or freedoms. It allows for **industrial trade unions** to elect to account for GST on a cash basis.

#### **Conclusion**

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