

PAR 2016/28 - Explanatory statement -



Explanatory Statement

Goods and Services Tax: Particular Attribution Rules Determination (No. 28) 2016 for Prepayments of Telephone Services

General outline of determination

1. This determination is made under subsection 29-25(1) of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) on the basis that paragraph 29-25(2)(b) of the GST Act applies.
2. The determination sets out the particular attribution rules for GST payable on taxable supplies of telephone services where a prepayment is made by the customer prior to the issue of an invoice for that supply.
3. The determination is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Date of effect

4. The determination commences on the day after registration.

What is this determination about

5. Under section 29-25 of the GST Act, the Commissioner may determine the tax period or periods to which GST payable, input tax credits and adjustments for taxable supplies, creditable acquisitions and creditable importations of certain kinds are attributable on the basis that the basic attribution and the special rules in Chapter 4 of the GST Act apply inappropriately.
6. Subsection 29-25(2) of the GST Act provide the circumstances where the Commissioner may make these particular attribution rules. Paragraph 29-25(2)(b) involve a supply or acquisition for which payment is made or an invoice is issued, but use, enjoyment or passing of title will, or may occur at some time in the future.
7. The determination sets out the particular attribution rules for prepayments for a taxable supply of telephone services where the invoice for the supply as part of its regular billing cycle, has yet to issue. These rules apply only to telecommunication providers that do not account on a cash basis.
8. In these circumstances, the GST is attributable:
 - if an invoice issued in relation to that supply, to the tax period in which that invoice is issued; or
 - to the tax period in which an invoice would have been issued by the supplier in relation to that supply if the recipient had not made the prepayment;

whichever is earlier.

9. For example, the determination will apply when a customer makes a prepayment for the following month or an overpayment (deliberate or otherwise) to their telecommunications provider. Under the determination, the telecommunications provider does not attribute the GST payable at the time of the early payment, but when the following monthly invoice is issued.

What is the effect of this determination

10. The determination overrides the attribution rule for entities that do not account on a cash basis under subsection 29-5(1) of the GST Act. Despite receiving part or all of the consideration, a telecommunications provider delays the attribution of the GST payable on the prepayment for telephone services as set out in Clause 5 of the determination.
11. This determination is not intended to override the requirement to hold a tax invoice or adjustment note prior to claiming an input tax credit or making a decreasing adjustment (subsection 29-10(3) and subsection 29-20(3) of the GST Act respectively). It does not override the provisions in the GST Act relating to resident agents acting for non-residents (Division 57); agents and insurance brokers (Division 153) or supplies and acquisitions made on a progressive or periodic basis (Division 156).
12. Compliance cost impact: minor- there will be no or minimal impacts for both implementation and ongoing compliance costs. The legislative instrument is minor or machinery in nature.

Background

13. This determination replaces the *A New Tax System (Goods and Services Tax) Act 1999 (particular attribution rules for prepayments for telephone supplies) Determination (No. 1) 2001* (the previous determination). The replaced instrument is repealed on commencement of this determination.

Consultation:

14. Section 18 of the *Legislative Instruments Act 2003* specifically provides for circumstances where consultation may not be necessary or appropriate. One of those circumstances is where the instrument is considered minor or machinery in nature, and does not substantially change the law.
15. In this case, no further consultation has been undertaken in the development of this determination because there is no substantive change from the previous determination and it is considered minor or machinery in nature.

Legislative references:

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

Legislative Instruments Act 2003

Timothy Dyce
Deputy Commissioner of Taxation
24 February 2016

Statement of Compatibility with Human Rights

This statement is 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

This Legislative Instrument sets out particular attribution rules for the GST payable on the taxable supply of telephone services by a telecommunications provider in the circumstances described in the determination. It prevents the basic rules of attribution and special rules under Chapter 4 of the *A New Tax System (Goods and Services Tax) Act 1999* from applying inappropriately because a prepayment is made for the taxable supply of telephone services prior to the issue of an invoice.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms as it is considered to be minor or machinery in nature and does not substantially change the law.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.