Australian Government
Australian Taxation Office

Australian Taxation Office Legislative Instrument

Instrument ID: 2017/ITX/0009

Explanatory Statement

Goods and Services Tax: Particular Attribution Rules for Lay-By Sales Determination 2017

General outline of this 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).

2. 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 statement.

3. This determination sets out particular attribution rules for GST payable on a taxable supply made under a **lay-by sale agreement** and for an input tax credit arising from a creditable acquisition made under a **lay-by sale agreement.**

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 the determination about?

7. Sections 29-5 and 29-10 of the GST Act set out the rules for attributing GST and input tax credits on your supplies and acquisitions.

8. Under section 29-25 of the GST Act the Commissioner may determine particular attribution rules in certain circumstances. One circumstance, set out in paragraph 29-25(2)(b) of the GST Act is where there is 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.

9. The determination provides rules for attribution of GST and input tax credits when you make taxable supplies or creditable acquisitions under a **lay-by sale agreement**.

What is the effect of this determination?

10. The GST payable by you on a taxable supply of goods that you make under a **lay-by sale agreement** is attributable to the tax period in which the final instalment of consideration is received. This applies only if you do not account on a cash basis.

11. The input tax credit to which you are entitled for a creditable acquisition of goods that you make under a **lay-by sale agreement** is attributable to the tax period in which you provide the final instalment of consideration. This applies only if you do not account on a cash basis.

12. This determination is substantially the same as the previous determination that it replaces. An entity that satisfied the requirements of the previous determination will satisfy the requirements of this determination.

13. 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

14. This determination replaces *A New Tax System (Goods and Services Tax) Act 1999 (Particular Attribution Rules for Lay-By Sales) Determination (No 1) 2000* – F2006B11600 registered on 20 November 2006 (previous determination). The previous determination is repealed from 1 April 2017.

Consultation

15. 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.

16. Broad consultation has been undertaken. The draft determination and draft explanatory statement were published on the ATO Legal database at 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 and subscription alerts issued. Tax professionals and tax associations regularly review both the Legal database and 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 in 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.*

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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 provides further rules on how to attribute the GST payable and input tax credits on a taxable supply or creditable acquisition made under a **lay-by sale agreement.**

Human rights implications

This legislative instrument does not engage any of the applicable human rights or freedoms. It allows for the attribution of GST payable and input tax credits for taxable supplies and creditable acquisitions made via **lay-by sale agreements**.

Conclusion

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