



Explanatory Statement

Goods and Services Tax: Recipient Created Tax Invoice Determination 2017 for Australian Direct Property Investment Association Inc. and their Originating Members

General outline of determination

1. This determination is made under subsection 29-70(3) 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 instrument.
3. This determination allows the following entities to issue recipient created tax invoices (RCTIs) in certain circumstances:
 - (a) a current **originating member** of the Australian Direct Property Investment Association Inc. (ADPIA)
 - (b) an entity managed or administered by a current **originating member** of ADPIA, or
 - (c) an entity that makes substantially similar supplies to those made by a current **originating member** of ADPIA.
4. This determination is a legislative instrument for the purposes of the *Legislation Act 2003*.

Date of effect

5. This determination commences retrospectively on 1 April 2017. This will allow 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 on 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 right of any person and will not impose a liability on any person for any act or omission before the instrument's registration date.

What is the determination about?

7. Generally, under the GST Act, tax invoices are issued by the entity that makes the taxable supply.

8. The purpose of this determination is to outline a class of tax invoice (called RCTIs) that the Commissioner has determined may be issued by GST registered recipients of taxable supplies. The Commissioner makes the determination by taking into account a number of factors including the type of industry, the taxable supply, GST turnover of the recipient and certain requirements for issuing RCTIs. The factors reflect a balance between facilitating the practical use of RCTIs by businesses and maintaining the integrity of the GST system.
9. In accordance with this determination, a current **originating member** of ADPIA, an entity managed or administered by a current **originating member** of ADPIA or an entity that makes substantially similar supplies to those made by a current **originating member** of ADPIA that is a recipient of a taxable supply of a **securities agency or referral service**, may issue an RCTI for the taxable supply if they:
 - (a) establish the value of the taxable supply, and
 - (b) satisfy the requirements set out in paragraph 6 of the determination.

What is the effect of the determination?

10. The effect of this determination is to streamline payment and invoicing processes by allowing the recipient that has the information to establish the value of the taxable supply to issue the tax invoice.
11. 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.
12. Compliance cost impact: Minor- There will be no or minimal impacts for both implementation and ongoing compliance costs. This determination is minor or machinery in nature.

Background

13. This determination replaces *A New Tax System (Goods and Services Tax) Act 1999 Classes of Recipient Created Tax Invoice Determination (No.1) 2001 –F2006B11603* (previous determination), registered on 20 November 2006. The previous determination is repealed on 1 April 2017.

Consultation

14. 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.
15. Broad consultation has been undertaken. This 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 Determination

Generally, tax invoices are issued by a supplier under the basic rules for GST. The legislative instrument allows a current **originating member** of Australian Direct Property Investment Association Inc. (ADPIA), an entity managed or administered by a current **originating member** of ADPIA or an entity that makes substantially similar supplies to those made by a current **originating member** of ADPIA, that is a recipient of a taxable supply, to issue the tax invoice (called a recipient created tax invoice) subject to a number of provisos.

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms. It allows for the streamlining of invoicing and payment practices.

Conclusion

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