

WAN 2017/3 - Explanatory statement -



Explanatory Statement

Goods and Services Tax: Waiver of Adjustment Note Determination 2017 – Members of Mastercard International and Visa International – Bank Interchange Transfers

General outline of determination

1. This determination is made under subsection 29-20(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 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 instrument.
3. This determination waives the requirement for a **member** to hold an adjustment note to attribute a decreasing adjustment to a tax period in certain circumstances.
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. Under subsection 29-20(3) of the GST Act, you can only attribute a decreasing adjustment from an adjustment event in the first tax period when you hold an adjustment note for the adjustment (unless the adjustment is \$75 or less).
8. However, the Commissioner may determine in writing the circumstances in which you do not require an adjustment note in order to attribute a decreasing adjustment.

9. This determination waives the requirement to hold an adjustment note for a decreasing adjustment that relates to the acquisition of **bank interchange services** where details of the adjustment are detailed on a **bank interchange services report** that satisfies the information requirements in subparagraph 6(2) of this determination.

What is the effect of the determination?

10. This determination provides that a **member** that has a decreasing adjustment relating to the acquisition of **bank interchange services** can attribute the decreasing adjustment without holding an adjustment note.
11. This determination overcomes the practical difficulties that a **member** faces in obtaining an adjustment note that relates to the acquisition of **bank interchange services**.
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 impacts for both implementation and ongoing compliance costs. This determination is minor or machinery in nature.

Background

14. This determination replaces *A New Tax System (Goods and Services Tax) Act 1999 Waiver to hold a Adjustment Note for a Decreasing Adjustment Determination 2000 – MEMBERS of MASTERCARD INTERNATIONAL and VISA INTERNATIONAL – F2006B11621* (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 Determination

Adjustment notes are generally issued by the supplier under the basic rules for GST. This determination waives the requirement in subsection 29-20(3) of the *A New Tax System (Goods and Services Tax) Act 1999* for **members** to hold an adjustment note before a decreasing adjustment is allowed to be attributable to a tax period where details of the adjustment are contained in a **bank interchange services report**, provided that certain conditions are met.

Human rights implications

The legislative instrument does not engage any of the applicable rights or freedoms. It allows for a **member** to attribute a decreasing adjustment without holding an adjustment note in certain circumstances.

Conclusion

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