

WTI 2017/3 - Explanatory statement -



Explanatory Statement

Goods and Services Tax: Waiver of Tax Invoice Requirement Determination 2017 for intangible supplies from offshore

General outline of determination

1. This determination is made under subsection 29-10(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 determination.
3. This determination waives the requirement to hold a tax invoice in order to attribute a creditable acquisition to a tax period where the creditable acquisition is of an intangible supply from offshore that is a taxable supply under section 84-5 of the GST Act.
4. This determination is a legislative instrument for the purposes of the *Legislation Act 2003*.

Date of effect

5. This determination commences on the day after its registration on the Federal Register of Legislation.

What is this determination about

6. This determination waives the requirement to hold a tax invoice under subsection 29-10(3) of the GST Act for an entity that makes a creditable acquisition of an intangible supply from offshore that is a taxable supply under section 84-5 of the GST Act.

What is the effect of this determination?

7. Where an entity makes a creditable acquisition of an intangible supply that is a taxable supply under section 84-5 of the GST Act, the requirement for a tax invoice under subsection 29-10(3) of the GST Act does not apply.

Background

8. This determination replaces A New Tax System (Goods and Services Tax) Act 1999 Waiver of Tax Invoice Requirement Determination (No. 2) 2000 – F2006B11650, registered on 29 November 2006 (previous determination). The previous determination is repealed on commencement of this determination.
9. 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.

Consultation:

10. 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.
11. 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 (GST Act)
Acts Interpretation Act 1901
Legislation Act 2003
Human Rights (Parliamentary Scrutiny) Act 2011

Statement of compatibility with Human Rights

This Legislative Instrument 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 allows the requirement for a tax invoice under subsection 29-10(3) of the GST Act does not apply in situations where the input tax credit for a creditable acquisition relates to intangible supplies from offshore that is a taxable supply because of section 84-5 of the GST Act.

Human rights implications

This Legislative Instrument does not engage any of the applicable human rights or freedoms. It allows for the attribution of creditable acquisitions from offshore without holding a tax invoice.

Conclusion

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