

WTI 2017/4 - Explanatory statement -



Explanatory Statement

Goods and Services Tax: Waiver of Requirement to hold a Tax Invoice Determination 2017 – Members of MasterCard International and Visa International – Bank Interchange Services

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 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 determination.
3. This determination allows a **member** to claim input tax credits related to **bank interchange services** without holding a tax invoice 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. The basic attribution rules in subsection 29-10(3) of the GST Act generally require an entity to hold a tax invoice before being able to attribute the input tax credit (or any part of the input tax credit) to a tax period.
8. Subsection 29-10(3) of the GST Act also provides that the requirement to hold a tax invoice does not apply in circumstances of a kind determined in writing by the

Commissioner to be circumstances in which the requirement for a tax invoice does not apply.

9. The determination waives the requirement to hold a tax invoice before being able to attribute input tax credits for a **member** that acquires **bank interchange services** provided the member holds a **bank interchange services report** that satisfies certain information requirements in subclause 5(2) of the determination.

What is the effect of this determination?

10. The determination provides that a member that holds a bank interchange services report prior to lodging their GST return, where the bank interchange services report satisfies the information requirements set out in in subparagraph 5(2) of the determination, will not need to hold a tax invoice for acquisitions of bank interchange services recorded on the report.
11. The 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 impact for both implementation and ongoing compliance costs. The legislative instrument is minor or machinery in nature.

Background

13. The determination replaces determination *A New Tax System (Goods and Services Tax) Act 1999 Waiver of Requirement to hold a Tax Invoice Determination 2000 - Members of MasterCard International And Visa International* (previous determination), registered on 11 January 2007. The previous determination is repealed from 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. 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 organisations and 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*.

Goods and Services Tax: Waiver of Requirement to hold a Tax Invoice Determination 2017 – Members of MasterCard International and Visa International – Bank Interchange Services

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

The legislative instrument waives the requirement in subsection 29-10(3) of the *A New Tax System (Goods and Services Tax) Act 1999* for **members** to hold a tax invoice before being able to attribute an input tax credit to a tax period where a **member** has made a creditable acquisitions of **bank interchange services** and holds a **bank interchange services** report provided certain information requirements are met.

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms. It allows for a **member** to attribute an input tax credit without holding a tax invoice for **bank interchange services** in certain circumstances.

Conclusion

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