

WAN 2016/39 - Explanatory statement -



Explanatory Statement

Goods and Services Tax: Waiver of Adjustment Note Determination (No. 39) 2016 – Reverse Charged Supplies

General outline of determination

1. The 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 determination.
3. The determination waives the requirement to hold an adjustment note to attribute a decreasing adjustment to a tax period if it relates to a taxable supply where section 83-5 of the GST Act (about reverse charging of GST) applies.
4. The determination is a legislative instrument for the purposes of the *Legislation Act 2003*.

Date of effect

4. The determination commences on the day after registration.

What is the determination about?

5. Under subsection 29-20(3) of the GST Act, you generally 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 less¹). However, the Commissioner may determine in writing circumstances under which the requirement for an adjustment note for a decreasing adjustment does not apply.
6. The determination waives the requirement to hold an adjustment note for a decreasing adjustment if it relates to a taxable supply where the non-resident supplier and recipient agree that the GST payable for the supply will be reversed charged to the recipient under section 83-5 of the GST Act, and they satisfy all requirements for reverse charging under that provision.

¹ Under subsection 29-80(2) of the GST Act there is no obligation to hold an adjustment note for low value adjustments, which is currently specified by regulation 29-80.02 of the *A New Tax System (Goods and Services Tax) Regulations 1999* to be \$75.

What is the effect of the determination?

7. The effect of the determination is that at the time of lodging a GST return a recipient, who has a decreasing adjustment relating to a taxable supply that is reversed charged under section 83-5 of the GST Act, can attribute the decreasing adjustment without holding an adjustment note.
8. Section 83-5 of the GST Act allows a non-resident supplier and a recipient to agree that the recipient account for the GST payable for a taxable supply (or reverse charge the GST) provided the requirements of the section are satisfied.
9. The determination overcomes the practical difficulties that a recipient faces in obtaining an adjustment note from a non-resident supplier that complies with the requirements of Australian GST law.
10. 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

11. The determination replaces *A New Tax System (Goods and Services Tax) Act 1999 Waiver of Requirement to hold an Adjustment Note for a Decreasing Adjustment Determination (No. 7) 2004* (the previous determination). The previous determination is repealed on commencement of the determination.
12. The determination is substantially the same as the previous determination that it replaces. Therefore, a recipient of a taxable supply that is reversed charged under section 83-5 of the GST Act can continue to attribute any decreasing adjustments without holding an adjustment note.

Consultation:

13. 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.
14. Broad consultation has occurred. The draft determination and draft explanatory statement were published on the ATO Legal Database at ato.gov.au on 29 June 2016 seeking feedback and comments for a period of two weeks. The ATO Legal Database sends emails and news feeds to direct subscribers such as tax professionals and other industry stakeholders. Consultation on the draft determination and draft explanatory statement was also announced on “What we are consulting about” at ato.gov.au. No comments were received by the due date.

15. Direct consultation was not considered to be necessary because the determination merely preserves a concession that would otherwise be removed as a consequence of the sunseting of the previous determination.

Legislative references:

A New Tax System (Goods and Services Tax) Act 1999

Acts Interpretation Act 1901

Legislation Act 2003

Statement of Compatibility with Human Rights

Prepared in accordance with *Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*.

Goods and Services Tax: Waiver of Adjustment Note Determination 2016 (No.39) – Reverse Charged Supplies

The 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

Generally, you need to hold an adjustment note to attribute a decreasing adjustment at the time you lodge your GST return (unless the adjustment is \$75 or less). The Legislative Instrument waives this requirement to hold an adjustment note for a decreasing adjustment if it relates to a taxable supply where the non-resident supplier and recipient agree that the GST is reversed charged to the recipient. This overcomes difficulties for the recipient to obtain an adjustment note from the non-resident supplier that complies with Australian GST law.

Human rights implications

The Instrument does not engage any of the applicable rights or freedoms. The Instrument provides a concession for recipients of reversed charged taxable supplies and allows them to attribute any decreasing adjustments for such supplies without holding an adjustment note.

Conclusion

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