

LI 2024/D6 - Explanatory Statement -



Explanatory Statement

A New Tax System (Goods and Services Tax): Waiver of Tax Invoice Requirement (Motor Vehicle Incentive Payment Made to Motor Vehicle Dealer) Determination 2024

General outline of instrument

1. This instrument is made under subsection 29-10(3) of the *A New Tax System (Goods and Services Tax) Act 1999* (the Act).
2. This instrument waives the requirement for a recipient of a supply of a motor vehicle in certain circumstances to hold a tax invoice before the relevant input tax credit will be attributable to a tax period. It applies where the recipient makes a creditable acquisition of a motor vehicle from a motor vehicle dealer and, in addition to the consideration payable by the recipient, the motor vehicle dealer receives or is entitled to receive third-party consideration in the form of a motor vehicle incentive payment.
3. This instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.
4. 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.

Date of effect

5. This instrument commences on the day after it is registered on the Federal Register of Legislation.

Effect of this instrument

6. Under subsection 29-10(3) of the Act, an input tax credit for a creditable acquisition is not attributable to a tax period unless the recipient holds a tax invoice.
7. This instrument waives the requirement for a recipient to hold a tax invoice before an input tax credit for a creditable acquisition is attributable to a tax period when the recipient holds a document that meets the requirements in this instrument.
8. The instrument applies where a recipient makes a creditable acquisition of a motor vehicle from a motor vehicle dealer, and the dealer receives (or is entitled to receive) a motor vehicle incentive payment for the supply of that motor vehicle to the recipient in addition to the consideration payable by the recipient.
9. For the purposes of the instrument, 'motor vehicle incentive payment' is limited to incentive payments that are third-party consideration (such as from a motor vehicle manufacturer, distributor or importer), where the incentive payment forms part of the total consideration for the supply of the motor vehicle to the recipient.
10. Instead of a tax invoice, the recipient must hold a document that meets the information requirements set out in section 7 of the instrument.

11. This requires that the document satisfies the requirements of paragraphs 29-70(1)(a) and 29-70(1)(c) of the Act, other than:

- (a) the requirement in subparagraph 29-70(1)(c)(iii), that the document contains enough information for the price of the supply to be clearly ascertained; and
- (b) the requirement in subparagraph 29-70(1)(c)(vi), that the document contains enough information for the amount of GST (if any) payable in relation to each supply to be clearly ascertained.

12. Instead of these 2 requirements, the document must contain enough information to enable the following to be clearly ascertained:

- (a) the amount of consideration payable by the recipient of the supply; and
- (b) the amount of GST payable in relation to the consideration payable by the recipient.

Compliance cost assessment

13. To be advised.

Background

14. Generally, when a recipient makes a creditable acquisition, an input tax credit for the acquisition is not attributable to a tax period until they hold a tax invoice. A tax invoice is a document that meets the requirements in subsection 29-70(1) of the Act.

15. In some cases, the requirement for the recipient to hold a document that meets the requirements in subsection 29-70(1) of the Act may impose a disproportionate burden or other commercial difficulties on a supplier or recipient, particularly if the document that they hold has most of the required features of a tax invoice.

16. When a recipient purchases a motor vehicle from a motor vehicle dealer, the document that the recipient receives for that supply only sets out the consideration payable by the recipient and the amount of GST payable in relation to that consideration. In certain scenarios a motor vehicle dealer may receive a motor vehicle incentive payment from the manufacturer, distributor, or importer for the sale (supply) of a motor vehicle. Certain motor vehicle incentive payments, for example fleet rebates and run-out model support, are third-party consideration provided by the manufacturer to the motor vehicle dealer for the supply of the motor vehicle to the recipient. These payments are third-party consideration and form part the consideration for the supply of a motor vehicle.

17. The recipient generally will not know that such third-party consideration has been provided by the manufacturer to the motor vehicle dealer. Therefore, the recipient generally will not know that the document they hold does not meet the requirements in subparagraphs 29-70(1)(c)(iii) and 29-70(1)(c)(vi) of the Act and that the document is not a valid tax invoice.

Consultation

18. Subsection 17(1) of the *Legislation Act 2003* requires the Commissioner to be satisfied that appropriate and reasonably practicable consultation has been undertaken before they make an instrument.

19. As part of the consultation process, you are invited to comment on the draft determination and its accompanying draft explanatory statement. Please forward your comments to the contact officer by the due date.

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| Due date: | 6 June 2024 |
| Contact officer: | Graham Thomson |
| Email: | Graham.Thomson@ato.gov.au |
| Phone: | (07) 3213 5991 |

Legislative references

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

Acts Interpretation Act 1901

Human Rights (Parliamentary Scrutiny) Act 2011

Legislation Act 2003

Draft

Statement of compatibility with human rights

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

Generally, a taxpayer must hold a tax invoice to be able to claim an input tax credit under the *A New Tax System (Goods and Services Tax) Act 1999* (the Act). A tax invoice is a document that meets certain requirements specified in the Act. This instrument waives the requirement to hold a tax invoice in certain circumstances. It applies to the recipient of a supply of a motor vehicle, where the motor vehicle dealer receives a motor vehicle incentive payment from a third party (such as a motor vehicle manufacturer, distributor or importer) in addition to the consideration provided by the recipient. The requirement to hold a tax invoice is only waived where the recipient holds a document that meets the requirements of this instrument.

Human rights implications

This instrument does not engage any of the applicable rights or freedoms because it merely waives the requirement to hold a tax invoice where the recipient holds an alternative document that meets the requirements of the instrument.

Conclusion

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