



Explanatory Statement

Goods and Services Tax: Waiver of Tax Invoice Requirement Determination (No. 40) 2016 – Government Undercover Agents

General outline of determination

1. The 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. The determination waives the requirement for a government law enforcement agency to hold tax invoices when attributing input tax credits for creditable acquisitions when reimbursing its employees or agents for expenses incurred when using an assumed name as part of their activities as an employee or agent.
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 29-10(3) of the GST Act, you can generally only attribute an input tax credit for a creditable acquisition in the first tax period when you hold a tax invoice for the creditable acquisition (unless the GST-inclusive price of the supply is \$82.50 or less¹). However, the Commissioner may determine in writing circumstances under which the requirement for a tax invoice does not apply.
6. The Commissioner has determined that at the time of lodging a GST return, the requirement for a government law enforcement agency to hold a tax

¹ Subsection 29-80(1) of the GST Act specify there is no obligation to hold a tax invoice for low value transactions, which is currently specified by regulation 29-80.01 of the *A New Tax System (Goods and Services Tax) Regulations 1999* to be a GST-inclusive price of \$82.50 for most supplies.

invoice when attributing an input tax credit for a creditable acquisition in a tax period is waived if:

- (a) it relates to a reimbursement of an expense to an employee or agent under Division 111 of the GST Act ; and
- (b) the employee or agent was using an assumed name when he or she incurred the expense; and
- (c) the government law enforcement agency holds one of the following documents:
 - (i) a credit card statement that is issued in the assumed name of the employee or agent listing the reimbursed expense; or
 - (ii) an employee's or agent's statement that meets the information requirements set out in Clause 6 of the determination.

What is the effect of the determination?

- 7. The effect of the determination is that government law enforcement agencies can attribute input tax credits for creditable acquisitions for reimbursed expenses incurred by their employees or agents using assumed names without holding a tax invoice if the requirements of the determination are met. This overcomes difficulties that a government law enforcement agency's employees or agents may face in obtaining tax invoices for expenses incurred when using an assumed name in the course of their activities as an employee or agent.
- 8. 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

- 9. The determination replaces *Goods and Services Tax: Waiver of Tax Invoice Requirement - Government Undercover Agents Determination (No. 1) 2006* (the previous determination). The previous determination is repealed on commencement of the determination.
- 10. The determination is substantially the same as the previous determination that it replaces. Therefore, a government law enforcement agency can continue to claim input tax credits for creditable acquisitions in the same manner under the determination.

Consultation:

- 11. 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.

12. Targeted consultation was undertaken. A draft copy of the determination and explanatory statement were sent to various government agencies on 1 July 2016 seeking feedback with comments due on 20 July 2016. Comments received reiterated that the determination was still required but recommended no changes for the draft determination and explanatory statement.

13. Broad consultation was not considered to be appropriate due to subject matter of the 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*.

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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 a tax invoice in order to claim input tax credits for creditable acquisitions (unless the GST-inclusive price of the supply is \$82.50 or less) at the time you lodge your GST return. The Legislative Instrument waives the tax invoice requirement for government law enforcement agencies to claim input tax credits for creditable acquisitions relating to reimbursements of expenses incurred by their employees or agents when using an assumed name where due to the nature of their work, are unable to obtain a tax invoice. This is on the proviso that the government law enforcement agencies meet the requirements of the Legislative Instrument at the time they lodge their GST return.

Human rights implications

The Instrument does not engage any of the applicable rights or freedoms. It allows government law enforcement agencies to claim input tax credits relating to reimbursements in situations where it may be difficult to obtain a tax invoice or valid tax invoice due to their employees or agents using an assumed name as part of their duties.

Conclusion

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