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## Explanatory Statement

# A New Tax System (Goods and Services Tax) Third Party Adjustment Note Information Requirements Determination 2020

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### General Outline of Instrument

1. This instrument is made under subsection 134-20(1)(d) of the *A New Tax System (Goods and Services Tax) Act 1999*.
2. This instrument repeals and replaces F2010L01588 registered on the Federal Register of Legislation on 16 June 2010 and which is due to sunset.
3. This instrument describes the information that must be included in a third party adjustment note.
4. The instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.
5. 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

6. This instrument commences on 1 October 2020.

Under subsection 12(2) of the *Legislation Act 2003* this instrument does not adversely affect the rights or liabilities of any person other than the Commonwealth.

### What is the effect of this instrument

7. The effect of this instrument sets out the information that the Commissioner requires for a third party adjustment note. The requirements provide for appropriate documentation to be created, which will be held by payers and payees to substantiate their third party adjustments.

### Compliance cost assessment

8. Compliance cost impact: Minor – There will be minimal impact for both implementation and ongoing compliance costs. The legislative instrument is minor and machinery in nature.

### Background

9. This instrument has been developed to ensure that the appropriate amount of goods and services tax (GST) is collected and the appropriate amount of input tax credits claimed. This is for

situations where there are payments between parties in a supply chain which indirectly alter the price paid or received by the parties for the things supplied.

10. This is achieved by creating an adjustment in situations where an entity (the payer), who supplies a thing for re-sale, makes a monetary payment to a third party (the payee) in connection with the payee's acquisition of that thing. This adjustment occurs when the payer does not supply the thing directly to the payee but rather through a supply chain.

11. Division 134 requires a form of adjustment note for decreasing adjustments above \$75 (the adjustment note threshold).

12. Decreasing adjustments that exceed the adjustment note threshold cannot be attributed until the tax period in which the payer holds a third party adjustment note.

13. The payer is required to give the payee a copy of the third party adjustment note within 28 days of the earlier of:

a) a request by the payee

or

b) becoming aware of the adjustment before the copy is requested.

This requirement does not apply to decreasing adjustments less than the adjustment notes threshold.

14. A third party adjustment note must contain enough information to enable the following to be clearly ascertained:

a) the payer's identity, as specified in a form other than the payer's ABN (note that under paragraph 134-20(1)(c) of the GST Act, the payer must also set out its ABN);

b) the payee's identity or the payee's ABN;

c) a description of the thing that the payee acquires (including the quantity) and to which the payment relates;

d) the amount of the payment (being a payment of money, an offset of debt, or a credit to an account) that represents a third party payment under Division 134 of the GST Act;

e) the amount of the payer's decreasing adjustment under subsection 134-5(2) of the GST Act;

f) the date the note is issued.

15. This instrument has been developed to allow taxpayers to substantiate and properly account for adjustments for their third party payments. It describes what should be included in a third party adjustment note. This allows taxpayers to generate suitable adjustment notes and provide them to recipients of third party payments when they are required to do so.

## **Consultation**

16. Subsection 17(1) of the *Legislation Act 2003* requires, before the making of a determination, that the Commissioner is satisfied that appropriate and reasonably practicable consultation has been undertaken.

17. For this instrument, public consultation was undertaken for a period of 4 weeks commencing on 29 June 2020.

18. The draft instrument and draft explanatory statement were published on the ATO Legal database. Publication was advertised via the 'What's new' page on that system and via the 'Open Consultation' page on **ato.gov.au**. Major tax and superannuation publishers and associations monitor these pages and include the details in the daily and weekly Alerts and newsletters to their subscribers and members. This ensures advice of the draft is disseminated widely across the tax professional community, and that they are in an informed position to provide comments and feedback.

19. No feedback was received.

***Legislative references***

*Acts Interpretation Act 1901*

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

*Legislative Instruments Act 2003*

## **Statement of compatibility with Human Rights**

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

### **Title of Legislative Instrument**

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 instrument sets out the information that the Commissioner requires for a third party adjustment note. The requirements provide for appropriate documentation to be created, which will be held by payers and payees to substantiate their third party adjustments.

### **Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms. It allows the the appropriate amount of GST to be collected and the appropriate amount of input tax credits to be claimed in situations where there are payments between parties in a supply chain which indirectly alter the price paid or received by the parties for the things supplied.

### **Conclusion**

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