Legislative Instrument

Goods and Services Tax: Recipient Created Tax Invoice Determination (No. 41) 2016 for Australian Financial Services Licensees and their Representatives

I, Deborah Jenkins, Acting Deputy Commissioner of Taxation, make this determination under subsection 29-70(3) of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).

**Deborah Jenkins**

Acting Deputy Commissioner of Taxation

Dated: 13/0/9/2016

**Name of determination**

1. This determination is the *Goods and Services Tax: Recipient Created Tax Invoice Determination (No. 41) 2016 for Australian Financial Services Licensees and their Representatives*.

 **Commencement**

2. This determination commences on the day after registration.

3. This determination applies retrospectively to recipient created tax invoices (RCTIs) that were issued in the circumstances outlined in this determination on or after 1 April 2016.

**Repeal of previous determination**

 4. *A New Tax System (Goods and Services Tax) Act 1999 Classes of Recipient Created Tax Invoice Determination (No. 33) 2000* (the previous instrument) - F2005B02755, registered on 28 November 2005, expired on 1 April 2016.

**Determination (Which entities are covered under this determination)**

5. This determination applies to an Australian financial services (AFS) licensee, or a representative of an AFS licensee, that satisfies the requirements of this determination.

 6. An entity that satisfied the requirements of the previous determination and who has acquired the relevant AFS licensing or is a representative of an AFS licensee, will generally satisfy the requirements of this determination.

 **Class of tax Invoices that may be issued by the recipient of a taxable supply under this determination**

7.   An AFS licensee or a representative of an AFS licensee that is the recipient of a taxable supply of a financial planning service provided to a client on their behalf, may issue a recipient created tax invoice (RCTI) for the taxable supply if they:

(a)     establish the value of the taxable supply; and

(b)     satisfy the requirements set out in Clause 8.

**Requirements that must be satisfied by a recipient of a taxable supply under this determination**

8.    A recipient must satisfy the following requirements when issuing an RCTI under this determination:

(a)   be registered for GST;

(b)   set out the ABN of the supplier on the RCTI;

(c)   issue the original or a copy of the RCTI to the supplier within 28 days of making, or determining, the value of a taxable supply and retain the original or the copy;

(d)   the recipient must issue the original or a copy of an adjustment note to the supplier within 28 days of any adjustment and must retain the original or the copy;

(e)   reasonably comply with its obligations under the taxation laws; and

(f)   have either a written agreement with the supplier that meets the requirements of Clause 9, or a written agreement embedded in the RCTI that meets the requirements of Clause 10.

**Requirements of a written agreement with the supplier**

1. The written agreement the recipient has with the supplier must:
2. specify the supplies to which it relates;
3. be current and effective when the RCTI is issued; and
4. have the following conditions:

(i) the recipient can issue RCTIs in respect of the supplies;

(ii) the supplier will not issue tax invoices in respect of the supplies;

(iii) the supplier acknowledges that it is registered for GST when it enters into the agreement and that it will notify the recipient if it ceases to be registered for GST; and

(iv) the recipient acknowledges that it is registered for GST when it enters into the agreement and that it will notify the supplier if it ceases to be registered for GST.

**Requirements of a written agreement embedded in an RCTI**

1. The embedded agreement in the RCTI that the recipient has with the supplier must contain the following statement:

*The recipient and the supplier declare that this agreement applies to supplies to which this tax invoice relates. The recipient can issue tax invoices in respect of these supplies.The supplier will not issue tax invoices in respect of these supplies.The supplier acknowledges that it is registered for GST and that it will notify the recipient if it ceases to be registered. The recipient acknowledges that it is registered for GST and that it will notify the supplier if it ceases to be registered for GST. Acceptance of this RCTI constitutes acceptance of the terms of this written agreement*.

*Both parties to this supply agree that they are parties to an RCTI agreement. The supplier must notify the recipient within 21 days of receiving this document if the supplier does not wish to accept the proposed agreement.*

**Definitions**

1. The following expressions are defined for the purpose of this determination:

**Australian financial services licensee** is an entity that has been granted an Australian financial services licence by the Australian Securities & Investment Commission (ASIC) under section 913B of the *Corporations Act 2001*.

**financial planning service** is a service provided by an AFS licensee or representative of an AFS licensee that includes the following:

 the establishment and definition of the client/planner relationship;

  gathering of client data;

  analysis and evaluation of the client's financial status including problem identification;

   development and presentation of recommendations and/or alternatives for negotiation with clients;

    implementation of agreed recommendations; and

   reviewing and updating of the financial plan as required.

**representative** has the meaning provided by section 910A of the *Corporations Act 2001*.

12. Other expressions in this determination have the same meaning as in the GST Act.