

EXPLANATORY STATEMENT

Issued by authority of the Minister for Revenue and Financial Services

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

A New Tax System (Goods and Services Tax) (Incidental Valuable Metal Goods) Determination 2017 (No. 1)

Section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (the Act) provides that the Minister may determine a class of goods that are incidental valuable metal goods for the purposes of the Act.

The purpose of *A New Tax System (Goods and Services Tax) (Incidental Valuable Metal Goods) Determination 2017 (No. 1)* (the Determination) is to determine a class of goods that are incidental valuable metal goods. An incidental valuable metal good within the definition in the Act is not prevented from being 'second-hand goods' for the purposes of the Act.

The GST law allows entities to claim input tax credits for second-hand goods acquired for the purposes of sale or exchange (but not for manufacture) in the ordinary course of their business, even though the supply of the goods to them was not a taxable supply.

Treasury Laws Amendment (GST Integrity) Act 2017 amended the definition of second-hand goods in section 195-1 of the Act to ensure that entities cannot exploit the special tax treatment for second-hand goods to claim input tax credits by manipulating the form of metals such as gold, silver and platinum. These amendments prevent goods to the extent they contain such metal, from being second-hand goods. However, special rules also ensure that a range of goods are not inappropriately excluded from the second-hand goods definition. Accordingly, the Minister may prospectively determine a class of goods that are incidental valuable metal goods. Such goods are not precluded from being second-hand goods.

See the attachment for an explanation of the provisions in the Determination.

Treasury conducted targeted confidential consultation on the Determination and this explanatory statement over the period 10 July 2017 to 21 July 2017. Key industry stakeholders were invited to provide feedback during the consultation period. In response to stakeholder feedback, the Determination and this explanatory statement have been updated to clarify the requirements relating to holding a photograph of the relevant item as supporting material.

The Determination is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Determination commenced on the day after it was registered on the Federal Register of Legislation.

The Determination is minor or machinery in nature and is expected to have minimal transitional and ongoing compliance cost impacts.

Explanation of provisions

The first four sections of the Determination are machinery provisions setting out the name of the Determination, the time the Determination commences, the authority for the Determination and a list of definitions used in the Determination. The Determination is made under subparagraph (c)(iii) of the definition of ‘incidental valuable metal goods’ in section 195-1 of the Act. The Determination commenced on the day after it was registered on the Federal Register of Legislation. A number of expressions used in the Determination are defined in section 195-1 of the Act and referred to in the note to section 4. Section 4 also defines Act as the *A New Tax System (Goods and Services Tax) Act 1999*.

Section 5 provides that the purpose of the Determination is to determine a class of goods that are incidental valuable metal goods for the definition of ‘incidental valuable metal goods’ in section 195-1 of the Act. See below for further information about the purpose of the Determination.

Goods that are not in a class covered by the Determination are not prevented from also being incidental valuable metal goods in accordance with section 195-1 of the Act. For example, goods that are collectables or antiques, that satisfy the other requirements in section 195-1 of the Act, may also be incidental valuable metal goods.

Section 6 is the provision, which sets out when goods are determined to be incidental valuable metal goods.

Requirements to satisfy definition of incidental valuable metal goods in section 195-1 of the Act

In order to be considered incidental valuable metal goods, the goods must satisfy the requirements in paragraphs (a) and (b) of the definition of incidental valuable metal goods in section 195-1 of the Act. These criteria are replicated in paragraphs 6(1)(a) and (b) of the Determination. That is, the goods must be acquired for the purposes of sale or exchange (but not for manufacture) in the ordinary course of business and must consist wholly or partly of valuable metal.

Acquisitions from an unregistered entity by an entity (a dealer) satisfying certain requirements

Section 6 provides that the goods must be acquired by a dealer that:

- is registered under the Act for GST purposes; and
- is licensed as a second-hand goods dealer in every State or Territory in Australia in which the dealer operates; and

- satisfies the record keeping obligations under subsections 29-10(3) and 29-20(3) of the Act, as modified by section 66-17 of the Act to the extent the dealer is required to comply with those obligations.

The dealer must satisfy these criteria throughout the period starting when the dealer acquires the goods and ending when the dealer supplies the item.

The dealer must acquire the goods from an unregistered entity. Generally, this means the dealer must acquire the goods from a non-business entity.

Supplies to an Australian consumer

Section 6 provides that the goods acquired by a dealer may only be considered within the class of goods in this Determination if the dealer supplies the goods to an Australian consumer.

‘Australian consumer’ is defined in section 195-1 of the Act to generally mean an entity that is an Australian resident and is not registered under the Act for GST purposes.

Substantially transformed and commercially distinct test

Section 6 provides that the physical characteristics of the valuable metal in the goods must have been substantially transformed by means of a manufacturing process or by skilled craftsmanship undertaken to produce the goods. The goods must also be commercially distinct from the valuable metal in the goods. What is considered substantially transformed and commercially distinct is a matter of fact and degree.

For example, an item of gold jewellery would generally meet this test as the gold would have been substantially transformed by means of a manufacturing process undertaken to produce the jewellery. On the other hand, the gold in a 100 gram bar of gold would not be considered to have been substantially transformed by means of a manufacturing process or by skilled craftsmanship. The 100 gram bar of gold would also not be considered to be commercially distinct from 100 grams of gold.

Supporting material for substantially transformed and commercially distinct test

Section 6 requires the dealer to hold a photograph of the goods which are claimed to meet the substantially transformed and commercially distinct test. The photograph must clearly display the physical characteristics of the goods to be verified and should be stamped with the date the photograph was taken. For the purposes of this Determination, a date-stamped photograph includes a digital photograph where the date the photograph was taken can be identified from the photograph’s metadata. The dealer must hold the photograph at the time the item is supplied by the dealer.

An entity that makes a creditable acquisition is required to keep records that identify and explain all transactions and acts relevant to that supply (refer section 382-5 of Schedule 1 to the *Tax Administration Act 1953*). Generally, such records must be retained for at least five years after the completion of the transactions or acts to which the records relate.

Purpose of the Determination

The *Treasury Laws Amendment (GST Integrity) Act 2017* amended the *A New Tax System (Goods and Services Tax) Act 1999* to address exploitation of the GST law as it relates to valuable metals. The amendments introduced a reverse charge for business to business transactions between suppliers and purchasers of gold, silver and platinum to remove the opportunity for a supplier to avoid paying GST to the Commissioner of Taxation by liquidating the company. The amendments also clarified the law to ensure that entities cannot exploit the special GST treatment available for second-hand goods to claim input tax credits by changing the form of a valuable metal they acquire.

The purpose of the Determination is to allow licensed second-hand goods dealers to be able to obtain input tax credits for purchases of certain goods that contain valuable metals. This is because licensed second-hand goods dealers are subject to government regulation and must retain appropriate records of transactions. The Determination ensures that sellers of goods to second-hand goods dealers cannot have claimed input tax credits. Also the valuable metal goods to which the Determination applies must be substantially transformed by manufacturing or craftsmanship and be commercially distinct from the underlying valuable metal. Therefore in these circumstances such goods do not pose a risk to GST revenue that their form may be altered by minor physical changes to allow input tax credits to be claimed inappropriately.

Statement of Compatibility with Human Rights

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

A New Tax System (Goods and Services Tax) (Incidental Valuable Metal Goods) Determination 2017 (No. 1)

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

The Determination is made under section 195-1 of the Act.

The Determination commenced on the day after it was registered on the Federal Register of Legislation.

The purpose of the Determination is to determine a class of goods that are incidental valuable metal goods for the definition of ‘incidental valuable metal goods’ in section 195-1 of the Act. Such goods will not be precluded from being second-hand goods.

The GST law allows entities to claim input tax credits for second-hand goods acquired for the purposes of sale or exchange (but not for manufacture) in the ordinary course of their business, even though the supply of the goods to them was not a taxable supply.

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms.

Conclusion

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