Australian Government
Australian Taxation Office

Explanatory Statement

A New Tax System (Goods and Services Tax) (Choosing to Account on a Cash Basis – Representatives of Incapacitated Entities) Determination 2025

General outline of instrument

1. This instrument is made under paragraph 29-40(1)(c) of the *A New Tax System (Goods and Services Tax) Act 1999* (the Act).

2. The instrument allows representatives of incapacitated entities to choose to account on a cash basis under section 29-40 of the Act.

3. The 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.

6. It repeals and replaces the *Goods and Services Tax: Choosing to Account on a Cash Basis Determination (No 39) 2015 – representatives of incapacitated entities* (2015 instrument), which would otherwise sunset on 1 October 2025.

7. It has the same substantive effect as the 2015 instrument.

Background

8. An entity may only choose to account on a cash basis if it satisfies one of the eligibility conditions in subsection 29-40(1) of the Act. The condition in that subsection relevant to this instrument is that the Commissioner has determined under paragraph 29-40(1)(c) of the Act the kind of enterprise in respect of which an entity may to choose to account on a cash basis.

9. If they are unable to meet these conditions they may only account on a cash basis if the entity requests, and receives, permission from the Commissioner to account on a cash basis under section 29-45 of the Act.

10. In the 2015 instrument, the Commissioner determined that enterprises that were carried on by an entity, before that entity became incapacitated, were enterprises of a kind that may account on a cash basis.

11. This allowed representatives of incapacitated entities to choose to account on a cash basis. Such representatives may want the option to do this due to commercial or regulatory reasons. For example, insolvency practitioners may want to account on a cash basis to the Australian Securities and Investment Commission, or in reporting to creditors pursuant to the *Bankruptcy Act 1966*.

Effect of this instrument

12. Under section 6 of the instrument, the Commissioner has determined that an enterprise that had been carried on by an incapacitated entity, before it became incapacitated, is one in respect of which the representative of that entity may choose to account on a cash basis.

13. The representative of an incapacitated entity may therefore choose to account on a cash basis, irrespective of the method of accounting originally adopted by the incapacitated entity prior to incapacitation, and does not need to request and receive permission from the Commissioner under section 29-45 of the Act to do so.

14. The expression 'representative' is defined in the Act to mean any of the following:

- a trustee in bankruptcy
- a liquidator
- a receiver
- a controller (within the meaning of section 9 of the *Corporations Act 2001*)
- an administrator appointed to an entity under Division 2 of Part 5.3A of the *Corporations Act 2001*
- a person appointed or authorised under an Australian law to manage the affairs of an entity because it is unable to pay all its debts as and when they become due and payable, or
- an administrator of a deed of company arrangement executed by the entity.

15. The expression 'incapacitated entity' is defined in the Act to mean any of the following:

- an individual who is a bankrupt
- an entity that is in liquidation or receivership, or
- an entity that has a representative.

Compliance cost assessment

16. Compliance cost impact: minor – there will be no additional regulatory impacts as the instrument is minor and machinery in nature (OIA25-09324).

Consultation

17. 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 a determination.

18. Public consultation on the draft instrument and explanatory statement was undertaken for a period of 4 weeks commencing 14 May 2025.

19. The draft instrument and draft explanatory statement were published on the ATO Legal database and publicised on the database's 'What's new' page. Major tax and superannuation publishers and associations commonly monitor these pages and usually include the details in the daily and weekly alerts and newsletters to their subscribers and members.

20. No feedback was received on the draft instrument and explanatory statement during the consultation period.

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

This legislative instrument provides that a representative, such as a controller or receiver, of an incapacitated entity may choose to account on a cash basis for an enterprise that was carried on by the entity before it become incapacitated (such as through bankruptcy or a company in receivership).

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms. It reduces compliance costs by alleviating the need for representatives to seek permission from the Commissioner every time they wish to account for GST on a cash basis.

Conclusion

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