Australian Government
Australian Taxation Office

Australian Taxation Office Legislative Instrument
Instrument ID: 2013/ITX/0005

A New Tax System (Goods and Services Tax) Waiver of Tax Invoice Requirement (Acquisitions Where Total Consideration Not Known) Legislative Instrument 2013

Explanatory Statement

General outline of this instrument

1. This legislative instrument is made under subsection 29-10(3) of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).

2. This instrument waives the requirement for a recipient making a creditable acquisition to hold a tax invoice for an input tax credit to be attributable to a tax period, where the total price of the thing or things acquired cannot be ascertained at the time an invoice is issued or a payment is made when they hold a document that meets the requirements prescribed in this instrument.

3. This instrument is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

4. All legislative references in this explanatory statement are to provisions in the GST Act unless otherwise specified.

Commencement and application of this instrument

5. This instrument commences on 1 July 2010 and applies to net amounts for tax periods commencing on or after that date.

6. The retrospective application of this instrument does not have an adverse effect on the rights or liabilities of any person other than the Commonwealth.[1] The effect of this instrument is to the advantage of affected parties. It waives the requirement for a recipient to hold a tax invoice before an input tax credit is attributable to a tax period when the recipient holds a document that meets the requirements prescribed in this instrument.

7. These prescribed requirements are not substantively different to the requirements under which documents that showed an interim amount of consideration payable instead of the total price for the supply were treated as tax invoices in Goods and Services Tax Ruling GSTR 2000/17 – Goods and services tax: tax invoices (withdrawn on 25 May 2011). This means that suppliers or their agents do not have to change their software or accounting systems to issue documents that would comply with this instrument.

[1] Subsection 12(2) of the *Legislative Instruments Act 2003* provides that a retrospective legislative instrument (or provision of that instrument) will be of no effect if it applies to adversely affect the rights or liabilities of any person other than the Commonwealth or an authority of the Commonwealth.

8. This instrument applies retrospectively to align to the date of effect of the legislative change for tax invoices.[2]

What is this instrument about?

9. The effect of this instrument is that an input tax credit for a creditable acquisition is attributable to a tax period for acquisitions where the total price of the supply is not known when the recipient or their agent holds a document other than a tax invoice. This instrument also sets out the particular information that must be included in this document for the input tax credit to be attributed to that tax period.

What is the effect of this instrument?

10. This instrument waives the requirement for a recipient to hold a tax invoice before an input tax credit for a creditable acquisition is attributable to a tax period when the recipient or their agent holds a document that meets the requirements of this instrument.

11. This instrument intends to give effect to the same general treatment as when the Commissioner had exercised the discretion GSTR 2000/17 to treat documents that show interim amounts of consideration payable rather than the total price of the supply as a tax invoice.

12. Compliance cost impact: An assessment of the compliance cost impact indicates that the impact will be minimal for both the implementation and on-going compliance costs. The instrument is routine in nature.

Background

13. Generally, when a recipient makes a creditable acquisition, an input tax credit for the acquisition is not attributable to a tax period until they hold a tax invoice. A tax invoice is a document that meets the requirements in subsection 29-70(1).

14. In some cases, the necessity for the recipient to hold a document that meets the requirements of subsection 29-70(1) may impose a disproportionate burden on a supplier or a recipient, particularly if the document that they do hold has most of the required features of a tax invoice.

15. GSTR 2000/17 outlined circumstances under which documents that show interim amounts of consideration payable rather than the total price were treated as tax invoices because the Commissioner exercised the discretion under former subsection 29-70(1). The Commissioner's discretion to treat a document as a tax invoice is now contained in subsection 29-70(1B).

16. The Commissioner's discretion under subsection 29-70(1B) is administrative, and can only be exercised on a case by case basis. Therefore it is no longer appropriate to deal with this matter in a public ruling. Instead, the Commissioner is making a determination under subsection 29-10(3) to ensure that taxpayers do not have to change their administrative practices.

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[2] See *Tax Laws Amendment (2010 GST Administration Measure No.2) Act 2010* and the repeal of regulations 29.70.01 and 29.70.02 to the *A New Tax System (Goods and Services Tax) Regulations 1999* by the *A New Tax System (Goods and Services Tax) Amendment Regulations 2010 (No.1)* (206 of 2010).

Explanation

17. The *A New Tax System (Goods and Services Tax) (Particular Attribution Rules Where Total Consideration Not Known) Determination (No. 1) 2000* legislative instrument sets out the particular attribution rules for supplies and acquisitions where some consideration is received (or provided), or an invoice is issued, before the total consideration for the supply or acquisition can be ascertained because it depends on a future event or events. The effect of the particular attribution rules is to defer attribution of the GST payable on the supply, or entitlement to an input tax credit, in respect of the amount that cannot be ascertained.

18. The particular attribution rules also provide for an input tax credit for a creditable acquisition to be attributed to a tax period but only to the extent that the consideration is provided or an invoice is issued before the total consideration is known. When the recipient knows the total consideration, the input tax credit for the creditable acquisition is also attributable to that tax period, but only to the extent that the input tax credit has not been previously attributed to an earlier tax period.

19. However, under subsection 29-10(3), an input tax credit is not attributable to a tax period unless the recipient holds a tax invoice. In these circumstances, a supplier cannot produce a document that meets the information requirements for a tax invoice under subsection 29-70(1) before the total consideration is known as subparagraph 29-70(1)(c)(iii) requires that the price of what is supplied be able to be clearly ascertained from the document. As a result, an input tax credit for the acquisition would not be attributable to a tax period in accordance with the particular attribution rules of that instrument.

20. To give effect to those particular attribution rules, where the recipient holds an invoice or other document showing an interim amount of consideration payable or paid, and that invoice or other document otherwise satisfies the requirements of paragraphs 29-70(1)(a) and 29-70(1)(c), this instrument has the effect of allowing an input tax credit for a creditable acquisition to be attributed at the time the recipient gives their GST return for the tax period to the Commissioner.

21. When the total amount of the consideration is known, a supplier may issue a further document for the remainder of the consideration payable rather than the total price of the supply. Where the recipient holds such a document, and that document otherwise satisfies the requirements of paragraphs 29-70(1)(a) and 29-70(1)(c), this instrument has the effect of allowing the input tax credit for a creditable acquisition to be attributed at the time the recipient gives their GST return for the tax period to the Commissioner.

Consultation

22. Section 18 of the *Legislative Instruments Act 2003* specifically provides for circumstances where consultation may not be necessary or appropriate. One of those circumstances is where the instrument is considered minor or machinery in nature, and does not substantially change the law.

23. Although the instrument was considered minor or machinery in nature, and does not substantially change the law, comment was invited from members of the community through the publication of a consultation draft of this instrument and explanatory statement.

James O'Halloran
Deputy Commissioner of Taxation

19 March 2013

Related Rulings / Determinations

GSTR 2000/17 (Withdrawn)

Legislative references

A New Tax System (Goods and Services Tax) Act 1999
29-10(3)
29-70(1)
29-70(1)(a)
29-70(1)(c)(iii)
29-70(1B)

Legislative Instruments Act 2003
12(2)
18

Human Rights (Parliamentary Scrutiny) Act 2011
Part 3
3

A New Tax System (Goods and Services Tax) Regulations 1999
29-70.01
29-70.02

Other references
A New Tax System (Goods and Services Tax) (Particular Attribution Rules Where Total Consideration Not Known) Determination (No. 1) 2000

Subject references
Goods and services tax
Attribution rules
Creditable acquisition
GST input tax credits & creditable acquisitions
Taxable supply
Tax invoices

Tax Office references

NO:
ISSN:

Statement of Compatibility with Human Rights

This Statement is 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

This instrument waives the requirement for a recipient making a creditable acquisition, where the total price of the thing or things acquired cannot be ascertained at the time an invoice is issued or a payment is made, to hold a tax invoice for an input tax credit to be attributable to a tax period.

Human Rights Implications

On an assessment of the compatibility of this instrument with the seven core international human rights treaties to which Australia is a party, it has been determined that this instrument does not engage any of the applicable rights or freedoms because the instrument is minor or machinery in nature.

Conclusion

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

James O'Halloran
Deputy Commissioner of Taxation