



A New Tax System (Goods and Services Tax) Waiver of Tax Invoice Requirement (Motor Vehicle Incentive Payment Made to Motor Vehicle Dealer) Legislative Instrument 2014

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:
 - (a) the recipient makes a creditable acquisition of a motor vehicle from a motor vehicle dealer (the supplier); and
 - (b) the supplier receives or is entitled to receive a motor vehicle incentive payment for the supply of the motor vehicle to the recipient in addition to the consideration it receives from the recipient; and
 - (c) the recipient holds 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 commenced on 1 May 2014 and applies to tax periods for which the GST return is required to be given to the Commissioner on or after 1 May 2014.
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.

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.

7. These prescribed requirements are not substantively different to the documents motor vehicle dealers have been providing as tax invoices to customers (recipients) before the decision of the Full Federal Court in *AP Group Limited v. Commissioner of Taxation* [2013] FCAFC 105 (*AP Group*). This means that suppliers do not have to change the documents they issue to recipients. This will allow a recipient to attribute the input tax credit as would otherwise be the case.

8. This instrument applies retrospectively to align to the date from which the Commissioner agreed for motor vehicle dealers to have modified documentation to implement the decision of the Full Federal Court. The Commissioner recognised that entities were required to modify their documentation to implement the Court's decision and allowed until 1 May 2014 for this to be done.

What is this instrument about?

9. This instrument provides for an input tax credit for a creditable acquisition to be attributable to a tax period for acquisitions of a motor vehicle where the total price of the supply and the amount of GST payable on the supply is not stated on the document held by the recipient. This circumstance arises where a motor vehicle incentive payment is made to the supplier by a motor vehicle manufacturer, distributor or importer and is part of the consideration for the supply to the recipient (sometimes referred to as 'third party consideration'). This instrument also sets out the particular information that must be included in the document held by the recipient for the input tax credit to be attributable 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 holds a document that meets the requirements of this instrument.

11. This instrument is a response to industry concerns. It addresses the practical implications of the Full Federal Court's decision in *AP Group* where the documents motor vehicle dealers provide do not satisfy all of the requirements under subsection 29-70(1) to be a tax invoice.

12. Compliance cost impact: No change/low – minor or machinery in nature. A compliance cost assessment indicates a minor impact to both implementation and on-going compliance costs.

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.² 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 or other commercial difficulties on a supplier or a recipient, particularly if the document that they do hold has most of the required features of a tax invoice. The sale of motor vehicles to retail recipients where a motor vehicle incentive payment is also made has become such a case.

15. The Commissioner had interpreted the GST law so that particular motor vehicle incentive payments were consideration for a supply made by the motor vehicle dealer to

² Subsection 29-10(3).

the manufacturer, importer or distributor (manufacturer). It was considered that such payments were not part of the 'price' of the motor vehicle supplied to the recipient. Therefore, a document provided by the dealer to the recipient which sets out the consideration provided by the recipient as the relevant price and the GST payable on this amount, in addition to all the other requirements in subsection 29-70(1), was a valid tax invoice.

16. However, in *AP Group* the Full Federal Court on appeal held that particular 'fleet rebates' and 'run-out model support' payments considered in the case were consideration provided by the manufacturer for the supply of motor vehicles to the dealer's customers (that is, third party consideration). Consequently, such payments form part of the price for the supply of a motor vehicle.

17. As noted, the documents that have been provided by the motor vehicle dealer to the recipient only set out the consideration provided by the recipient and the amount of GST payable in relation to that consideration, not the full price and GST payable on that price. The consequence of this, following the decision in *AP Group*, is that the requirements in subparagraphs 29-70(1)(c)(iii) and 29-70(1)(c)(vi) are not satisfied. That is, such documents are not tax invoices under subsection 29-70(1).

18. The recipient generally will not know that such third party consideration has been provided by the manufacturer to the motor vehicle dealer. Therefore, the recipient generally will not know that the document they hold does not meet the requirements of a tax invoice. However, this does not affect the requirement in subsection 29-10(3).

19. Requiring the amounts of third party consideration to be stated on the tax invoice may lead to confusion by the recipient regarding the extent to which they are liable to provide the consideration for their acquisition and the amount of the input tax credit to which they are entitled.³ In addition, motor vehicle dealers would have an increased compliance burden to comply with the requirements because of the need to update their documentation they provide to recipients to comply with the requirements of subsection 29-70(1). For these reasons it is not appropriate to require a recipient to hold a tax invoice before they are able to attribute the input tax credit for the creditable acquisition.

Explanation

20. Under subsection 29-10(3), an input tax credit is not attributable to a tax period unless the recipient holds a tax invoice.

21. This instrument ensures that the recipient will be able to attribute the input tax credit for their creditable acquisition to the tax period in which they hold a document that meets the requirements set out in the instrument, without needing to hold a tax invoice.

22. The instrument waives the requirement to hold a tax invoice if a recipient (the recipient) makes a creditable acquisition of a motor vehicle from a motor vehicle dealer (the supplier), the supplier receives a motor vehicle incentive payment for the supply of the motor vehicle to the recipient in addition to the consideration payable by the recipient (third party consideration), and the requirements of the instrument are satisfied.

23. For the purposes of the instrument, 'motor vehicle incentive payment' is limited to incentive payments that are third party consideration. That is where the incentive payment is part payment for the supply of the motor vehicle to the recipient.

24. For the requirement to hold the tax invoice to be waived, the recipient must hold a document that meets the information requirements set out in clause 5 of the instrument.

³ Sections 11-5, 11-20, 11-25 and 11-30.

25. This requires that the document satisfies the requirements of paragraphs 29-70(1)(a) and 29-70(1)(c), other than:

- (a) the requirement in subparagraph 29-70(1)(c)(iii) that the document contains enough information for the price of the supply to be clearly ascertained; and
- (b) the requirement in subparagraph 29-70(1)(c)(vi) that the document contains enough information for the amount of GST (if any) payable in relation to each supply to be clearly ascertained.

26. Instead of these two requirements, the document must contain enough information to enable the following to be clearly ascertained:

- (a) the amount of consideration payable by the recipient of the supply; and
- (b) the amount of GST payable that is referable to the consideration payable by the recipient.

27. In effect, this ensures that the information required on the document is the same as that which would be required for a tax invoice if the incentive payment the supplier receives from the manufacturer was not third party consideration for the supply to the recipient.

28. The document requirements of paragraphs 29-70(1)(a) and 29-70(1)(c) that are not altered by this instrument are (noting that this instrument will not apply in circumstances where a recipient created tax invoice is issued):

- it is issued by the supplier of the supply or supplies to which the document relates;
- it contains enough information for the following to be clearly ascertained:
 - the supplier's identity and the supplier's ABN;
 - if the total price of the supply or supplies is at least \$1,000 or such higher amount as the regulations specify – the recipient's identity or the recipient's ABN;
 - what is supplied, including the quantity (if applicable) of what is supplied;
 - the extent to which each supply to which the document relates is a taxable supply;
 - the date the document is issued;
 - such other matters as the regulations specify.

Consultation

29. 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.

30. The instrument is considered minor or machinery in nature, and does not substantially change the law. However, targeted consultation was undertaken. Industry representatives, tax practitioners and software developers were invited to comment on the draft determination and explanatory statement. Comments received as part of the consultation were taken into account in developing the final determination and explanatory statement.

James O'Halloran
Deputy Commissioner of Taxation

8 May 2014

Legislative references

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

11-5

11-20

11-25

11-30

29-10(3)

29-70(1)

29-70(1)(a)

29-70(1)(c)

29-70(1)(c)(iii)

29-70(1)(c)(vi)

Legislative Instruments Act 2003

12(2)

18

Human Rights (Parliamentary Scrutiny) Act 2011

Part 3

3

Case references

AP Group Limited v Commissioner of Taxation [2013] FCAFC 105

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 acquisition is of a motor vehicle and the motor vehicle dealer receives a motor vehicle incentive payment that is third party consideration in addition to the consideration it receives from the recipient, to hold a tax invoice for an input tax credit to be attributable to a tax period. The instrument sets out alternative document information requirements.

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