

GSTR 2012/D3EC - Compendium

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Page status: **not legally binding**

Page 1 of 21

Ruling Compendium – GSTR 2012/D3

This is a compendium of responses to the issues raised by external parties to draft Ruling GSTR 2011/D1 *Goods and services tax: tax invoices*.

This compendium of comments has been edited to maintain the anonymity of entities that commented on the draft Ruling. It is in two parts as follows.

- Part A – substantive or technical issues with the content
- Part B – typographical, grammatical, and editorial corrections

Part A – substantive or technical issues with the content

Summary of issues raised and responses

Issue No.	Issue raised	Tax Office Response/Action taken
A.1	The preamble refers to section 105-60 of Sch 1 to the TAA 1953. This section has been repealed and should refer to Division 357.	The preamble in the new draft Ruling does not refer to the TAA 1953.
A.2	Draft Ruling paragraph 50 could cause confusion for taxpayers, their representatives and auditors in the absence of detail about under what circumstances contracts are capable of being a tax invoice. For instance, the most common excuse given for not having a tax invoice is ' <i>the contract is the tax invoice isn't it?</i> '. It is imperative that the circumstances under which a contract is capable of being a tax invoice be provided. For instance, include a statement or an example that ordinarily a contract such as a standard land contract would not be a tax invoice unless it contains a special condition or something to the effect that ' <i>once settlement of the sale is completed this document is intended to be a tax invoice and the vendor warrants that sale was a taxable supply that includes GST of \$xx</i> '.	Agreed. Clarification of the circumstances in which ordinary commercial documents such as lease agreements and contracts are capable of being tax invoices has been added at new draft Ruling paragraph 68. It is acknowledged that, for instance, a lease agreement or contract would be in the approved form for a tax invoice if it includes the information requirements for a tax invoice.
A.3.1	In draft Ruling paragraph 53, replace the words 'need not re-issue the document' with 'cannot re-issue the document as a tax invoice'. The words 'need not' implies that the taxpayer can still issue a tax invoice after the Commissioner has exercised the discretion. This is incorrect because once the discretion has been exercised the document is a tax invoice for the purposes of both the supplier and recipient. As there can only be one tax invoice for a taxable supply, the supplier can no longer issue a tax invoice for that supply after the Commissioner has exercised his discretion.	Agreed in part. New draft Ruling paragraphs 60 and 164 provides clarification that a supplier is not required to reissue a document that meets the requirements for a tax invoice if the Commissioner has treated the document as a tax invoice. This is because the document is a tax invoice for the purposes of both the supplier and the recipient.

A.3.2	<p>Replace draft Ruling paragraph 177 with:</p> <p><i>A small newsagent acts as an agent for several publishers. In a single dealing the newsagent makes supplies on behalf of more than one publisher to a corporate customer. The newsagent issues a single document for the publishers in relation to the supplies. This document satisfies all of the tax invoice requirements, other than the requirements that the identity and ABN of the supplier and the total price for all of the taxable supplies are clearly ascertainable from the document. The document has the identity and ABN of the newsagent. This is in accordance with the existing commercial practice of the newsagent.</i></p>	Not applicable. An equivalent paragraph has not been included in the new draft Ruling.
A.4	<p>Draft Ruling paragraphs 36 and 111 seem to link the Commissioner's actions to the imposition of an administrative penalty. This may cause problems. In these paragraphs, supplier A is not penalised because the Commissioner took 28 days to exercise the discretion from the date of the recipient's request to the supplier. However, in similar circumstances, supplier B is penalised because the Commissioner took more than 28 days. In both cases the behaviour of the supplier is the same.</p>	Comments noted. New draft Ruling paragraphs 48 and 170 provide clarification of the potential application of the administrative penalty for failing to issue a tax invoice in circumstances where the Commissioner has exercised the discretion to treat a document as a tax invoice.
A.5.1	<p>Draft Ruling paragraphs 4, 102 and 103 refer to the exercise of the discretion in relation to documents yet to be issued. This is odd as the discretion will be exercised for a document already issued by the supplier.</p>	<p>The reference to the term 'yet to be issued' (see paragraph 4 of PS LA 2004/11) reflects that the previous tax invoices ruling, GSTR 2000/17, sets out the circumstances in which the Commissioner would exercise the discretion to treat as a tax invoice particular classes of document issued by any supplier for an indefinite period. In effect, the discretion could be said to have been exercised for a document before it had been issued (and before a supply had been made).</p> <p>The exercise of the Commissioner's discretion, however, cannot be fettered in that manner as it is an administrative discretion. The Commissioner will consider the exercise of the discretion at the time of a request by a taxpayer based on the particular facts and circumstances of each individual case. This has been explained at new draft Ruling paragraphs 45 and 118.</p> <p>Accordingly, the new draft Ruling does not outline those particular classes of document or specific circumstances in which the Commissioner will exercise the discretion to treat a document as a tax invoice. Further explanation about the exercise of the discretion by the Commissioner is found in Law Administration Practice Statement PS LA 2004/11.</p> <p>However, the Commissioner recognises this may cause uncertainty for taxpayers. To reduce the uncertainty as to whether a document would be treated as a tax invoice in the circumstances previously set out in GSTR 2000/17 (or other public ruling products), the Commissioner has created a number of draft legislative instruments under subsection 29-10(3) to</p>

		allow taxpayers to attribute an input tax credit without holding a tax invoice in those circumstances if they hold a document(s) that meets particular information requirements. Until these instruments take effect, any documents issued which would have been treated as tax invoices under the previously withdrawn GSTR 2000/17 will continue to be treated as tax invoices.
A.5.2	It is not clear from draft Ruling paragraphs 16 to 19 and 75 whether there is a single supply or multiple supplies of the items.	Agreed. Clarification has been provided at new draft Ruling paragraphs 24 to 27 and 95 that there are multiple supplies. That is, a separate supply of each item which may or may not be a taxable supply.
A.5.3	Footnote 5 at draft Ruling paragraph 25 and the second sentence of draft Ruling paragraph 48 note that it is a not a requirement of the law for the supplier to request a tax invoice from the supplier before making a request for the Commissioner to exercise the discretion to treat a document as a tax invoice. This is an administrative action in relation to how the Commissioner will exercise the discretion that is already set out in PS LA 2004/11. Suggest reference to relevant paragraphs of PS LA 2004/11.	Agreed. Footnote references to PS LA 2004/11 which sets out this administrative action have been inserted at new draft Ruling paragraphs 45 and 66.
A.5.4	There is insufficient emphasis at draft Ruling paragraphs 28 and 55 that a recipient created tax invoice can only be issued in certain circumstances. Suggest insertion that a recipient created tax invoice is a tax invoice belonging to a class of tax invoices that the Commissioner has determined in writing.	Agreed. Footnote references have been inserted at new draft Ruling paragraphs 12 and 70 to explain that a recipient created tax invoice is a tax invoice belonging to a class of tax invoices that the Commissioner has determined in writing.
A.5.5	Suggest that the general statement at draft Ruling paragraphs 30 and 94 that 'the Commissioner is under no obligation to exercise the discretion' be modified as it may not be correct.	Agreed. The statement has been deleted.
A.5.6	In relation to draft Ruling paragraphs 32 and 107, it is queried if the exercise of the discretion to treat a document as a tax invoice could be a decision that forms part of the process of making, or leading up to the making of an assessment or calculation of tax, charge or duty that would exclude ADJR review.	New draft Ruling paragraphs 49 and 119 reflect that a taxpayer may be able to seek an ADJR review of the decision not to exercise the discretion.
A.5.7	Suggest insertion of a statement at draft Ruling paragraphs 36 and 109 that sets out the status of a document for which the Commissioner has exercised the discretion.	Agreed. See new draft Ruling paragraph 48.
A.5.8	Insert reference to section 382-5 of Sch 1 to the TAA (record keeping) as a footnote as authority for draft Ruling paragraphs 41 and 120.	Agreed.
A.5.9	The first sentence of draft Ruling paragraph 47 infers that the tax period in which the creditable acquisition was made is relevant whereas the time of acquisition is not relevant. Suggest delete 'made in a particular tax period' or, alternatively, replace it with 'made for a particular tax period' after 'claim'.	Agreed. An amendment has been made at new draft Ruling paragraph 64 which reflects that a recipient is required to hold a tax invoice before an input tax credit is attributable to a tax period for a creditable acquisition. The creditable acquisition may have been made in a previous tax period.

A.5.10	The first sentence of draft Ruling paragraph 48 suggests that a recipient should request a tax invoice from a supplier before treating a document as a tax invoice under subsection 29-70(1A), where that document was given to the recipient by the supplier a request for a tax invoice, and that document does not meet the requirements for a tax invoice. Subsection 29-70(1A) does not require such a request to be made.	Agreed. Clarification has been provided at new draft Ruling paragraph 65 that a recipient that receives a document that does not meet all of the requirements for a tax invoice may treat the document as a tax invoice under subsection 29-70(1A) where the recipient holds another document from the supplier from which the missing information can be clearly ascertained.
A.5.11	It could be noted at draft Ruling paragraph 50 that not all tax invoices will be an 'invoice'.	Disagree. This would be more appropriate for inclusion in a ruling that discusses invoices.
A.5.12	Insert 'unlike subsection 29-70(1B) after 'subsection' in the last sentence to footnote 19 at draft Ruling paragraph 52.	Agreed.
A.5.13	Insert a reference to subsection 388-50(1) of Sch 1 to the TAA as a footnote at draft Ruling paragraph 57.	Agreed.
A.5.14	It is not clear in the last sentence of draft Ruling paragraph 69 whether the name on the ABR will be the actual name of the trustee entity or 'The trustee of the ABC Trust'.	Clarification made at new draft Ruling paragraph 88 that the entity identified on the ABR is usually the trustee for the trust – for example, 'The Trustee for the Jones Family Trust'. A footnote also acknowledges that the ABR has identified the trust without reference to the trustee in some instances – for example, 'The Jones Family Trust'.
A.5.15	It is queried why a part number or code would not be sufficient to determine what is supplied. It would be clear to the supplier and recipient what is being supplied.	Clarification provided at new draft Ruling paragraph 91 that a part number or code may not be sufficient to determine what is supplied where the recipient does not know what the part number or code relates to.
A.5.16	It is queried if the concepts of mixed and composite supplies have relevance at draft Ruling paragraphs 71 and 72.	The concepts of mixed and composite supplies are more relevant to a discussion of the extent to which each supply is a taxable supply. See discussion of the concept of mixed and composite supplies inserted at new draft Ruling paragraphs 30 to 35.
A.5.17	Suggest reword of the first sentence at draft Ruling paragraph 74. It is not the attribution of part of the price that is delayed rather it is the GST payable and input tax credits corresponding to that part of the price that is delayed.	Agreed. New draft Ruling paragraph 93 has been reworded to reflect the comment.
A.5.18	It is more appropriate for the draft Ruling paragraphs (94 to 111) dealing with the exercise of the discretion to be added to revised PS LA 2004/11. Suggest that the scenario where a supplier has failed to issue a tax invoice, and it is known the supplier won't be able to pay the GST, be addressed. It would assist if the Ruling stated whether the remission of GST is a relevant consideration.	Agreed. Further, a discussion of the scenario and whether the remission of GST is a relevant factor in the exercise of the discretion would be more appropriate to be dealt with in PS LA 2004/11.
A.5.19	The term 'double taxation' at draft Ruling paragraph 97 is not commonly used in a GST context. The term 'cascading of tax' is more commonly used.	Not applicable. An equivalent paragraph has not been included in new draft Ruling.

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Page 5 of 21

A.5.20	It is likely that 'the subject matter, scope and purpose of the GST Act' cited at draft Ruling paragraph 100 and subparagraph 102(c) is broader than sections 29-10 and 29-70.	Not applicable. An equivalent paragraph has not been included in the new draft Ruling.
A.5.21	If the guideline in draft Ruling sub-subparagraph 102(a)(i) is followed a recipient may not be able to claim an input tax credit because of a supplier's poor compliance behaviour.	An equivalent paragraph has not been included in the new draft Ruling. However, the guideline applies in situations where the supplier, or the recipient in the case of a recipient created tax invoice, made a request for the Commissioner to exercise the discretion for a document it issued.
A.5.22	It is not known how sections 29-10 and 29-70 are based on the presumption that the cost is borne by the end consumer at draft Ruling subparagraph 102(c).	An equivalent paragraph has not been included in the new draft Ruling. However, the Commissioner would agree with the statement.
A.5.23	The assertion at draft Ruling sub-subparagraph 102(d)(ii) that the tax invoice must show the trustee relationship may be supported by the words of subparagraph 29-70(1)(c)(i).	An equivalent paragraph has not been included in the new draft Ruling. However, clarification has been made at new draft Ruling paragraph 89 that the tax invoice may include the legal name of the trustee or the registered business name (or registered trading name) of the enterprise carried on by the trustee.
A.5.24	In draft Ruling sub-subparagraph 102(d)(ii) and paragraph 155 it should be noted that it is the legislation that attributes an input tax credit to a tax period. A taxpayer claims an input tax credit in a tax period.	Agreed. This has been reflected throughout the new draft Ruling where appropriate.
A.5.25	Insert reference to subsections 8J(9) and 8J(10) of the TAA in footnote 81 at draft Ruling paragraph 125.	Disagree. These provisions do not allow for the imposition of penalty. They explain the concept of a statement made to a person other than a taxation officer in connection with a taxation law – which includes a statement made in a tax invoice. Reference has therefore been made to the imposition provision being section 8M in footnote 144 at new draft Ruling paragraph 168.
A.5.26	Insert reference to the relevant provision of the <i>Corporations Act 2001</i> for incapacitated entities and their representatives in the first sentence of draft Ruling paragraph 131.	Disagree. The terms 'incapacitated entity' and 'representative' are defined in the GST Act with corresponding links to the <i>Corporations Act 2001</i> . Footnote references to these terms have been inserted at new draft Ruling paragraph 137.
A.5.27	It is queried if 'commercial' has a particular meaning in the term 'commercial lease' in draft Ruling paragraph 147.	The term 'commercial lease' refers to the lease of non-residential premises for business purposes.

A.6.1	<p>Draft Ruling paragraphs 18, 20 and 79 set out the ATO's approach to the requirement that a tax invoice must contain enough information to enable the extent to which a supply is a taxable supply to be determined. These paragraphs include the need to asterisk each taxable supply along with a corresponding statement of the extent to which each asterisked supply is a taxable supply. This is tantamount to a new requirement as it does not appear to have been a requirement under the previous law.</p> <p>Further, it would require extensive and costly changes to systems created by suppliers on the basis of private rulings that explained that a tax invoice could denote which items were taxable supplies without indicating the extent to which each was a taxable supply.</p>	<p>The requirement for a tax invoice to contain enough information to enable the extent to which each supply is a taxable supply to be clearly ascertained forms part of the law relating to tax invoices that was enacted on 1 July 2010. The Commissioner, at new draft Ruling paragraphs 26, 29 to 35 and 102, has listed a number of ways of how a supplier may represent this information on a tax invoice to be able to satisfy this requirement, including for supplies that are mixed supplies.</p> <p>The Commissioner does, however, acknowledge that there are other ways to represent the information on a tax invoice so as the extent to which a supply is a taxable supply could be determined. Unfortunately, it is not possible to address all of these situations in the new draft Ruling. Accordingly, the list is non-exhaustive.</p>
A.6.2	Suppliers should not be constrained to using an asterisk to denote when a supply is a taxable supply.	Agreed. The Commissioner acknowledges that the use of any reference mark is acceptable to denote which supplies are taxable supplies.
A.6.3	Draft Ruling sub-subparagraph 102(d)(i) sets out a limited exception in which the Commissioner can exercise the discretion to treat a non-complying document as a tax invoice where the previous document satisfied as a tax invoice under the previous requirements. This is inadequate as a system installed or upgraded after 1 July 2010 may be required to include the changes.	It may not be necessary for a supplier to make changes to its systems for the enacted requirements for a tax invoice during an upgrade after 1 July 2010. As the required information on a tax invoice does not have to be specifically stated or in a particular format on the document, the established system could already be sufficient to meet the requirements.
A.6.4	The Commissioner had treated an insurance renewal notice as a tax invoice once the policy was renewed under GSTR 2000/17. This practice has been cast in doubt in example 5 at draft Ruling paragraph 164 with the words 'may be appropriate'. Changes to this practice would involve significant (and unwarranted) compliance cost for supplier's impacted.	The discretion that allows the Commissioner to treat a document as a tax invoice is an administrative discretion. The exercise of the Commissioner's discretion therefore cannot be fettered. The Commissioner will consider the particular facts and circumstances of each individual case at the time a request has been made to exercise the discretion. However, to reduce uncertainty as to whether an insurance renewal notice would be treated as a tax invoice, the Commissioner has created a draft legislative instrument under subsection 29-10(3) such that an input tax credit is attributable to a tax period without the recipient being required to hold a tax invoice for a taxable supply of insurance provided they hold a renewal notice issued by the supplier. Until this instrument takes effect, any renewal notice which would have been treated as a tax invoice under the previously withdrawn GSTR 2000/17 will continue to be treated as a tax invoice.

A.6.5	<p>It is understood that a supplier that issued a tax invoice at the point of sale is not required to issue another tax invoice where requested by the recipient unless it is a copy. Draft Ruling paragraph 125 should make clear that a penalty will not be imposed on the supplier in these circumstances.</p>	<p>Disagree. It is correct that a supplier that has issued a tax invoice may issue a copy or duplicate of that document if requested by the recipient. However, if a supplier cannot show that it complied with the requirement to issue a tax invoice they may be liable to a penalty for failing to issue a tax invoice. Keeping a copy of the tax invoice would help to demonstrate that the requirement was satisfied.</p>
A.7.1	<p>Draft Ruling paragraph 24 regards the provision of an incorrect ABN as missing information. Commentator does not agree and considers that this interpretation should be withdrawn and limited to where no ABN has been quoted on the document.</p> <p>Large businesses cannot check each tax invoice to validate each ABN due to high volumes of transactions. Systems have been implemented to validate the ABN of a supplier at the commencement of the trading relationship and sample checking for compliance conducted.</p> <p>It is noted that the above concern may be redundant as a recipient may treat a document as a tax invoice where missing information can be clearly ascertained from other documents given to the recipient by the supplier. Examples of the types of other document include a supplier's product list, a business card or an earlier tax invoice.</p> <p>However, these examples of other documents may not relate to the supply. A recipient therefore may have to withhold an amount, under PAYG, from a payment it makes to another entity in respect to a supply where it does not have a document relating to the supply that quotes the supplier's ABN at the time of making the payment.</p> <p>Further, the previous ruling did not provide this interpretation for ABN quotation.</p>	<p>The Commissioner does not consider that a document contains the required information for a tax invoice if that information is incorrect. The Commissioner prefers the view that incorrect information on the document is missing. However, as noted, a recipient may treat a document that is missing information as a tax invoice under subsection 29-70(1A), if it holds another document from the supplier that contains the missing information.</p> <p>The types of other documents set out in the Ruling are only examples of documents the recipient may have received from the supplier which would enable them to treat the document that is missing information as a tax invoice. Other examples may also include invoices, receipts, quotes, order forms, renewal notices, letterheads, emails or other internet records if given by the supplier.</p> <p>Many of those documents would relate to the supply and 'no ABN withholding' would be necessary. The Commissioner also notes that, for PAYG purposes, a recipient need not withhold an amount for no ABN withholding where, at the time of making the payment, if the recipient does not have reason to suspect that the ABN quoted might not be genuine or that it does not belong to the supplier who quoted it. Further, regular suppliers can give a recipient a periodic quotation of their ABN that covers all the supplies made to the recipient for a specified period. See questions 12 and 15 of the document <i>No ABN withholding – questions and answers</i> on www.ato.gov.au.</p> <p>The Commissioner further notes that under the previous requirements for tax invoices a document with an incorrect ABN would not have satisfied the requirement for the tax invoice to include the supplier's ABN.</p>
A.7.2	<p>Draft Ruling paragraphs 23 to 27 provide that a recipient may treat a document that does not meet the requirements of a tax invoice as a tax invoice where it holds another document from a supplier that includes the missing information. This may encourage suppliers to be less vigilant in respect of meeting the requirements for a tax invoice.</p>	<p>Disagree. A document treated as a tax invoice under subsection 29-70(1A) is only a tax invoice for the purposes of the entity in receipt of the document .It does not satisfy the obligation of the entity issuing it to provide a tax invoice. A supplier may therefore be liable to an administrative penalty for failing to issue a tax invoice if they are less vigilant in meeting the requirements for a tax invoice.</p>

A.7.3	<p>Draft Ruling paragraph 29 provides that a recipient cannot treat a document that does not meet the recipient created tax invoice requirements as a tax invoice by relying on other documents. This interpretation may adversely effect businesses conducted on an electronic basis that had relied on the Commissioner's views at paragraphs 30 and 31 of GSTR 2000/17 for electronic purchasing by recipients of supplies.</p>	<p>As the discretion under which the Commissioner had treated an electronic purchasing system document as a tax invoice is an administrative discretion, the Commissioner cannot treat the document as a tax invoice in the same manner it had under GSTR 2000/17. The Commissioner will consider the exercise of the discretion at the time of a request based on the particular facts and circumstances of each individual case.</p> <p>However, to reduce uncertainty as to whether the document in relation to a electronic purchasing system would be treated as a tax invoice, the Commissioner has created a draft legislative instrument under subsection 29-10(3) such that an input tax credit is attributable to a tax period without the recipient being required to hold a tax invoice for a taxable supply provided they hold a document produced by the electronic purchasing system that meets particular information requirements. Until this instrument takes effect, documents produced by an electronic purchasing system which would have been treated as a tax invoice under the previously withdrawn GSTR 2000/17 will continue to be treated as a tax invoice.</p>
A.8.1	<p>It is recommended that the Commissioner continue to treat a document as a tax invoice that contains the identity and ABN of an agent rather than the identity and ABN of the principal in the draft Ruling. This has been the practice adopted by the Commissioner since the introduction of GST in July 2000. It is also the approach adopted in other public rulings, including paragraph 65 of GSTR 2000/37, paragraph 217 of GSTR 2005/1, paragraph 105 of GSTR 2005/1, GSTA TPP 027 and GSTA TPP 034.</p> <p>However, in Example 8 at draft Ruling paragraphs 173 to 176 it appears to limit the exercise of the discretion by stating that the Commissioner may exercise the discretion to treat a document containing an agent's details as a tax invoice. This suggests that there may be circumstances where the Commissioner may not exercise the discretion.</p> <p>This is contrary to the Commissioner's previously definitive view on the exercise of the discretion. It would be fair and reasonable for the Commissioner to exercise the discretion in these circumstances as it would cause unnecessary compliance costs for suppliers to change their systems. Further, it would align the tax invoice requirements with the 'no ABN withholding' principles set out at subsection 12-190(2A). This provision contains an exception to need to withhold an amount from a payment where the payer receives an invoice or some other document from the payee's agent which quotes the agent's ABN.</p>	<p>The discretion that allows the Commissioner to treat, as a tax invoice, a document that would not otherwise meet the tax invoice requirements is an administrative discretion. The exercise of the Commissioner's discretion cannot be fettered. The Commissioner will consider the particular facts and circumstances of each individual case at the time a request has been made for the exercise of the discretion.</p> <p>However, to reduce uncertainty as to whether a document that contains enough information to clearly ascertain the identity and ABN of the agent would be treated as a tax invoice, the Commissioner has created a draft legislative instrument under subsection 29-10(3) such that an input tax credit is attributable to a tax period without the recipient being required to hold a tax invoice for a taxable supply provided they hold a document issued by the agent and which contains the agent's identity and ABN. Until this instrument takes effect, a document that contains the identity and ABN of the agent which would have been treated as a tax invoice under the previously withdrawn GSTR 2000/17 will continue to be treated as a tax invoice.</p>

A.8.2	<p>It is recommended that the Commissioner exercise the discretion to treat a document as a tax invoice that contains the identity and ABN of a property manager rather than the landlord's identity and ABN – provided that the tenant has the landlord's details.</p> <p>Alternatively, if the property manager does not have legal authority to execute the lease, but has authority to manage the leased premises and issue tax invoices, provided the tenant is aware of the landlord's identity and ABN from another document, the tenant should be able to treat a document as a tax invoice that instead contains the identity and ABN of the property manager. That is, the validity of the tax invoice should not turn on strict legal agency principles as subsection 29-70(1A) allows other documents to provide information 'missing' from a tax invoice.</p>	<p>The discretion in subsection 29-70(1B) that allows the Commissioner to treat a document as a tax invoice is an administrative discretion. The exercise of the Commissioner's discretion cannot be fettered. The Commissioner will consider the particular facts and circumstances of each individual case at the time a request is made for the exercise of the discretion. However, the Commissioner has created a draft legislative instrument under subsection 29-10(3) such that an input tax credit is attributable to a tax period without the recipient being required to hold a tax invoice for a taxable supply provided they hold a document issued by a property manager.</p>
A.8.3	<p>It is recommended that either the trust's or the trustee's identity and ABN may be contained on a tax invoice.</p> <p>Trusts are treated as separate entities for the purposes of GST. However, trusts have no legal personality. This makes issuing tax invoices in the trust's name difficult. However, trustee's have legal personalities.</p>	<p>Clarification has been provided at new draft Ruling paragraph 89 that a tax invoice may include the legal name of the trustee or the registered business name (or registered trading name) of the enterprise carried on by the trustee.</p>
A.9.1	<p>The alternative view of the meaning of 'clearly ascertainable' set out in draft Ruling paragraphs 65 to 67 should be deleted. There is not a viable alternative view.</p> <p>Under paragraph 29-70(1)(c), the matters listed in (i) to (viii) must be clearly ascertainable from the contents of the tax invoice. The meaning of the word 'it' in the phrase 'it contains enough information to enable the following to be clearly ascertained' does not suggest that the matters listed in (i) to (viii) might be contained in some other document or multiple documents.</p> <p>When the opening passage of subsection 29-70(1) are read in conjunction with the opening passage of paragraph 29-70(1)(c), the combined effect is as follows:</p> <p style="padding-left: 40px;">A tax invoice is a document that complies with the following requirements: it contains enough information to allow the following to be clearly ascertained...</p> <p>A plain English reading of the provision, the word 'it' could be interpreted in any other way than a reference back to the tax invoice.</p> <p>Further, if the alternative view applied, subsection 29-70(1A) would be rendered redundant.</p> <p>If the Commissioner chooses to state the alternative view, the above explanation should be made clear rather than a reference to an ability to refer to extrinsic materials where the law is ambiguous and obscure (which clearly it is not).</p>	<p>Agreed. The matters listed in (i) to (viii) of paragraph 29-70(1)(c) must be clearly ascertainable from the tax invoice rather than another document or documents or external sources. Clarification has been provided at new draft Ruling paragraphs 15 to 16 and 77 to 85 to make it clearer that a reading of subsection 29-70(1) and paragraph 29-70(1)(c) require those matters in (i) to (viii) to be ascertainable from the tax invoice itself.</p>

A.9.2	<p>Draft Ruling paragraph 10 provides that a document is in the approved form for a tax invoice if it includes the information required by subsection 29-70(1). However, the reference to 'subsection 29-70(1)' should be replaced with 'the GST Act'. This is because there are other provisions which contain requirements for a tax invoice. For example, see the 'rounding of the amounts of GST' in section 9-90 and the GST group concessions at section 48-57. The statement should also be qualified with a reference to the fact that other Rulings may contain approved form requirements. A list of references to these other Rulings should be included.</p>	<p>An amendment has been made at new draft Ruling paragraphs 10 and 71 to clarify that there are other provisions that may contain additional requirements for a tax invoice.</p> <p>In addition, reference has been made to these other Rulings which contain approved form requirements in footnote 6 at new draft Ruling paragraph 10 and footnote 55 at new draft Ruling paragraph 71.</p>
A.9.3	<p>It is recommended that the view set out in draft Ruling paragraphs 21, 23, 28 and 81 be amended. These paragraphs provide that other documents cannot be used, under subsection 29-70(1A), to show that a document is intended to be a tax invoice or a recipient created tax invoice.</p> <p>This view is inconsistent with the terms of the legislation. Subsection 29-70(1A) would apply equally to paragraph 29-70(d) as it would to paragraph 29-70(c). For instance, a supplier sends a document as an attachment to an email and the email states, 'Please see attached tax invoice.' If the attached document contains a description of the supply, the date of the supply, the details of the supplier and recipient (if appropriate), the amount of GST payable in respect of each supply and all the information otherwise required by the GST Act, there is no reason why subsection 29-70(1A) would not apply to allow the entity receiving the email and the document to treat the document as a valid tax invoice.</p> <p>Further, the Commissioner should include more practical and common examples of where it might be 'clearly ascertainable' that a document is intended to be a tax invoice than that currently at draft Ruling paragraph 83. For instance, if a document (or a combination of documents under subsection 29-70(1A)) sets out a description of each of the relevant supplies, the date of those supplies, the identity and ABN details of the supplier and the recipient (if appropriate) and all the details of the GST associated with those supplies required by subparagraphs 29-70(1)(c)(iv),(vi) and (vii), it would be clearly ascertainable that the document was intended to be a tax invoice.</p>	<p>The Commissioner agrees that subsection 29-70(1A) would apply equally to paragraphs 29-70(c) and 29-70(d). This clarification has been provided at new draft Ruling paragraphs 38 and 108.</p> <p>The Commissioner, however, disagrees that the requirement that it can be clearly ascertained that the document is intended to be a tax invoice should reflect a less specific standard or lower threshold. A document that merely contains all of the other required information will not, without something more, be sufficient to demonstrate that the document was intended to be a tax invoice.</p>

A.9.4	It is recommended that the explanation in the table at draft Ruling paragraphs 38 and 150 about Division 123 be clarified. It is not clear if the statement intends to imply that suppliers that use a simplified accounting method cannot request the Commissioner to treat a document as a tax invoice under subsection 29-70(1B), or to indicate that there are no concessions in relation to the tax invoice requirements.	Agreed. New draft Ruling paragraphs 56 and 156 have been amended to reflect that a supplier using a simplified accounting method still needs to issue a tax invoice that meets the requirements within 28 days of a request by the recipient if the value of the taxable supply exceeds \$75, or such higher amount as the regulations specify. The statement is not intended to imply that a supplier that uses a simplified accounting method cannot request the Commissioner to treat a document as a tax invoice under subsection 29-70(1B) or that there are no concessions.
A.9.5	It is recommended that practical guidelines be included at draft Ruling paragraphs 52 and 53 around what taxpayers are required to do when they identify an error in a tax invoice, especially when that error is identified in subsequent periods and does not qualify as an adjustment event under Division 19. For instance, if the supplier has an onus to withdraw the earlier tax invoice or recipient created tax invoice so the recipient does not incorrectly claim input tax credits.	The Commissioner has provided guidance for suppliers and recipients, in the case of recipient created tax invoices, where an error is identified in a tax invoice at new draft Ruling paragraphs 59 to 61, 97 to 101, and 163 to 167. It includes situations where the recipient or the Commissioner has treated a document as a tax invoice under subsections 29-70(1A) or 29-70(1B) respectively and adjustment events that occur in the same or subsequent tax period. This guidance is consistent with that which has been provided in paragraph 65 of GSTR 2000/1 and paragraphs 25 to 27 of GSTR 2000/19.
A.9.6	The scenario contemplated at draft Ruling paragraphs 77 and 78 creates uncertainty. It is unusual and anomalous that a recipient can claim an input tax credit notwithstanding that it does not hold a tax invoice that correctly reflects the GST payable on the taxable supply. It would be preferable for the Commissioner to require that a tax invoice be re-issued that accurately reflects the supply that was made and the GST consequences of the supply. Further, the recipient in these circumstances may be in a position to rely on subsection 29-70(1A) by using another document issued by the supplier that reflects the correct value of the supply. However, this raises the issue of how subsection 29-70(1A) applies where a document purported to be a tax invoice conflicts with other relevant documentation that the recipient seeks to use under subsection 29-70(1A) to satisfy all of the tax invoice requirements. This is unclear in the law.	The Commissioner cannot require the supplier, or the recipient in the case of a recipient created tax invoice, to reissue a tax invoice in these circumstances if the original document met the requirements for a tax invoice before the adjustment event. If the document met the requirements at the time of its issue the supplier has fulfilled their obligation to give the recipient a tax invoice for the supply. However, the supplier may choose to issue a corrected tax invoice or to issue an adjustment note or other document for the adjustment event. This is because a supplier must have records under section 382-5 of Schedule 1 to the TAA that explain the transaction and the amount of the GST payable for the supply. However, it is recognised that the recipient would not be holding a document that meets the requirements of a tax invoice at the time of lodging their GST return. If the supplier has issued a subsequent document that contains the price of the supply after the adjustment event, the recipient may apply subsection 29-70(1A) to treat the document it holds as a tax invoice. See the explanation at new draft Ruling paragraph 98.
A.9.7	The heading prior to draft Ruling paragraph 112 appears to be erroneous. It should read, 'No requirement to issue a tax invoice or to hold a tax invoice to claim an input tax credit.'	Agreed. The heading has been changed.

A.9.8	<p>Suggest deleting draft Ruling paragraph 113 as it contradicts section 9-10, subsection 29-80(1) and the Commissioner's interpretation of what constitutes 'a taxable supply' in other public rulings. There is no support in the law for the view that multiple taxable supplies are amalgamated into one taxable supply when they are supplied in a single transaction.</p> <p>Perhaps the interpretation leads to what the Commissioner considers to be an appropriate outcome. In fact, it is agreed that where a recipient wishes to claim an input tax credit for many low value items purchased in a single transaction, it may be appropriate that they hold a tax invoice. However, if the law doesn't currently require that the tax invoice be held, the matter should be taken to Treasury to make amendments to subsection 29-80(1) to ensure that when multiple taxable supplies in a single transaction exceed a value of \$75, the recipient of those taxable supplies must hold a tax invoice in order to claim an input tax credit. It is not appropriate to rewrite the law in a public ruling in order to avoid unfavourable outcomes.</p> <p>Further, the ambiguous term 'taxable item' should be removed. Instead consistent and coherent guidelines around what constitutes a single taxable supply and what constitutes multiple taxable supplies for the purposes of subsection 29-70(1) and subsection 29-80(1) should be provided. These guidelines should be supported by the law and should be consistent with the views of the Commissioner as expressed in other public rulings.</p>	<p>The Commissioner's view of subsection 29-80(1) is that a supplier should issue a tax invoice where it makes taxable supplies of many low value items in a single transaction and the total value of these taxable supplies exceeds \$75. This is explained at new draft Ruling paragraphs 54 and 123.</p> <p>The Commissioner considers that it is improbable that it was intended that it would not be necessary to issue a tax invoice where a large number of low value items are supplied in a single transaction.</p> <p>The Commissioner has removed the term 'taxable item' and replaced it with an explanation that multiple supplies of items in a single transaction are not a single taxable supply.</p>
A.9.9	<p>It is recommended that further details be provided in respect of the tax invoice requirements for agents issuing tax invoices under subsection 153-15(1), including whether an unregistered agent can quote the ABN of its principal.</p>	<p>Disagree. However, the Commissioner has created a draft legislative instrument under subsection 29-10(3) such that an input tax credit is attributable to a tax period without a recipient being required to hold a tax invoice for a taxable supply provided they hold a document issued by an agent which contains enough information to clearly ascertain the agent's identity and ABN.</p>
A.9.10	<p>It is recommended that it be clarified whether, in addition to the identity and ABN of the supplier, a tax invoice can contain the identity and ABN of other members of the supplier's GST group.</p>	<p>Agreed. New draft Ruling paragraphs 19 and 140 explain that a tax invoice can include the identity and ABN of other members of a GST group, provided the GST group member that makes the supply can be clearly ascertained from the document.</p>

A.9.11	<p>It is recommended that the draft Ruling should include practical guidance in respect of:</p> <ul style="list-style-type: none"> the point in time a supplier or recipient may request the Commissioner to exercise the discretion to treat a document as a tax invoice; the point in time the exercise of the Commissioner's discretion takes effect (including if a recipient that has already claimed an input tax credit will be taken to have complied with subsection 29-10(3) or taken to have made a false and misleading statement); and the form the request for the Commissioner to exercise the discretion should take, including the documents that should be attached. 	<p>Agree in part. The Commissioner has outlined at new draft Ruling paragraph 48 the point in time that the exercise of the Commissioner's discretion takes effect.</p> <p>The Commissioner notes that guidance in relation to the first and second dot points can be found in Law Administration Practice Statement PS LA 2004/11. The Commissioner further advises that, in relation to the final dot point, any written form is acceptable to make a request for the Commissioner to treat a document as a tax invoice. This request should include enough information for the Commissioner to make a determination, including copies of any documents that relate to the supply. Such documents may include the document that does not meet the requirements for a tax invoice, an invoice, a receipt, a contract, a lease agreement, a quote, an order form, etcetera.</p>
A.10.1	<p>It is noted that with the withdrawal of GSTR 2000/17, effective from 25 May 2011, there is nothing that a taxpayer may currently rely on to avoid underpaying tax until the draft Ruling is finalised.</p>	<p>A taxpayer can rely on the draft Ruling (excluding appendices) to provide protection from interest and penalties if a statement turns out to be incorrect and the taxpayer has underpaid tax as a result. However, a taxpayer will have to pay the correct amount of tax provided the time limits under the law allow it. Further, any documents which would have been treated as a tax invoice under the previously withdrawn GSTR 2000/17 will continue to be treated as a tax invoice until the draft legislative instruments take effect.</p>
A.10.2	<p>There is confusion and inconsistency about the structure of GST public rulings following the adoption of the income tax system of a binding ruling section and non-binding explanation section. The former should cover all statements of principle accepted by the Commissioner and the latter an explanation of how the principle was developed from the legislation.</p> <p>It is recommended that if a statement of principle in the ruling section should be cross-referenced to the explanation of the principle if it is not clear from the legislation and there could be an alternative view from that expressed in the ruling.</p> <p>Consideration could also be had to cross-referencing all statements of principle in the binding section to its equivalent discussion in the non-binding section.</p>	<p>Comments noted. A footnote reference to the discussion of the alternative view of 'clearly ascertained' in the explanation section has been included at new draft Ruling paragraph 77.</p>
A.10.3	<p>A number of statements of principle in the explanation section should be in the ruling section. Draft Ruling paragraphs 51, 52, 53, 57, 60, 61, 62, 72, 74, 77, 78, 80, 85 and 113 all appear to be statements of principle that are rulings by the Commissioner and should be in the ruling section.</p>	<p>Agree in part. Old draft Ruling paragraphs 51 to 53, 60 to 61, 72, 74, 77 to 78, 85 and 113 have been included in the ruling section. Old draft Ruling paragraphs 57 and 62 were already in the ruling section.</p>

A.10.4	All examples in the draft Ruling should receive the same treatment and disclosed as either binding or non-binding.	The treatment of examples has been disclosed by the Commissioner as either binding or non-binding. For instance, the ruling section contains a note that indicates it is binding. The examples contained in that section are therefore binding.
A.10.5	It appears that the Commissioner has taken the view that the amendments to the law have the effect of treating many documents that would have been treated as tax invoices under the previous law as no longer being capable of being so treated after 1 July 2010. If so, the Commissioner should interpret the law to allow such documents to continue to be treated as tax invoices. If not, the Commissioner should make a determination under subsection 29-10(3), exercise the discretion under subsection 29-70(1B) to preserve the status of the documents as tax invoices, or promote an amendment to the law.	The previous tax invoices ruling, GSTR 2000/17, set out the circumstances in which the Commissioner would exercise the discretion to treat as a tax invoice, under subsection 29-70(1), for particular types of documents that did not meet the tax invoice requirements of the law. However, this discretion (now subsection 29-70(1B)) is an administrative discretion. The exercise of the Commissioner's discretion cannot be fettered. The Commissioner will consider the particular facts and circumstances of each individual case at the time a request has been made for the exercise of the discretion. However, to reduce uncertainty as to whether a document would be treated as a tax invoice, the Commissioner has created draft legislative instruments under subsection 29-10(3) such that an input tax credit is attributable to a tax period without the recipient being required to hold a tax invoice for a taxable supply in circumstances the Commissioner had previously treated a document as a tax invoice. Until these instruments take effect, any documents which would have been treated as tax invoices under the previously withdrawn GSTR 2000/17 will continue to be treated as tax invoices.
A.10.6	The comments comparing invoices to tax invoices at draft Ruling paragraphs 49 and 50 should include a comment that generally commercial invoices will satisfy all of the requirements of a tax invoice.	New draft Ruling paragraph 68 provides that commercial documents are tax invoices if they meet all of the requirements for a tax invoice.
A.10.7	Draft Ruling paragraph 2 'explains the circumstances under subsection 29-70(1A) when a recipient of a supply can treat a document as a tax invoice...'. This does not accurately reflect subsection 29-70(1A) that refers to the recipient of a document treating that document as a tax invoice.	An amendment has been made at new draft Ruling paragraph 2 that is consistent with the words of the subsection.
A.10.8	The comment at draft Ruling paragraph 8 that to the extent that the views expressed in GSTR 2000/17 are still relevant they have been included in the draft do not appear to be consistent with draft Ruling paragraph 44.	The comment at new draft Ruling paragraph 7 has been amended to reflect that the Commissioner's views in GSTR 2000/17 that are still relevant to the new tax invoice provisions have been incorporated into this new draft Ruling.
A.10.9	Part of the language in the draft Ruling is inconsistent with the words or expressions of the GST Act. For example, there are references to using a tax invoice to substantiate an input tax credit for a creditable acquisition. It is suggested that the expression 'attribute an input tax credit for a creditable acquisition' be used as it is used in section 29-10.	The language used in the new draft Ruling has been adjusted to reflect words or expressions in the GST Act where possible.

A.10.10	<p>Draft Ruling paragraph 11 provides that the matters listed in (i) to (viii) of paragraph 29-70(1)(c) must be clearly ascertainable from the document. This statement does not come from paragraph 29-70(1)(c). In particular, compare the introductory words of paragraph 29-70(1)(c) with the words of paragraph 29-70(1)(d) that include the expression ‘...from the document...’.</p> <p>Further, in the explanation at draft Ruling paragraphs 62 to 67, this requirement is said to be found in the Explanatory Memorandum. It is questionable whether there can be a reference to that document to interpret paragraph 29-70(1)(c) because the words of that paragraph are clear and do not require any interpretative assistance from that document.</p> <p>In addition, it is contrary to the manner of interpretation in sections 23 and 25 of the <i>Acts Interpretation Act 1901</i> which indicates that scope of the term tax invoice extends beyond the limits of a single piece of paper.</p>	<p>Disagree. The Commissioner considers that matters listed in (i) to (viii) of paragraph 29-70(1)(c) must be clearly ascertainable from the tax invoice rather than another document or documents or external sources. Clarification has been provided at new draft Ruling paragraphs 80 to 85 to make it clearer that a reading of subsection 29-70(1) and paragraph 29-70(1)(c) require those matters in (i) to (viii) to be ascertainable from information contained in the purported tax invoice itself.</p>
A.10.11	<p>The reference to the concept of a recipient being able to treat a document that does not meet the tax invoice requirements as a tax invoice should not be introduced at Draft Ruling paragraph 12 as that concept is discussed at draft Ruling paragraphs 23 to 27.</p>	<p>Agreed. A footnote has been inserted at new draft Ruling paragraph 16 to refer to the discussion of the concept at new draft Ruling paragraphs 40 to 43 and 111 to 117.</p>
A.10.12	<p>Draft Ruling paragraphs 13 and 14 are a clear departure from the effect of the previous prescriptive legislative approach. It is odd that amendments to the GST law that are stated to introduce a more flexible approach to tax invoice requirements would introduce a requirement that is not current commercial practice and has relevance solely for GST purposes.</p>	<p>The law states that the identity of the supplier must be clearly ascertainable from the tax invoice. The term ‘identity’ allows more flexibility as it is broader than the term ‘name’. For instance, the term ‘identity’ includes the term ‘name’.</p>
A.10.13	<p>Draft Ruling paragraphs 13 and 14 should make reference to GSTR 2008/3 that allows a bare trustee to issue a tax invoice in its own name and with its own ABN (at least by way of footnote).</p>	<p>Disagree. The circumstance set out in GSTR 2008/3 was an exercise of the Commissioner’s discretion to treat a document as a tax invoice under former subsection 29-70(1). However, this discretion (now subsection 29-70(1B)) is an administrative discretion. The exercise of the Commissioner’s discretion cannot be fettered. The Commissioner will consider the particular facts and circumstances of each individual case at the time a request has been made for the exercise of the discretion. However, the Commissioner has created a draft legislative instrument under subsection 29-10(3) such that an input tax credit is attributable to a tax period without the recipient being required to hold a tax invoice for a taxable supply provided they hold a document issued by the bare trustee which contains enough information to clearly ascertain the bare trustee’s identity and ABN. Until this instrument takes effect, a document that contains the identity and ABN of the bare trustee will continue to be treated as tax invoices in GSTR 2008/3.</p>

A.10.14	Draft Ruling paragraph 13 should indicate whether the business name and / or trading name should be on the Australian Business Register (ABR). There have been situations where ATO auditors have been reluctant to accept business names or trading names that are not registered as the name of the supplier on a tax invoice.	Disagree. This is a decision for a supplier to make. However, it may be prudent for a supplier using its business or trading name on documents to avoid situations in which a recipient or an auditor may dispute whether the document meets the requirements for a tax invoice by taking action to ensure it appears on ASIC Connect.
A.10.15	It is odd for the Commissioner to contend that the statement of a business name (and an ABN) identifies the supplier. The name of the supplier in this instance could only be ascertained by reference to an external source. This is not consistent with the principle in the draft Ruling that information cannot be clearly ascertained if reference is required to an external source or document.	The Commissioner considers that the requirement that the identity of the supplier must be clearly ascertainable would be satisfied where the document includes the registered business name of the supplier. The verification of this information by a recipient or an auditor by reference to an external source does not mean that this information was not clearly ascertainable from the document. A reference to information that can only be determined by reference to another external source or document refers to information missing from the document intended to be a tax invoice that can only be found from an external source or in another document.
A.10.16	Draft Ruling paragraph 14 should contain the more detailed explanation of what is required where a tax invoice is issued by the trustee of a trust as at draft Ruling paragraph 70.	Agreed. The relevant change has been made at new draft Ruling paragraph 18.
A.10.17	Example 1 at draft Ruling paragraphs 17 to 19 provides two alternative methods of showing a description and price of what is supplied for multiple supplies in a transaction. Can it be assumed that suppliers who adopt the expression 'GST included' in their tax invoice format are now required to vary that format.	The Commissioner acknowledges there are other ways to represent the information on a tax invoice to ascertain the price of what is supplied other than those illustrated in the examples. Unfortunately, every situation cannot be addressed in the new draft Ruling. The examples in this instance are therefore non-exhaustive. This is reflected at new draft Ruling paragraph 27.
A.10.18	The words 'each supply of items is fully taxable' in Example 1 at draft Ruling paragraph 17 should be deleted. It appears from the example that the GST-exclusive price of the things supplied is \$170 and that the additional GST payable is \$17 (being 10% of the GST-exclusive price). However, is the example meant to show that if the total GST-exclusive prices are not sub-totalled, the statement is required?	The example illustrates a manner for how the requirement to clearly ascertain the price of what is supplied can be satisfied if the GST-exclusive value of the supply or supplies is shown on the document.
A.10.19	It is submitted that the Example 1 at draft Ruling paragraph 18 may be misleading. While it is apparent that the example is meant to show that the GST applicable to each taxable supply is 1/11th of the price, the statement '... (*100% taxable)...' could infer that tax at the rate of 100% has been applied and the amount of GST is half of the total price shown. A statement such as '... (*fully taxable)...' might be preferable.	Agreed. Amendment made at new draft Ruling paragraph 26 to avoid any misconceptions.

A.10.20	Sub-subparagraph 29-70(1)(c)(vi) effectively requires there to be sufficient information on the document to determine the amount of GST payable for each taxable supply to which the document relates. However, Example 1 does not state the GST payable for each taxable supply. Instead the GST payable can be ascertained because it is known that the GST rate is 10%. As the relevant information must be clearly ascertained from the document itself it appears that it will be necessary for a taxpayer to rely on the exercise of the Commissioner's discretion where the GST payable on each supply is not shown. In addition, it is not clear whether taxpayers setting up new computer systems will be required to disclose the GST payable on the supply.	Section 9-70 states that the amount of GST on a taxable supply is 10% of the value of the taxable supply. As this information is well known it would be redundant if it was required to be included across all tax invoices.
A.10.21	The discussion at draft Ruling paragraph 25 about a recipient requesting the Commissioner to exercise the discretion to treat a document as a tax invoice under subsection 29-70(1B) raises the issue about whether the application may also be made pursuant to subsection 29-10(3). The Commissioner should discuss the operation of subsection 29-10(3) in the Ruling.	It is not intended to discuss in detail the operation of subsection 29-10(3) in this new draft Ruling. A summary of the circumstances where the Commissioner has determined that an input tax credit is attributable to a tax period without the recipient holding a tax invoice has been included at Appendix 2 of the new draft Ruling.
A.10.22	Draft Ruling paragraph 30 suggests that when a recipient makes an application to the Commissioner under subsection 29-70(1B), the Commissioner will have to deal with the supplier to determine that treating the document as a tax invoice is appropriate. These comments support a view expressed that subsection 29-70(1B) only applies to circumstances where a supplier seeks the exercise of the discretion in an advance of issuing documents.	New draft Ruling paragraph 45 has been clarified to avoid any misperception that subsection 29-70(1B) only applies to circumstances where a supplier seeks the exercise of the discretion for a document relating to a supply that has not been made.
A.10.23	Draft Ruling paragraph 34 identifies the table at paragraph 38 as a summary of '...the circumstances and conditions for particular situations in which the Commissioner may treat a document that does not comply with the requirements of subsection 29-70(1) as a tax invoice'. This statement is incorrect as the table identifies the provisions of the GST Act that vary the tax invoice requirements.	Agreed. The paragraph has been deleted.
A.10.24	Draft Ruling paragraphs 37 and 38 set out the special rules in the GST Act that affect tax invoices. However, the discussion of Division 58 does not discuss the structure of the tax invoice.	A document is in the approved form for a tax invoice if it includes the information required by subsection 29-70(1). As a supply by a representative (in that capacity) is taken to be a supply by the incapacitated entity, in general, the identity and ABN on the tax invoice should be that of the incapacitated entity. However, where the representative is registered, and because it is liable for any GST payable on its supplies, and entitled to input tax credits, made within the scope of its responsibility or authority for managing the incapacitated entity's affairs, the ABN issued to the representative in that capacity would be shown.

A.10.25	Draft Ruling paragraph 42 refers to circumstances where a recipient is not required to hold a tax invoice to claim an input tax credit for a creditable acquisition. The discussion is written solely from the perspective of the recipient but section 29-80 has equal application to both suppliers and recipients.	Agreed. Amendments to new draft Ruling paragraphs 52 and 53 have been made to explain when a supplier is not required to issue a tax invoice for a taxable supply and an input tax credit for a creditable acquisition is attributable to a tax period without a recipient holding a tax invoice.
A.10.26	<p>Draft Ruling paragraph 44 reflects the statement at paragraph 3.24 of the Explanatory Memorandum. This statement seems to over-ride all circumstances where the amended law would vary the tax invoice requirements that applied before the amendments. It is a fundamental statement that applies to the interpretation of section 29-70 as a whole. It should form part of the draft Ruling introduction and all comments need to be read subject to that statement. It is incumbent on the Commissioner to explain how that statement impacts on each and every requirement discussed in the draft Ruling.</p> <p>It is particularly relevant to the examples in Appendix 3. These examples purport to be circumstances where the Commissioner would exercise the discretion under subsection 29-70(1B) to treat documents as tax invoices. However, examples 4, 5, 8, 9 and 10 are all situations where the tax invoices that have been issued satisfied the tax invoice requirements before the law amendments and, on the basis of the statement in the explanatory statement, would continue to satisfy the tax invoice requirements regardless of any exercise of the Commissioner's discretion.</p>	Disagree. An equivalent paragraph has not been included in the new draft Ruling as the discretion in subsection 29-70(1B) is an administrative discretion. The exercise of the Commissioner's discretion cannot be fettered. The Commissioner will consider the particular facts and circumstances of each individual case at the time of a request for the exercise of the discretion. However, to reduce uncertainty as to whether documents would be treated as a tax invoice, the Commissioner has created draft legislative instruments under subsection 29-10(3) such that an input tax credit is attributable to a tax period without the recipient being required to hold a tax invoice for a taxable supply in circumstances similar to those where the Commissioner had previously treated a document as a tax invoice. Until these instruments take effect, any documents which would have been treated as tax invoices under the previously withdrawn GSTR 2000/17 will continue to be treated as tax invoices.
A.10.27	It is submitted that the third sentence in Example 8 at draft Ruling paragraph 173 is incorrect.	Not applicable. An equivalent paragraph has not been included in the new draft Ruling.
A.11	<p>Draft Ruling paragraph 123 could introduce an element of doubt around the need to keep records when read out of context.</p> <p>When read in context, it provides that there is no specific requirement for a supplier to keep a copy of a tax invoice to demonstrate it issued a tax invoice to a recipient (if requested by the recipient). Accordingly, when read in isolation, the paragraph is correct.</p> <p>However, it may cause confusion for entities as it does not make reference to the requirement for entities to keep records that explain all transactions. While an entity could keep tax invoices as a means to explain its sales and taxable supplies, it is open on the wording of the requirement for an entity to keep records of sales and taxable supplies in documents other than a tax invoice.</p> <p>Accordingly, it is recommended that paragraph advise that keeping a copy of a tax invoice will assist an entity to meet its record keeping requirements.</p>	Agreed. New draft Ruling paragraph 161 has been amended to reflect that keeping a copy of a tax invoice will assist an entity to meet its requirement to keep records that explain all transactions.

Part B – typographical or editorial type edits

Summary of issues raised and responses

Issue No.	Issue raised	Tax Office Response/Action taken
B.1.1	The words 'of a GST group' should be added at the end of the first line in the first paragraph of the table at draft Ruling paragraph 38 under the heading GST Groups.	Agreed.
B.1.2	Replace the word 'entity' with 'member' in the second paragraph of the table at draft Ruling paragraph 38 under the heading GST groups.	Agreed.
B.1.3	Remove the apostrophe after the name 'Jones' whenever it occurs in the dot points at draft Ruling sub-subparagraph 102(d)(ii).	Agreed. The changes have been made at new draft Ruling paragraphs 88 and 89.
B.1.4	Replace the word 'id' in the last sentence of draft Ruling paragraph 131 with 'is'.	Agreed.
B.2	Replace the word 'if' with 'as' in the third sentence in draft Ruling paragraph 173.	Not applicable. An equivalent paragraph has not been included in the new draft Ruling.
B.3.1	The first letter of the word 'part' should not be capitalised in draft Ruling paragraphs 9, 71, 73, 74, 167, 168, sub-subparagraph 102(d)(v), footnote 8, the heading to Example 6, and the preamble to Appendices 1, 2 and 3.	Agreed (where an equivalent paragraph has not been excluded from the new draft Ruling).
B.3.2	The legislative citation of the TAA at draft Ruling paragraph 33 should be the <i>Taxation Administration Act 1953</i> as it is the first reference to that Act.	Disagree. There is now an earlier reference to this Act contained in a footnote.
B.3.3	Insert 'the recipient' after 'objection' in the second sentence of draft Ruling paragraph 33.	Agreed.
B.3.4	Insert '(after the adjustment event)' after 'actual price' in the second sentence at draft Ruling paragraph 78.	Disagree. The equivalent paragraph in the new draft Ruling has been restructured.
B.3.5	The legislative citation of the <i>Taxation Administration Act 1953</i> at draft Ruling paragraph 78 should be the TAA as it is not the first reference to that Act.	Agreed. New draft Ruling paragraph 99 includes a reference to the 'TAA 1953'.
B.3.6	Avoid use of the word 'discretion' in draft Ruling paragraph 89 when discussing that it is the choice of the recipient whether to treat a document as a tax invoice under subsection 29-70(1A).	Agreed. The word 'discretion' has been replaced with 'may choose' at new draft Ruling paragraph 114.
B.3.7	The only place that the term 'non-compliant tax invoice' has been used is at draft Ruling paragraphs 92 and 93. Replace with 'document that does not meet all the tax invoice requirements'.	Agreed.

This edited version of the Compendium of Comments is not intended to be relied upon. It provides no protection from primary tax, penalties, interest or sanctions for non-compliance with the law.

Page status: **not legally binding**

Page 20 of 21

B.3.8	Replace the last sentence in draft Ruling paragraph 100 with 'It is these factors that underlie the position that the Commissioner is under no obligation to treat a document as a tax invoice.'	Not applicable. An equivalent paragraph has not been included in the new draft Ruling.
B.3.9	Insert 'by' between 'payable' and 'the recipient' in the first sentence of footnote 74.	Agreed. The word 'by' has been inserted in new draft Ruling footnote 107.
B.3.10	Replace 'issue' with 'issued' in last sentence in draft Ruling paragraph 164.	Not applicable. An equivalent paragraph has not been included in the new draft Ruling.
B.3.11	Insert 'by each' after 'GST payable' in the last sentence in draft Ruling paragraph 181 to reinforce that a recipient can only claim their proportion of the total input tax invoice on that tax invoice.	Not applicable. An equivalent paragraph has not been included in the new draft Ruling.
B.4	Replace 'real estate agent' with 'newsagent' in the third sentence in draft Ruling paragraph 177.	Not applicable. An equivalent paragraph has not been included in the new draft Ruling.
B.5.1	Replace 'a Tribunal or Court' with 'the Administrative Appeals Tribunal or the Federal Court' in the last sentence of draft Ruling paragraph 33. The AAT is the only Tribunal that may undertake a review of an objection against an assessment decision. Similarly, it is the Federal Court that a taxpayer may appeal to against the decision.	Agreed.
B.5.2	Move 'under Part IVC of the TAA' to after 'object'.	Agreed.
B.5.3	Move 'within 28 days of the request by the recipient' after 'to the recipient' in the second sentence of draft Ruling paragraph 35.	Not applicable. An equivalent paragraph has not been included in the new draft Ruling.
B.5.4	Replace 'document in which' with 'document for which' in the first line of draft Ruling paragraphs 36 and 111.	These paragraphs have been restructured but similar wording has been adopted at new draft Ruling paragraph 48.
B.5.5	Insert 'when finalised' after 'this Ruling' at draft Ruling paragraphs 44 and 45.	Agreed in part. See new draft Ruling paragraph 62.
B.5.6	Insert 'with the GST payable by the supplier' at the end of the third sentence of draft Ruling paragraph 46 and at the end of the first sentence of draft Ruling paragraph 98.	Agreed.
B.5.7	Insert cross-references to the relevant paragraphs in GSTR 2000/34 at draft Ruling paragraphs 49 and 50.	Footnotes have been inserted at new draft Ruling paragraphs 67 and 68 to add cross-references to GSTR 2000/34 which is about invoices.
B.5.8	Replace 'It contends' with 'it may be contended' at draft Ruling paragraph 65.	Disagree. Alternative wording has been adopted in new draft Ruling paragraph 80.
B.5.9	Insert 'in the GST Act' after 'defined' in the first line of draft Ruling paragraph 69.	Agreed.
B.5.10	Insert 'in that capacity' after 'registered' in the third line of draft Ruling paragraph 69.	Agreed.

This edited version of the Compendium of Comments is not intended to be relied upon. It provides no protection from primary tax, penalties, interest or sanctions for non-compliance with the law.

Page status: **not legally binding**

Page 21 of 21

B.5.11	Replace 'identity' with 'capacity' in footnote 39 at draft Ruling paragraph 70.	Not applicable. An equivalent footnote has not been included in the new draft Ruling.
B.5.12	Replace 'for the net amount paid' with 'to the extent of the net amount paid' in the second sentence at draft Ruling paragraph 74.	Agreed.
B.5.13	Suggest avoid use of the term 'you' in the second and third sentences at draft Ruling paragraph 74 to make clear that the second sentence relates to a recipient whereas the third sentence relates to a supplier.	Agreed. The terms 'supplier' and 'recipient' have been used in the second and third sentences of new draft Ruling paragraph 94.
B.5.14	Replace the last sentence of draft Ruling paragraph 85 with 'To the extent a supply is non-taxable, the tax invoice cannot include words that indicate the price of a supply is inclusive of GST.'	Similar wording has been adopted at new draft Ruling paragraph 109.
B.5.15	Replace 'if it is a creditable acquisition' with 'to the extent it is a creditable acquisition' in the last sentence of draft Ruling paragraph 89 for consistency with section 11-30.	Agreed.
B.5.16	Insert 'for the recipient' after 'requirement' in the second sentence of draft Ruling paragraph 94.	Agreed.
B.5.17	Insert 'rather than registered businesses' at the end of the first sentence of draft Ruling paragraph 97 to clarify the feature of the GST Act that is relevant.	Not applicable. An equivalent paragraph has not been included in the new draft Ruling.
B.5.18	Replace 'who are claiming' to 'who seek to claim' as a recipient cannot claim an input tax credit in a tax period until they hold a tax invoice.	Not applicable. An equivalent paragraph has not been included in the new draft Ruling.
B.5.19	Insert 'Schedule 1 to' after 'Subsection 105-40(1) of' in footnote 65 to draft Ruling paragraph 107.	Agreed.
B.5.20	Insert 'for a supply' after tax invoice' as it is the supply that has a price.	Agreed.
B.5.21	It is unclear which concession is referred to in the heading preceding draft Ruling paragraph 140.	Agreed. The heading has been re-worded to reflect that the discussion relates to the interaction between subsection 48-57(1) and the ability of a recipient to treat a document as a tax invoice under subsection 29-70(1A) in certain circumstances.