Australian Taxation Office Legislative Instrument
Instrument ID: 2013/ITX/0002

A New Tax System (Goods and Services Tax) Waiver of Tax Invoice Requirement (Acquisitions Under an Agency Relationship) 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 through their agent, through their insurance broker or by way of a supply made through the supplier's agent to hold a tax invoice for an input tax credit to be attributable to a tax period 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 making a creditable acquisition of a thing or things through their agent, through their insurance broker or by way of a supply made through the supplier's agent 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 contained the details of an agent for the recipient or supplier or insurance broker were treated as tax invoices in Goods and Services Tax Ruling GSTR

[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.

2000/17 – Goods and services tax: tax invoices (withdrawn on 25 May 2011). This means that suppliers and their agents or insurance brokers do not have to change their software or accounting systems to issue a document that would comply with this instrument.

8. The 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 by a recipient made through their agent, insurance broker, or by way of a supply made through the supplier's agent, 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 are the effects 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 exercised the discretion in GSTR 2000/17 to treat documents that contained an agent's or insurance broker's details 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 contained the details of an agent for the supplier or recipient or an insurance broker for the recipient 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. It is therefore 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. Provided the requirements of this instrument are met, for the purposes of attributing an input tax credit for a creditable acquisition to a tax period, a recipient of a thing or things:

- acquired under a supply the supplier made through their agent;
- acquired through an insurance broker; or
- acquired through their agent where the total price of the thing or things acquired is at least $1,000 (or such higher amount as the regulations made under section 29-70 may specify)

is not required (under subsection 29-10(3)) to hold a tax invoice for the creditable acquisition before the input tax credit is attributable to that tax period.

Acquisition of a thing or things that the supplier has supplied through an agent

18. Division 153 has special rules about tax invoices and agents. It reflects the position at common law that a supply or acquisition an agent makes on behalf of a principal is taken to be a supply or acquisition made by the principal. Accordingly, if a supplier makes a taxable supply through an agent, the agent can issue a tax invoice for the supplier.[3]

19. Where an agent issues a tax invoice for a supply made on behalf of the supplier by an agent that contains the agent's, rather than the supplier's, identity and Australian business number (ABN), the document would not meet the tax invoice requirements set out in subsection 29-70(1).[4] It does not matter that the agent for the supplier may have transacted with the recipient either by disclosing the agency relationship but without naming the supplier or by not disclosing either the agency relationship or the supplier's identity. In these situations, under subsection 29-10(3), an input tax credit for a creditable acquisition would not be attributable to a tax period until the recipient held a document that complied with the tax invoice requirements.

20. However, where a recipient or their agent holds a document that contains the identity and ABN of the supplier's agent, and which otherwise satisfies the requirements of paragraphs 29-70(1)(a) and 29-70(1)(c) other than subparagraph 29-70(1)(c)(i), 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.

Acquisition of a thing or things in a single dealing from an agent for multiple suppliers (including a supply made on the agent's own account)

21. In a single dealing with a recipient, an entity may be an agent for more than one principal, or the entity may make a supply as an agent, together with a supply on its own account. In these situations, the tax invoice would need to contain enough information to clearly ascertain the identity and ABN of each supplier,[5] and the price for each separate taxable supply.[6]

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[3] Paragraph 153-15(1)(b).
[4] Subparagraph 29-70(1)(c)(i) provides that a tax invoice must contain enough information to be able to clearly ascertain the supplier's identity and ABN.
[5] Subparagraph 29-70(1)(c)(i).
[6] Subparagraph 29-70(1)(c)(iii).

22. However, where a recipient or their agent holds a document that contains the identity and ABN of the agent for the supplier and the total price for all of the taxable supplies, and that otherwise satisfies the requirements of paragraphs 29-70(1)(a) and 29-70(1)(c) other than subparagraph 29-70(1)(c)(i), 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.

Acquisition of insurance through an insurance broker

23. Division 153 treats the supply of an insurance policy by an insurer through an insurance broker acting on behalf of a recipient as if the supply were made through the insurance broker as an agent of the insurer.[7] This enables the broker to issue a tax invoice on behalf of the insurer. If the insurance broker issues a tax invoice for a supply of insurance made on behalf of the insurer that contains the insurance broker's identity and ABN rather than the insurer's, the document would not meet the tax invoice requirements set out in subsection 29-70(1).[8]

24. However, where a recipient or their agent holds a document that contains the identity and ABN of the insurance broker, and that otherwise satisfies the requirements of paragraphs 29-70(1)(a) and 29-70(1)(c) other than subparagraph 29-70(1)(c)(i), 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.

Acquisition of a thing or things through the recipient's agent

25. An input tax credit for a creditable acquisition a recipient acquires through an agent is attributable to a tax period if their agent holds the tax invoice.[9] If, however, the agent holds a document, for an acquisition of a thing or things made on behalf of the recipient where the total price of the thing or things acquired is at least $1,000 (or such higher amount as the regulations made under section 29-70 may specify), that contains the agent's, rather than the recipient's, identity or ABN, the document would not meet the tax invoice requirements set out in subsection 29-70(1).[10] It does not matter that the agent for the recipient may have transacted with the supplier or their agent either by disclosing the agency relationship but without naming the recipient or by not disclosing either the agency relationship or the recipient.

26. In these situations, under subsection 29-10(3), an input tax credit for a creditable acquisition would not ordinarily be attributable to a tax period until the recipient held a document that complied with the tax invoice requirements.

27. However, where a recipient or their agent holds a document that contains the identity or ABN of the recipient's agent, and that otherwise satisfies the requirements of paragraphs 29-70(1)(a) and 29-70(1)(c) other than subparagraph 29-70(1)(c)(ii), 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.

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[7] Subsection 153-25(1).

[8] Subparagraph 29-70(1)(c)(i) provides that a tax invoice must contain enough information to be able to clearly ascertain the supplier's identity and ABN.

[9] Section 153-5.

[10] Subparagraph 29-70(1)(c)(ii) provides that a tax invoice must contain enough information to be able to clearly ascertain the recipient's identity or ABN where the total price is at least $1,000 or such higher amount as the regulations specify.

Acquisition of a thing or things through a recipient's agent for multiple recipients in a single dealing

28. A supplier may issue a single tax invoice for a supply made to an agent for more than one recipient or a supply made to the agent on its own account and at least one other principal. In these situations, where the total price for the supply is at least $1,000 or such higher amount as the regulations made under section 29-70 may specify, the tax invoice would need to contain enough information to clearly ascertain the identity or ABN of each recipient.[11]

29. However, where their agent holds a document that contains the identity or ABN of the agent, and that otherwise satisfies the requirements of paragraphs 29-70(1)(a) and 29-70(1)(c) other than subparagraph 29-70(1)(c)(ii), this instrument has the effect of allowing the input tax credit each recipient is entitled to for a creditable acquisition to be attributed at the time each recipient gives their GST return for the tax period to the Commissioner.

30. The amount of the input tax credit that each recipient would be entitled to would depend on the extent to which they provided consideration for the acquisition and the extent to which the acquisition was for a creditable purpose. The total amount of input tax credit cannot exceed the total amount of GST payable in relation to the supplies.

31. Further, each recipient must have records that explain their use of the acquisition and the amount of consideration they provided as required by section 382-5 of Schedule 1 to the *Taxation Administration Act 1953*.

32. This instrument does not apply to documents relating to reimbursements governed by Division 111.

Consultation

33. 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.

34. Although the instrument was considered minor or machinery in nature, and does not substantially change the law, consultation was carried out to the following extent:

- comment was invited from the Australian Taxation Office's National Tax Liaison Group GST Subcommittee; and
- 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

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[11] Subparagraph 29-70(1)(c)(ii).

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)
29-70(1)(c)(i)
29-70(1)(c)(ii)
29-70(1)(c)(iii)
29-70(1B)
Div 111
Div 153
153-5
153-15(1)
153-15(1)(b)
153-25(1)

Taxation Administration Act 1953
Sch 1 382-5

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

Subject references

Goods and services tax
Acquisitions and supplies by agents
Attribution rules
Creditable acquisition
GST input tax credits & creditable acquisitions
GST insurance
Taxable supply
Tax invoices

Tax Office references

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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 to hold a tax invoice before an input tax credit is attributable to a tax period for a creditable acquisition made through their agent, through their insurance broker or by way of a supply made through the supplier's agent.

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