WTI 2013/10 - Explanatory statement -

Australian Government
Australian Taxation Office

Australian Taxation Office Legislative Instrument
Instrument ID: 2013/ITX/0011

A New Tax System (Goods and Services Tax) Waiver of Tax Invoice Requirement (Acquisition of a Motor Vehicle Under a Full or Split Full Novated Lease Arrangement) 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 an employer making a creditable acquisition of a motor vehicle by way of a lease through a full or split full novation arrangement to hold a tax invoice for an input tax credit to be attributable to a tax period when they hold documents that meet 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 an employer making a creditable acquisition of a motor vehicle by way of a lease through a full or split full novation arrangement to hold a tax invoice before an input tax credit for a lease payment is attributable to a tax period when the employer holds documents that meet the requirements prescribed in this instrument.

7. These prescribed requirements are not substantively different to the requirements under which the tripartite agreement and tax invoice issued to the employee[2] could be

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[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.

[2] This instrument applies to situations where the novation arrangement involves the legal assumption of the employee's obligations under the lease. Division 111 may apply in circumstances where there has merely

treated as tax invoices in Goods and Services Tax Advice GSTA TPP 056 – Goods and services tax: Where an employee novates a lease to his or her employer, can an invoice to the employee be treated as being received by the employer through its agent (the employee)?. This means that suppliers (i.e. finance companies) do not have to change their software or accounting systems to issue documents 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.[3]

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 the acquisition of a motor vehicle by way of a lease through a full or split full novation arrangement when an employer holds documents other than a tax invoice. This instrument also sets out the particular information that must be included in these documents for the input tax credit to be attributed to that tax period.

What is the effect of this instrument?

10. This instrument waives the requirement for an employer to hold a tax invoice before an input tax credit for a creditable acquisition is attributable to a tax period when the employer holds documents that meet the requirements of this instrument.

11. This instrument intends to give effect to the same general treatment as when the Commissioner exercised the discretion under GSTA TPP 056 to treat tripartite agreements and tax invoices issued to an employee in a novated lease arrangement as a tax invoice for the employer.

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 hold has most of the required features of a tax invoice.

15. GSTA TPP 056 outlined circumstances under which a tripartite agreement and tax invoices issued to the employee in a novated lease arrangement could be treated as tax invoices by the employer because the Commissioner would exercise 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).

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been a reimbursement or payment by the employer on behalf of the employee. Where that Division applies, and its requirements are met, the reimbursement is treated as consideration for an acquisition that the employer has made from the employee. The input tax credit is attributable in the tax period in which the employer holds the tax invoice issued to the employee.

[3] 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).

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

Explanation

17. A full or split full novation is a tripartite arrangement whereby an employer, their employee and a finance company agree to transfer to the employer all, or some, of the rights and obligations in a motor vehicle lease entered into between the employee and the finance company. The result is that the lease between the employee and the finance company is rescinded (contractually extinguished) and replaced by a new novated lease arrangement in which the employer becomes the lessee of the motor vehicle for the novation period.[4]

18. Where the novated lease of the motor vehicle by the finance company to the employer is a taxable supply, the employer may have an input tax credit entitlement for the GST included in the lease charges if the acquisition of the motor vehicle by way of lease is a creditable acquisition for the employer. However, under subsection 29-10(3), an input tax credit for the creditable acquisition would not be attributable to a tax period until the employer held a tax invoice issued by the finance company.

19. This instrument intends, as the relevant paragraphs of GSTA TPP 056 were, to save finance companies from having to issue another document to the employer once the lease had been novated.

20. Where the employer holds the tripartite agreement (or deed of novation) and the tax invoice issued to the employee under the original lease, and these documents otherwise satisfy the requirements of paragraphs 29-70(1)(a) and 29-70(1)(c), this instrument has the effect of allowing the input tax credit for a creditable acquisition of the motor vehicle by way of lease (during the period of the novation) to be attributed at the time the employer gives their GST return for the tax period to the Commissioner.

Consultation

21. 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.

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[4] The deed of novation also usually contains a clause that transfers the lease obligations back to the employee on termination of the lease or when the employee ceases employment with the employer. Accordingly, the employer would not have an entitlement to an input tax credit for the lease of the motor vehicle on the expiration or termination of the novated lease. Further, as a result of such a clause, the employer is not purchasing the motor vehicle and would not have an entitlement to an input tax credit for the purchase of the motor vehicle.

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

James O'Halloran

Deputy Commissioner of Taxation

19 March 2013

Related Rulings / Determinations

GSTA TPP 056

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(1B)
Div 111

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
Attribution rules
Creditable acquisition
GST input tax credits & creditable acquisitions
Taxable supply
Tax invoices
Lease
Novation

Tax Office references

NO:
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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 an employer making a creditable acquisition of a motor vehicle by way of a lease through a full or split full novation arrangement to hold a tax invoice for an input tax credit to be attributable to a tax period.

Human Rights Implications

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

Conclusion

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

James O'Halloran

Deputy Commissioner of Taxation