WTI 2013/2 - Explanatory statement -

Australian Government
Australian Taxation Office

Australian Taxation Office Legislative Instrument
Instrument ID: 2013/ITX/0003

A New Tax System (Goods and Services Tax) Waiver of Tax Invoice Requirement (Acquisitions from or Acquisitions by a Beneficiary of a Bare Trust) 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 from a beneficiary through the trustee of a bare trust or a beneficiary of a bare trust making a creditable acquisition from a third party through the trustee of the bare trust 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 a trustee of a bare trust or a beneficiary of a bare trust making a creditable acquisition from a third party through the trustee of the bare trust to hold a tax invoice before an input tax credit is attributable to a tax period when the recipient, beneficiary or trustee of the bare trust 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 the bare trust or trustee of the bare

[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.

trust were treated as tax invoices in Goods and Services Tax Ruling GSTR 2008/3 – Goods and services tax: dealings in real property by bare trusts. This means that the trustee for the bare trust does 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.[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, or a supply made through, a bare trustee on behalf of a beneficiary in a bare trust when the recipient or their agent (including the trustee) holds a document other than a tax invoice. This instrument also sets out the particular information that must be included in this document for the input tax credit to be attributed to that tax period.

What is the effect of this instrument?

10. This instrument waives the requirement for a recipient or beneficiary to hold a tax invoice before an input tax credit for a creditable acquisition is attributable to a tax period when the recipient, beneficiary or their agent (including the trustee) 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 2008/3 to treat documents that contain the details of the bare trust or trustee of a bare trust 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 or beneficiary 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 has most of the required features of a tax invoice.

15. GSTR 2008/3 outlines circumstances under which documents that contained the details of the bare trust or trustee of a bare trust as a supplier or a recipient instead of the beneficiary’s details 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

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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).

under subsection 29-10(3) to ensure that taxpayers do not have to change their administrative practices.

Explanation

Supplies by a beneficiary of a bare trust

17. In some circumstances, a beneficiary rather than the trustee of a bare trust may make taxable supplies or creditable acquisitions. If the trustee issues or holds tax invoices it does so on behalf of the beneficiary in those circumstances. GSTR 2008/3 explains the ATO view on the GST treatment of supplies of real property involving beneficiaries of bare trusts or similar trusts.

18. Where a beneficiary of a bare trust makes a taxable supply, subparagraph 29-70(1)(c)(i) requires that the tax invoice issued by the beneficiary contains enough information to enable the beneficiary's identity and Australian business number (ABN) to be clearly ascertained from the document. A trustee of a bare trust will often issue documents intended to be tax invoices on behalf of the beneficiary.

19. A document issued by the trustee, for the supply made by the beneficiary, that contains the identity and ABN of the bare trust or the trustee of the bare trust as a supplier, rather than the beneficiary's details, will not satisfy the information requirements for a tax invoice.

20. However, where the recipient holds a document containing the identity and ABN of the bare trust or the trustee of the bare trust, and that otherwise satisfies the requirements of paragraph 29-70(1)(a), paragraph 29-70(1)(c) and subsection 29-70(1), 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 a tax period to the Commissioner.

Acquisitions by a beneficiary of a bare trust

21. If a beneficiary of the bare trust makes a creditable acquisition 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) the document held by the beneficiary needs to contain enough information to enable the beneficiary's identity or ABN to be clearly ascertained, under subparagraph 29-70(1)(c)(ii).

22. Where the beneficiary makes the acquisition and a document issued by a supplier contains only the identity or ABN of the bare trust or the trustee of the bare trust, the document will not satisfy the information requirements for a tax invoice under subsection 29-70(1).

23. However, where the beneficiary makes the acquisition but the beneficiary or the trustee of the bare trust holds a document containing the identity or ABN of the bare trust or the trustee of the bare trust as the recipient, and that otherwise satisfies the requirements of paragraphs 29-70(1)(a) and 29-70(1)(c), this instrument has the effect of allowing the input tax credit for a creditable acquisition to be attributed at the time the recipient gives their GST return for a tax period to the Commissioner.

Consultation

24. 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.

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

James O'Halloran

Deputy Commissioner of Taxation

19 March 2013

Related Rulings / Determinations

GSTR 2008/3

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(1B)

Legislative Instruments Act 2003
12(2)
18

Human Rights (Parliamentary Scrutiny) Act 2011
Part 3
3

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

Subject references

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

Tax Office references

NO:
ISSN:

Statement of Compatibility with Human Rights

This Statement is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

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This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011.*

Overview

This instrument waives the requirement for a recipient making a creditable acquisition through a bare trustee or a beneficiary making a creditable acquisition from a third party through the bare trustee 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