

WTI 2013/7 - Explanatory statement -



Australian Government
Australian Taxation Office

Australian Taxation Office Legislative Instrument
Instrument ID: 2013/ITX/0008

A New Tax System (Goods and Services Tax) Waiver of Tax Invoice Requirement (Acquisitions from Property Managers) 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 of real property by way of a supply made through a supplier's property manager 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 a recipient that makes a creditable acquisition by way of a supply made through the supplier's property manager, to hold a tax invoice before an input tax credit is attributable to a tax period when the recipient holds documents that meet the requirements prescribed in this instrument.

¹ Subsection 12(2) of the *Legislative Instruments Act 2003* provides that a retrospective legislative instrument (or provision of that instrument) will be of no effect if it applies to adversely affect the rights or liabilities of any person other than the Commonwealth or an authority of the Commonwealth.

7. These prescribed requirements are not substantively different to the requirements under which documents that contained the details of a supplier's property manager (when an agent at common law) instead of the supplier's details were treated as tax invoices in Goods and Services Tax Ruling GSTR 2000/17 – Goods and services tax: tax invoices (withdrawn on 25 May 2011). This means that suppliers or their property managers 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.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, where the supply acquired is made through a property manager on behalf of a principal, 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 is the effect of this instrument

10. This instrument waives the requirement for a recipient to hold a tax invoice before an input tax credit for a creditable acquisition is attributable to a tax period when the recipient or their agent holds a document that meets the requirements of this instrument.

11. This instrument is intended to give effect to the same general treatment as when the Commissioner had exercised the discretion as a tax invoice in GSTR 2000/17 to treat documents that contain a property manager's details (when an agent at common law) 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 hold has most of the required features of a tax invoice.

15. GSTR 2000/17 outlined circumstances under which documents containing the details of the supplier's property manager (when an agent at common law) 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).

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).

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.

Explanation

17. Property managers may act on behalf of the principal, in terms of being authorised to manage the real property of the principal, making or facilitating supplies on behalf of the principal, and issuing tax invoices in respect of supplies of that real property made or facilitated on behalf of the principal.

18. Where a property manager issues a tax invoice for a supply made on behalf of the supplier that contains the property manager's identity and Australian business number (ABN) rather than the supplier's, the document would not meet the tax invoice requirements set out in subsection 29-70(1).³ 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. It does not matter that the property manager for the supplier may have transacted with the recipient either by disclosing the property manager relationship but without naming the supplier or by not disclosing either the property manager relationship or the identity of the supplier.

19. However, where a recipient holds a document that contains the identity and ABN of the supplier's property manager, 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.

20. Further to the circumstances that had been addressed in GSTR 2000/17, this instrument also applies to property managers including where the property manager is not an agent at common law but operates in a manner similar to an agent.

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.

³ 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.

22. 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 Property Council of Australia; 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

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(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

Acquisitions and supplies by agents

Attribution rules

Creditable acquisition

GST input tax credits & creditable acquisitions

Taxable supply

Tax invoices

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*.

A New Tax System (Goods and Services Tax) Waiver of Tax Invoice Requirement (Acquisitions from Property Managers) Legislative Instrument 2013

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 of real property by way of a supply made through a supplier's property manager 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