

WAN 2013/1 - Explanatory statement -



Australian Government
Australian Taxation Office

Australian Taxation Office Legislative Instrument
Instrument ID: 2013/ITX/0028

A New Tax System (Goods and Services Tax) Waiver of Adjustment Note Requirement (Decreasing Adjustments Relating to Reimbursements of an Employee etc) Legislative Instrument 2013

Explanatory Statement

General outline of this instrument

1. This legislative instrument is made under subsection 29-20(3) of the *A New Tax System (Goods and Services Tax) Act 1999* ('the GST Act').
2. This instrument waives the requirement for an entity to hold an adjustment note in certain circumstances before attributing a decreasing adjustment (arising from an adjustment event in respect of an acquisition covered by section 111-5 of the GST Act) to a tax period when the entity holds a document that meets the information 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 21 August 2013 and applies to tax periods for which the GST return is given to the Commissioner on or after 21 August 2013.

What is this instrument about?

6. This instrument provides that a decreasing adjustment (arising from an adjustment event in respect of an acquisition covered by section 111-5) is attributable to a tax period when an entity holds a document other than an adjustment note. This instrument also sets out the particular information that must be included in this document for the decreasing adjustment to be attributed to that tax period.

What is the effect of this instrument?

7. This instrument waives the requirement for an entity to hold an adjustment note before a decreasing adjustment (arising from an adjustment event in respect of an acquisition covered by section 111-5) is attributable to a tax period when the entity holds a document that meets the information requirements prescribed in this instrument.

8. This instrument intends to give effect to the same general treatment as when the Commissioner exercised the discretion in GSTR 2000/1 to treat documents that contain an employee's (or associate of the employee), an agent's, an officer's or a partner's details as an adjustment note.

9. Compliance cost impact: Low – minor or machinery in nature. The instrument will affect only a small proportion of businesses. There is a low ongoing compliance cost impact and a low implementation impact reflecting the need for some taxpayers to be aware of the change and make some minor adjustments to their processes.

Background:

10. Generally, when an entity has a decreasing adjustment from an adjustment event, the adjustment is not attributable to a tax period until the entity holds an adjustment note. An adjustment note is a document that meets the requirements in subsection 29-75(1) and the *A New Tax System (Goods and Services Tax) Adjustment Note Information Requirements Determination 2012*.

11. In some cases, the necessity for an entity to hold a document that meets the requirements of subsection 29-75(1) and the *A New Tax System (Goods and Services Tax) Adjustment Note Information Requirements Determination 2012* may impose a disproportionate burden on a supplier or a recipient, particularly if the document has most of the required features of an adjustment note.

12. GSTR 2000/1 outlined circumstances under which documents containing details of an employee (or associate of the employee), an agent, an officer of their company or a partner of their partnership as the recipient instead of the entity's details are treated as adjustment notes because the Commissioner exercised the discretion under subsection 29-75(1).

13. The Commissioner's discretion under subsection 29-75(1) 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 29-20(3) to ensure that entities do not have to change their administrative practices.

Explanation

14. Division 111 has special rules that apply when an entity reimburses an employee, an agent, an officer of their company or a partner of their partnership for an expense incurred that is directly related to the activities of that position. The reimbursement is treated as consideration for an acquisition that the entity makes from the employee, agent, officer or partner.¹ If the requirements of the Division are met, the entity may attribute an input tax credit for the creditable acquisition to a tax period if they hold the tax invoice that was issued to the person they reimbursed.²

15. There is no equivalent special rule for adjustment notes. This means that the entity could not attribute a decreasing adjustment for an acquisition covered by section 111-5 if

¹ Subsection 111-5(1).

² Section 111-15.

they hold an adjustment note that includes the identity or Australian business number (ABN) of their employee, agent, officer of their company or partner as the recipient.

16. However, where the entity holds an adjustment note issued to their employee, agent, officer of the company, or partner, in respect of the acquisition being reimbursed, that meets clause 5 of this instrument, the decreasing adjustment may be attributed at the time the entity gives their GST return for a tax period to the Commissioner.

Consultation

17. 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.

18. Although the instrument was considered minor or machinery in nature, and does not substantially change the law, limited consultation was carried out by inviting comment from members of the community through the publication of a consultation draft on this instrument and explanatory statement.

James O'Halloran
Deputy Commissioner of Taxation

Dated: 20 August 2013

Related Rulings / Determinations

GSTR 2000/1

Legislative references

A New Tax System (Goods and Services Tax) Act 1999

29-20(3)

29-75(1)

Div 111

111-5

111-5(1)

111-15

Legislative Instruments Act 2003

18

Other references

A New Tax System (Goods and Services Tax) Adjustment Note Information Requirements Determination 2012

Subject references

Goods and services tax
Attribution rules
Creditable acquisition
Adjustment events
Adjustment notes
Adjustments
Reimbursement of employees

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 Adjustment Note Requirement (Decreasing Adjustments Relating to Reimbursements of an Employee etc) 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 of the Legislative Instrument

This instrument waives the requirement for an entity to hold an adjustment note before a decreasing adjustment (arising from an adjustment event in respect of an acquisition covered by section 111-5 where the total price was at least \$1,000) is attributable to a tax period when the entity holds a document that meets the information requirements prescribed in this instrument

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

James O'Halloran

Deputy Commissioner of Taxation