

***WAN 2013/2 - Explanatory statement -***



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## A New Tax System (Goods and Services Tax) Waiver of Adjustment Note Requirement (Decreasing Adjustments Relating to Supplies made by or to a Partnership) Legislative Instrument 2013

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# 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* (GST Act).
2. This instrument waives the requirement for an entity to hold an adjustment note in certain circumstances before attributing a decreasing adjustment 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 under 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 a supply made by a partnership or to a partnership where the total price was at least \$1,000) 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) is attributable to a tax period when the entity holds a document that meets the requirements of this instrument.

8. This instrument intends to give effect to the same general treatment as when the Commissioner exercised the discretion in GSTR 2003/13 and GSTR 2004/6 to treat documents that contain the details of a partner in their capacity as a partner of a partnership as an adjustment note.

9. Compliance cost impact: No change/low – minor or machinery in nature. A compliance cost assessment indicates a minor impact to both implementation and on-going compliance costs.

## **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), including the information requirements in *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) 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 2003/13 and GSTR 2004/6 outlined circumstances under which documents containing details of a partner (in their capacity as a partner of a partnership) as a supplier or a recipient instead of the partnership's details were 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**

### ***Supplies by a partnership***

14. A supply made by a partner in their capacity as a partner of a partnership is treated as a supply by the partnership under subsection 184-5(1). Accordingly, where a partner makes a supply or supplies in their capacity as a partner in a partnership, paragraph 5(1)(b) of the *A New Tax System (Goods and Services Tax) Adjustment Note Information Requirements Determination 2012* requires that the adjustment note issued by the partnership contain enough information to enable the partnership's identity to be clearly ascertained from the document.<sup>1</sup>

15. A document that contains the identity of a partner as the supplier in such circumstances will therefore not satisfy the information requirements for an adjustment note.

16. However, where the entity holds a document in which the identity of the partner and the ABN of the partnership can be clearly ascertained, and otherwise satisfies the requirements of subclause 5(1)<sup>2</sup> of the *A New Tax System (Goods and Services Tax) Adjustment Note Information Requirements Determination 2012*, this legislative instrument

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<sup>1</sup> For recipient created adjustment notes, a similar requirement exists in paragraph 5(2)(b) of that Determination.

<sup>2</sup> Subclause 5(2) for recipient created adjustment notes.

has the effect of allowing a decreasing adjustment to be attributed at the time the entity gives their GST return for the tax period to the Commissioner.

### ***Acquisitions made by a partnership***

17. An acquisition made by a partner in their capacity as a partner of a partnership is treated as an acquisition by the partnership under subsection 184-5(1). Accordingly, where an entity makes a supply or supplies to a partner in their capacity as a partner in a partnership, paragraph 5(1)(c) of the *A New Tax System (Goods and Services Tax) Adjustment Note Information Requirements Determination 2012* requires that the adjustment note issued by the entity contain enough information to enable the partnership's identity or Australian business number (ABN) to be clearly ascertained from the document where the total price is at least \$1,000 (or such higher amount as the regulations made under section 29-70 may specify).<sup>3</sup>

18. Where a document issued to the partnership contains only the identity or ABN of a partner, the document will not satisfy the information requirements of an adjustment note.

19. However, where the entity holds a document containing the identity of a partner as the recipient or the ABN of the partnership, and that otherwise satisfies the requirements of subsection 29-75(1) and subclause 5(1)<sup>4</sup> of the *A New Tax System (Goods and Services Tax) Adjustment Note Information Requirements Determination 2012*, this legislative instrument allows the decreasing adjustment to be attributed at the time the entity gives its GST return for the tax period to the Commissioner.

20. This instrument does not apply to documents held by a partner for an acquisition that the partnership reimburses to which Division 111 applies.

### **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.

22. The instrument is considered minor in nature, and does not substantially change the law. The intent of the instrument is to give effect to the same general treatment as when the Commissioner exercised the discretion in GSTR 2003/13 and GSTR 2004/6 to treat documents that contain the details of a partner of a partnership as an adjustment note so that entities do not need to change their administrative practices.

**James O'Halloran**

**Deputy Commissioner of Taxation**

Dated: 20 August 2013

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### ***Related Rulings / Determinations***

GSTR 2003/13

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<sup>3</sup> For recipient created adjustment notes, a similar requirement exists in paragraph 5(2)(c) of that Determination. Also, the price requirement does not apply.

<sup>4</sup> Subclause 5(2) for recipient created adjustment notes.

GSTR 2004/6

**Legislative references**

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

29-20(3)

29-70

29-75(1)

Div 111

184-5(1)

*Legislative Instruments Act 2003*

18

*Human Rights (Parliamentary Scrutiny) Act 2011*

Part 3

3

**Subject references**

Goods and services tax

Adjustment notes

Attribution rules

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**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*.

### **A New Tax System (Goods and Services Tax) Waiver of Adjustment Note Requirement (Decreasing Adjustments Relating to Supplies made by or to a Partnership) 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 an entity to hold an adjustment note before attributing a decreasing adjustment (relating to a supply made by or to a partnership) to a tax period when they hold a document that contains the details of a partner of the partnership.

#### **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**