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# A New Tax System (Goods and Services Tax) Waiver of Tax Invoice Requirement (Acquisitions under an Agency Relationship) Legislative Instrument (No. 1) 2012

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## 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 through their agent, through their insurance broker or by way of a supply made through the supplier's agent to hold a tax invoice for an input tax credit to be attributable to a tax period.
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.<sup>1</sup> The effect of the 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 their agent, through their insurance broker or by way of a supply made through the supplier's agent to hold a tax invoice before an input tax credit is attributable to a tax period when the recipient holds a document that meets the information requirements prescribed in this instrument.

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<sup>1</sup> 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.

7. These prescribed information requirements are not substantively different to the requirements under which documents that contained the details of an agent for the recipient or supplier or insurance broker were treated as tax invoices in Goods and Services Tax Ruling GSTR 2000/17 – Goods and services tax: tax invoices (withdrawn on 25 May 2011).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 and their agents or insurance brokers do not have to change their software or accounting systems to issue documents that would comply with this instrument.

8. If this instrument did not apply retrospectively, a recipient could be liable to an administrative penalty and the imposition of the General Interest Charge in respect of input tax credits attributed to a tax period in which the recipient held a document that contained the details of their agent, an agent for the supplier, or an insurance broker instead of their or a supplier's details, as applicable, after the withdrawal of GSTR 2000/17. This is because such a document held by the recipient at the time of lodging its GST return<sup>2</sup> would not meet the information requirements for a tax invoice,<sup>3</sup> or be treated as a tax invoice,<sup>4</sup> and the input tax credit would therefore be incorrectly attributed to a tax period.

### **What is this instrument about?**

9. This instrument explains that an input tax credit for a creditable acquisition is attributable to a tax period for acquisitions by, or a supply made through, an agent 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 should 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 relieves a recipient from the requirement 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 effect the same general treatment as when the Commissioner had exercised the discretion to treat documents that contain an agent's or insurance broker's details as a tax invoice in GSTR 2000/17.

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

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<sup>2</sup> The GST return forms part of the Activity Statement.

<sup>3</sup> Subsection 29-10(3) provides that a recipient must hold a tax invoice for an input tax credit for a creditable acquisition to be attributable to a particular tax period.

<sup>4</sup> Unless, on a recipient's request, the Commissioner exercised the discretion under subsection 29-70(1B) to treat a document as a tax invoice.

15. GSTR 2000/17 outlined circumstances under which documents that contained the details of an agent for the supplier or recipient or an insurance broker for the recipient 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. The binding statements in GSTR 2000/17 may have confined or restrained the Commissioner's discretion and in light of this it is therefore not appropriate to deal with this matter in a public ruling.

17. To avoid imposing an administrative burden on suppliers and recipients who relied on GSTR 2000/17 the Commissioner has chosen to make a determination under subsection 29-10(3) to allow these administrative practices to continue.

### **Explanation**

18. Provided the requirements of this instrument are met, for the purposes of attributing an input tax credit for a creditable acquisition to a tax period, a recipient of a thing or things:

- acquired under a supply the supplier made through their agent;
- acquired through an insurance broker; or
- acquired through their agent where the total price of the thing or things is at least \$1,000,

is not required (under subsection 29-10(3)) to hold a tax invoice for the creditable acquisition.

### ***Acquisition of a thing or things that the supplier has made through an agent***

19. Division 153 has special rules about tax invoices and agents. It reflects the position at common law that a supply or acquisition an agent makes on behalf of a principal is taken to be a supply or acquisition made by the principal. Accordingly, if a supplier makes a taxable supply through an agent, the agent can issue a tax invoice for the supplier.<sup>5</sup>

20. Where an agent issues a tax invoice for a supply made on behalf of the supplier that contains the agent's identity and ABN rather than the supplier, the document would not meet the tax invoice requirements set out in subsection 29-70(1).<sup>6</sup> It does not matter that the agent for the supplier may have transacted with the recipient either by disclosing the agency relationship but without naming the supplier or by not disclosing either the agency relationship or the supplier. 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.

21. However, where a recipient or their agent holds a document that contains the identity and ABN of the supplier's agent, and that otherwise satisfies the requirements of subsection 29-70(1), this instrument allows 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.

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<sup>5</sup> Paragraph 153-15(1)(b).

<sup>6</sup> Paragraph 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.



***Acquisition of a thing or things in a single dealing from an agent for multiple suppliers (including a supply made on the agent's own account)***

22. In a single dealing with a recipient, an entity may be an agent for more than one principal, or the entity may make a supply as an agent, together with a supply on its own account. In these situations, the tax invoice would need to contain enough information to clearly ascertain the identity and ABN of each supplier,<sup>7</sup> and the price for each separate taxable supply.<sup>8</sup>

23. However, where a recipient or their agent holds a document that contains the identity and ABN of the agent for the supplier, the total price for all of the taxable supplies, and that otherwise satisfies the requirements of subsection 29-70(1), this instrument allows 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.

***Acquisition of insurance through an insurance broker***

24. Division 153 treats the supply of an insurance policy by an insurer through an insurance broker acting on behalf of a recipient as if the supply were made through the insurance broker as an agent of the insurer.<sup>9</sup> This enables the broker to issue a tax invoice on behalf of the insurer. If the insurance broker issues a tax invoice for a supply of insurance made on behalf of the insurer that contains the broker's identity and ABN rather than the insurer's, the document would not meet the tax invoice requirements set out in subsection 29-70(1).<sup>10</sup>

25. However, where a recipient or their agent holds a document that contains the identity and ABN of the insurance broker, and that otherwise satisfies the requirements of subsection 29-70(1), this instrument allows 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.

***Acquisition of a thing or things through the recipient's agent***

26. An input tax credit for a creditable acquisition a recipient acquires through an agent is attributable to a tax period if their agent holds the tax invoice.<sup>11</sup> If, however, the agent holds a document, for a supply or supplies made on behalf of the recipient where the total price is at least \$1,000 or such higher amount as the regulations specify, that contains the agent's identity or ABN rather than the recipient, the document would not meet the tax invoice requirements set out in subsection 29-70(1).<sup>12</sup> It does not matter that the agent for the recipient may have transacted with the supplier or their agent either by disclosing the agency relationship but without naming the recipient or by not disclosing either the agency relationship or the recipient.

27. In these situations, under subsection 29-10(3), an input tax credit for a creditable acquisition would not ordinarily be attributable to a tax period until the recipient held a document that complied with the tax invoice requirements.

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<sup>7</sup> Paragraph 29-70(1)(c)(i).

<sup>8</sup> Paragraph 29-70(1)(c)(iii).

<sup>9</sup> Subsection 153-25(1).

<sup>10</sup> Paragraph 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.

<sup>11</sup> Section 153-5.

<sup>12</sup> Paragraph 29-70(1)(c)(ii) provides that a tax invoice must contain enough information to be able to clearly ascertain the recipient's identity or ABN where the total price is at least \$1,000 or such higher amount as the regulations specify.

28. However, where a recipient or their agent holds a document that contains the identity or ABN of the recipient's agent, and that otherwise satisfies the requirements of subsection 29-70(1), this instrument allows 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.

***Acquisition of a thing or things through a recipient's agent for multiple recipients in a single dealing***

29. A supplier may issue a single tax invoice for a supply made to an agent for more than one recipient or a supply made to the agent on its own account and at least one other principal. In these situations, where the total price for the supply is at least \$1,000 or such higher amount as the regulations specify, the tax invoice would need to contain enough information to clearly ascertain the identity or ABN of each recipient.<sup>13</sup>

30. However, where their agent holds a document that contains the identity or ABN of their agent as the recipient, and that otherwise satisfies the requirements of subsection 29-70(1), this instrument allows the input tax credit each recipient is entitled to for a creditable acquisition to be attributed at the time each recipient gives their GST return for the tax period to the Commissioner.

31. Each recipient in this instance would be required to attribute the input tax credit on a basis that reflects the extent to which they provided consideration for the acquisition and also their actual usage of the acquisition for a creditable purpose. The total amount of input tax credits cannot exceed the total amount of GST payable in relation to the supplies.

32. Further, each recipient should have records that explain their use of the acquisition and the amount of consideration they provided as required by section 382-5 of Schedule 1 to the *Taxation Administration Act 1953*.

33. This instrument does not apply to documents held by an employee, associate, agent, officer or partner of the entity for an acquisition that an entity reimburses to which Division 111 applies.

**Consultation**

34. Section 18 of the *Legislative Instruments Act 2003* specifically provides for circumstances where consultation may not be necessary or appropriate. One of those

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<sup>13</sup> Paragraph 29-70(1)(c)(ii). <sup>13</sup> 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.

<sup>13</sup> The GST return forms part of the Activity Statement.

<sup>13</sup> Subsection 29-10(3) provides that a recipient must hold a tax invoice for an input tax credit for a creditable acquisition to be attributable to a particular tax period.

<sup>13</sup> Unless, on a recipient's request, the Commissioner exercised the discretion under subsection 29-70(1B) to treat a document as a tax invoice.

<sup>13</sup> Paragraph 153-15(1)(b).

<sup>13</sup> Paragraph 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.

<sup>13</sup> Paragraph 29-70(1)(c)(i).

<sup>13</sup> Paragraph 29-70(1)(c)(iii).

<sup>13</sup> Subsection 153-25(1).

<sup>13</sup> Paragraph 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.

<sup>13</sup> Section 153-5.

<sup>13</sup> Paragraph 29-70(1)(c)(ii) provides that a tax invoice must contain enough information to be able to clearly ascertain the recipient's identity or ABN where the total price is at least \$1,000 or such higher amount as the regulations specify.

<sup>13</sup> Paragraph 29-70(1)(c)(ii).

circumstances is where the instrument is considered minor or machinery in nature, and does not substantially change the law.

35. 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:

- feedback was invited from the National Tax Liaison Group GST Subcommittee; and
- comment was invited from members of the community through the publication of a consultation draft of this instrument and explanatory statement.

## **Statement of Compatibility with Human Rights**

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

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36. This 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**

37. This instrument waives the requirement for a recipient to hold a tax invoice before an input tax credit is attributable to a tax period for a creditable acquisition made through their agent, through their insurance broker or by way of a supply made through the supplier's agent.

## **Human rights implications**

38. On an assessment of the compatibility of this instrument with the seven core international human rights treaties to which Australia is a party, this instrument has been determined not to engage any of the applicable rights or freedoms.

## **Conclusion**

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

**James O'Halloran**  
**Deputy Commissioner of Taxation**

[date of issue]

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### ***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)(c)(i)

29-70(1)(c)(ii)

29-70(1)(c)(iii)

29-70(1B)

Div 111

Div 153

153-5

153-15(1)

153-15(1)(b)

153-25(1)

*Taxation Administration Act 1953*

382-5

*Legislative Instruments Act 2003*

12(2)

18

*Human Rights (Parliamentary Scrutiny) Act 2011*

Part 3

3

**Subject references**

Goods and services tax

Acquisitions and supplies by agents

Attribution rules

Creditable acquisition

GST input tax credits & creditable acquisitions

GST insurance

Taxable supply

Tax invoices

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**Tax Office references**

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