



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 (No. 1) 2012

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 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.
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 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 a bare trustee or a beneficiary making a creditable acquisition from a third party through the bare trustee to hold a tax invoice before an input tax credit is attributable to a tax period when the recipient,

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.

beneficiary or bare trustee holds a document that meets the information requirements prescribed in this instrument.

7. These prescribed information requirements are not substantively different to the requirements under which documents that contained the details of the bare trust or trustee of the bare 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. 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 an input tax credit attributed to a tax period in which the recipient or beneficiary held a document that contained the identity and/or ABN of the bare trust or the trustee of a bare trust, rather than the beneficiary of the bare trust as the supplier or the recipient, after the withdrawal of the view in GSTR 2008/3. This is because such a document held by the recipient at the time of lodging its GST return² would not meet the requirements for a tax invoice,³ or be treated as a tax invoice,⁴ 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, 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 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 (including the trustee) 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 the details of the bare trust or trustee of a bare trust as a tax invoice in GSTR 2008/3.

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).

² The GST return forms part of the Activity Statement.

³ 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.

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

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.

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. The binding statements in GSTR 2008/3 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 2008/3 the Commissioner has chosen to make a determination under subsection 29-10(3) to allow these administrative practices to continue.

Explanation

Supplies by a beneficiary of a bare trust

18. 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.

19. 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 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.

20. 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.

21. 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 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 a tax period to the Commissioner.

Acquisitions by a beneficiary of a bare trust

22. Where a beneficiary of the bare trust makes a creditable acquisition for a total price of at least \$1,000 (or such higher amount as the regulations specify), under subparagraph 29-70(1)(c)(ii), the document held by the beneficiary needs to contain enough information to enable the beneficiary's identity or ABN to be clearly ascertained.

23. 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).

24. 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 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 a tax period to the Commissioner.

Consultation

25. 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.

26. Although the instrument was considered minor 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*.

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 (No. 1) 2012

27. 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

28. 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 bare trustee or by way of a supply made through a bare trustee.

Human rights implications

29. 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

30. 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]

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)(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

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: