Australian Government
Australian Taxation Office

Australian Taxation Office Legislative Instrument
Instrument ID: 2012/ITX/0013

A New Tax System (Goods and Services Tax) Waiver of Tax Invoice Requirement (Acquisitions Where Total Consideration Not Known) 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, where the total price of the thing or things acquired cannot be ascertained at the time an invoice is issued or a payment is made, 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 this instrument is to the advantage of affected parties. It waives the requirement for a recipient making a creditable acquisition, where the total price of the thing or things acquired cannot be ascertained at the time an invoice is issued or a payment is made, 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 the 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.

7. These prescribed information requirements are not substantively different to the requirements under which documents that showed an interim amount of consideration payable instead of the total price for the supply were treated as tax invoices in Goods and Services Tax Ruling GSTR 2000/17 – Goods and services tax: tax invoices (withdrawn on 25 May 2011).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 agents 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 an input tax credit attributed to a tax period in which the recipient held a document showing an interim amount of consideration payable instead of the total price for the supply, 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[2] would not meet the requirements of 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 where the total price of the supply is not known 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 show interim amounts of consideration payable rather than the total price of the supply 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.

---

[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.

15. GSTR 2000/17 outlined circumstances under which documents that show interim amounts of consideration payable rather than the total price 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. The *A New Tax System (Goods and Services Tax) (Particular Attribution Rules Where Total Consideration Not Known) Determination (No. 1) 2000* legislative instrument sets out the particular attribution rules for supplies and acquisitions where some consideration is received (or provided), or an invoice is issued, before the total consideration for the supply or acquisition can be ascertained because it depends on a future event or events. The effect of the particular attribution rules is to defer attribution of the GST payable on the supply, or entitlement to an input tax credit, in respect of the amount that cannot be ascertained.

19. The particular attribution rules also provide for an input tax credit for a creditable acquisition to be attributed to a tax period but only to the extent that the consideration is provided or an invoice is issued before the total consideration is known. When the recipient knows the total consideration, the input tax credit for the creditable acquisition is also attributable to that tax period, but only to the extent that the input tax credit has not been previously attributed to an earlier tax period.

20. However, under subsection 29-10(3), an input tax credit is not attributable to a tax period unless the recipient holds a tax invoice. In these circumstances, a supplier cannot produce a document that meets the information requirements for a tax invoice under subsection 29-70(1) before the total consideration is known as subparagraph 29-70(1)(c)(iii) requires that the price of what is supplied be able to be clearly ascertained from the document. As a result, an input tax credit for the acquisition would not be attributable to a tax period in accordance with the particular attribution rules of that instrument.

21. To give effect to those particular attribution rules, where the recipient holds an invoice or other document showing an interim amount of consideration payable or paid, and that invoice or other document otherwise satisfies the requirements of subsection 29-70(1), this instrument allows an 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.

22. When the total amount of the consideration is known, a supplier must issue a further document for the remainder of the consideration payable rather than the total price of the supply. Where the recipient holds such a document, and that document otherwise satisfies the requirements of subsection 29-70(1), this instrument also 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.

Consultation

23. 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.

24. 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*.

A New Tax System (Goods and Services Tax) Waiver of Tax Invoice Requirement (Acquisitions Where Total Consideration Not Known) Legislative Instrument (No. X) 2012

25. 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

26. 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 where the total price of the thing or things acquired cannot be ascertained at the time an invoice is issued or a payment is made.

Human rights implications

27. 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

28. 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 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)(iii)
29-70(1B)

Legislative Instruments Act 2003
12(2)
18

Human Rights (Parliamentary Scrutiny) Act 2011
Part 3
3

Other references
A New Tax System (Goods and Services Tax) (Particular Attribution Rules Where Total Consideration Not Known) Determination (No. 1) 2000

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: