



A New Tax System (Goods and Services Tax) Waiver of Tax Invoice Requirement (Acquisition of a Motor Vehicle under a Full or Split Full Novated Lease Arrangement) 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 an employer making a creditable acquisition of a motor vehicle by way of a lease through a full or split full novation arrangement 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 an employer making a creditable acquisition of a motor vehicle by way of a lease through a full or split full novation arrangement to hold a tax invoice before an input tax credit for a

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.

lease payment is attributable to a tax period when the employer holds documents that meet the information requirements prescribed in this instrument.

7. These prescribed information requirements are not substantively different to the requirements under which the tripartite agreement and tax invoice issued to the employee² could be treated as tax invoices in Goods and Services Tax Advice GSTA TPP 056 – Goods and services tax: Where an employee novates a lease to his or her employer, can an invoice to the employee be treated as being received by the employer through its agent (the employee)? (withdrawn on XX XXXX 2012). This means that suppliers (i.e. finance companies) do not have to change their software or accounting systems to issue documents that would comply with this instrument.

What is this instrument about?

8. This instrument explains that an input tax credit for a creditable acquisition is attributable to a tax period for the acquisition of a motor vehicle by way of a lease through a full or split full novation arrangement when an employer holds documents other than a tax invoice. This instrument also sets out the particular information that should be included in these documents for the input tax credit to be attributed to that tax period.

What is the effect of this instrument?

9. This instrument relieves an employer 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 employer holds documents that meet the requirements of this instrument.

10. This instrument is intended to effect the same general treatment as when the Commissioner could exercise the discretion to treat tripartite agreements and tax invoices issued to an employee in a novated lease arrangement under GSTA TPP 056 as a tax invoice for the employer.

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

Background

12. 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).

13. 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 This instrument applies to situations where the novation arrangement involves the legal assumption of the employee's obligations under the lease. Division 111 may apply in circumstances where there has merely been a reimbursement or payment by the employer on behalf of the employee. Where that Division applies, and its requirements are met, the reimbursement is treated as consideration for an acquisition that the employer has made from the employee. The input tax credit is attributable in the tax period in which the employer holds the tax invoice issued to the employee.

14. GSTA TPP 056 outlined circumstances under which a tripartite agreement and tax invoice issued to the employee in a novated lease arrangement could be treated as tax invoices because the Commissioner would exercise 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).

15. 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 GSTA TPP 056 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.

16. To avoid imposing an administrative burden on suppliers and recipients who relied on GSTA TPP 056 the Commissioner has chosen to make a determination under subsection 29-10(3) to allow these administrative practices to continue.

Explanation

17. A full or split full novation is a tripartite arrangement whereby an employer, their employee and a finance company agree to transfer to the employer all, or some, of the rights and obligations in a motor vehicle lease entered into between the employee and the finance company. The result is that the lease between the employee and the finance company is rescinded (contractually extinguished) and replaced by a new novated lease arrangement in which the employer becomes the lessee of the motor vehicle for the novation period.³

18. Where the novated lease of the motor vehicle by the finance company to the employer is a taxable supply, the employer may have an input tax credit entitlement for the GST included in the lease charges if the acquisition of the motor vehicle by way of lease is a creditable acquisition for the employer. However, under subsection 29-10(3), an input tax credit for the creditable acquisition would not be attributable to a tax period until the employer held a tax invoice issued by the finance company.

19. This instrument is intended, as the relevant paragraphs of GSTA TPP 056 were, to save finance companies from having to issue another document to the employer once the lease had been novated.

20. Where the employer holds the tripartite agreement (or deed of novation) and the tax invoice issued to the employee under the original lease, and these documents otherwise satisfy the requirements of subsection 29-70(1), this instrument allows the input tax credit for a creditable acquisition of the motor vehicle by way of lease (during the period of the novation) to be attributed at the time the employer gives their GST return for the tax period to the Commissioner.

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.

³ The deed of novation also usually contains a clause that transfers the lease obligations back to the employee on termination of the lease or when the employee ceases employment with the employer. Accordingly, the employer would not have an entitlement to an input tax credit for the lease of the motor vehicle on the expiration or termination of the novated lease. Further, as a result of such a clause, the employer is not purchasing the motor vehicle and would not have an entitlement to an input tax credit for the purchase of the motor vehicle.

22. 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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23. 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

24. This instrument waives the requirement for an employer to hold a tax invoice before an input tax credit is attributable to a tax period for a creditable acquisition of a motor vehicle acquired through a full or split full novation arrangement.

Human rights implications

25. 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

26. 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

GSTA TPP 056 (Withdrawn)

Legislative references

A New Tax System (Goods and Services Tax) Act 1999
29-10(3)
29-70(1)
29-70(1B)
Div 111

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
Lease
Novation

Tax Office references

NO:
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DRAFT FOR CONSULTATION