



A New Tax System (Goods and Services Tax)
Waiver of Tax Invoice Requirement (Offer
Documents and Insurance Renewal Notices)
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 to hold a tax invoice for an input tax credit to be attributable to a tax period when they hold an offer document or an insurance renewal notice that meets certain conditions.
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

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 to hold a tax invoice before an input tax credit is attributable to a tax period when the recipient holds an offer document or an insurance renewal notice that meets the information requirements prescribed in this instrument.
7. These prescribed information requirements are not substantively different to the requirements under which offer documents and insurance renewal notices were treated as tax invoices in *Goods and Services Tax Ruling GSTR 2000/17 – Goods and services tax: tax invoices* (withdrawn on 25 May 2011).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 a document that would comply with this 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.

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 an offer document or insurance renewal notice after the withdrawal of GSTR 2000/17. This is because such a document held by the recipient at the time of lodging its GST return² would not meet the information 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 this instrument is about?

9. This instrument explains that an input tax credit for a creditable acquisition is attributable to a tax period for acquisitions made after the acceptance of an offer (including an insurance renewal) when the recipient 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 are the effects 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 holds an offer document, or an insurance renewal notice, 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 offer documents and insurance renewal notices 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 satisfies the requirements of 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. Offer documents and insurance renewals are examples of this kind of document.

15. GSTR 2000/17 outlined circumstances under which offer documents and insurance renewal notices 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).

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.

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 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

Documents that are merely offers

18. A supplier may issue to a prospective recipient a document that offers to make a supply. This may, for example, include subscriptions to trade magazines, access to online databases, membership of trade or professional associations, or offers to attend training courses, seminars, or conferences. When they issue the document, the supplier does not know whether the recipient will accept the offer, and the supply will proceed. In addition, the offer may give the prospective recipient a choice of supplies or pricing options that may make the final price unknown when the offer is issued. Because of these uncertainties, the offer document cannot be a tax invoice when it is issued.

19. This instrument is intended to save suppliers from having to issue another document if the offer is accepted. Accordingly, where a recipient or their agent holds an offer document, 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 in certain circumstances.

20. The offer must be made to multiple parties (for example, a substantial number of members of an association, or a mailing list of subscribers). This instrument does not apply to offers made by a supplier to a single recipient, such as a 'quote' given by a professional or tradesperson.

21. The offer document must also contain enough information to be able to determine the supplies offered to be acquired or to be renewed, the extent to which each supply is a taxable supply and the price and GST payable when the offer or renewal is accepted by the recipient.

Insurance renewal notices

22. When a supplier issues an insurance renewal notice they do not know whether they will make the supply. As a result of this uncertainty, the document cannot be a tax invoice.

23. This instrument is intended to save insurers from having to issue another document when a policy is renewed. Accordingly, where a recipient or their agent holds an insurance renewal notice, and it 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.

24. Previously a tax invoice, relating to a supply of insurance where the GST payable was less than 1/11th of the price,⁵ could in lieu of showing the GST-exclusive value of the supply, include a statement to the effect that the input tax credit entitlement is based on the GST amount shown and that the GST amount may be less than 1/11th of the total amount payable.

25. There is no longer a requirement to show the GST-exclusive value on tax invoices. As a result, the statement as an alternative to showing the GST-exclusive value for supplies of insurance has not been included as a requirement in this instrument.

26. However, a tax invoice may include the statement or indicate the GST-exclusive value of the supply of insurance if renewed in the insurance renewal notice.

Consultation

27. 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.

28. 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 on 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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29. 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

30. This instrument waives the requirement for a recipient to hold a tax invoice before an input tax credit is attributable to a tax period when they hold an offer document or an insurance renewal notice that meets the requirements of this instrument.

⁵ A supply of insurance may be fully taxable but the GST amount may be less than 1/11th as stamp duty is not included in working out the GST on insurance premiums (section 78-5).

Human rights implications

31. 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

32. 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)

29-70(1B)

78-5

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

GST insurance

Taxable supply

Tax invoices

Tax Office references

NO:

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