



A New Tax System (Goods and Services Tax) Waiver of Tax Invoice Requirement (Acquisitions from or Acquisitions by a Partnership) 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 or a partnership making a creditable acquisition to hold a tax invoice for an input tax credit to be attributable to a tax period when they hold a document that contains the details of a partner of the partnership.
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 or a partnership making a creditable acquisition to hold a tax invoice before an input tax credit is attributable to a tax period when the recipient or partnership holds a document that meets the information requirements prescribed in 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.

7. These prescribed information requirements are not substantively different to the requirements under which documents that contained the details of a partner of a partnership as a supplier or recipient rather than the partnership's details were treated as tax invoices in *Goods and Services Tax Ruling GSTR 2003/13 – Goods and services tax: general law partnerships*. 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.

8. If this instrument did not apply retrospectively, a recipient or partnership 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 that contained the details of a partner of a partnership as a supplier or recipient rather than the partnership's details after the withdrawal of the view in GSTR 2003/13. This is because such a document held by the recipient or partnership 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 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 partner acting in their capacity as a partner of the partnership when the recipient or partnership (including a partner) 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 or partnership 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 partnership 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 a partner of a partnership as tax invoice in GSTR 2003/13.

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 2003/13 outlined circumstances under which documents containing details of a partner of a partnership as a supplier or a recipient instead of the partnership's details are treated as tax invoices because the Commissioner exercised the discretion under former subsection 29-70(1).

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 2003/13 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 the view set out in GSTR 2003/13 the Commissioner has chosen to make a determination under subsection 29-10(3) to allow these administrative practices to continue.

Explanation

Supplies by a partnership

18. A supply made by a partner in their capacity as a partner of a partnership is treated as a supply by the partnership under subsection 184-5(1).⁵ Accordingly, where a partner makes a supply or supplies in their capacity as a partner in a partnership, subparagraph 29-70(1)(c)(i) requires that the tax invoice issued by the partnership contain enough information to enable the partnership's identity and ABN to be clearly ascertained from the document.

19. A document that contains the identity and ABN of a partner as the supplier in such circumstances will therefore not satisfy the information requirements for a tax invoice.

20. However, where the recipient holds an invoice containing the identity and ABN of a partner, and that otherwise satisfies the requirements of subsection 29-70(1), this legislative instrument allows an 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 partnership

21. In most cases, where a partner makes a creditable acquisition in their capacity as a partner of a partnership, the partnership must hold a tax invoice before attributing an input tax credit to a tax period. If the tax invoice is for a supply or supplies where the total price is at least \$1,000, subparagraph 29-70(1)(c)(ii) requires that the tax invoice contain the identity or ABN of the recipient. Where the recipient is a partnership, the details required to be clearly ascertained from the document will be the identity or ABN of the partnership.

22. Where a document issued to the partnership contains only the identity or ABN of a partner, the document will not satisfy the information requirements of a tax invoice under subsection 29-70(1).

⁵ Similarly, an acquisition by a partner in their capacity as a partner of a partnership is treated as an acquisition by the partnership under subsection 184-5(1).

23. However, where the partnership holds a document containing the identity of a partner as the recipient, and that otherwise satisfies the requirements of subsection 29-70(1), this legislative instrument allows an 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.

24. Where the tax invoice is for a supply or supplies where the total price is less than \$1,000, the fact that it contains the identity of a partner and not the identity of the partnership is not relevant. The GST Act does not require that information to be clearly ascertainable from a tax invoice for a supply or supplies of such a price. However, the partnership would have to maintain records to evidence that the acquisition was made by a partner in that capacity.

25. This instrument does not apply to documents held by a partner for an acquisition that the partnership reimburses to which Division 111 applies.

Consultation

26. 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.

27. 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 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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28. 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

29. This instrument waives the requirement for a recipient or a partnership to hold a tax invoice before an input tax credit is attributable to a tax period when they hold a document that contains the identity and/or ABN of a partner of the partnership.

Human rights implications

30. 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

31. 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 2003/13

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)

Div 111

184-5(1)

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: