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# A New Tax System (Goods and Services Tax) Waiver of Tax Invoice Requirement (Acquisitions from Property Managers) Legislative Instrument (No. 1) 2012

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## 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 of real property by way of a supply made through a supplier's property manager 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.<sup>1</sup> The effect of this instrument is to the advantage of affected parties. It waives the requirement for a recipient that makes a creditable acquisition by way of a supply made through the supplier's property manager, to hold a tax invoice before an input tax credit is attributable to a tax period when the recipient holds documents that meet the information requirements prescribed in the instrument.

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<sup>1</sup> 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 supplier's property manager (when an agent at common law) instead of the supplier's details were treated as tax invoices in Goods and Services Tax Ruling GSTR 2000/17 – Goods and services tax: tax invoices (withdrawn on 25 May 2011).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 property managers 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, where the supply acquired is made through a property manager on behalf of a principal, 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**

9. 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.

10. This instrument is intended to effect the same general treatment as when the Commissioner had exercised the discretion to treat documents that contain a property manager's details (when an agent at common law) as a tax invoice in GSTR 2000/17.

11. 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**

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.

14. GSTR 2000/17 outlined circumstances under which documents containing the details of the supplier's property manager 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).

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 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.

16. 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

17. Property managers may act on behalf of the principal, in terms of being authorised to manage the real property of the principal, making or facilitating supplies on behalf of the principal, and issuing tax invoices in respect of supplies of that real property made or facilitated on behalf of the principal.

18. Where a property manager issues a tax invoice for a supply made on behalf of the supplier that contains the property manager's identity and ABN rather than the supplier's, the document would not meet the tax invoice requirements set out in subsection 29-70(1).<sup>2</sup> In these situations, under subsection 29-10(3), an input tax credit for a creditable acquisition would not be attributable to a tax period until the recipient held a document that complied with the tax invoice requirements. It does not matter that the property manager for the supplier may have transacted with the recipient either by disclosing the property manager relationship but without naming the supplier or by not disclosing either the property manager relationship or the identity of the supplier.

19. However, where a recipient holds a document that contains the identity and ABN of the supplier's property manager, 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 the tax period to the Commissioner.

20. This instrument applies to property managers including where the property manager is not an agent at common law but operates in a manner similar to an agent.

## 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.

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 Property Council of Australia; 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*.

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<sup>2</sup> Paragraph 29-70(1)(c)(i) provides that a tax invoice must contain enough information to be able to clearly ascertain the supplier's identity and ABN.



## **Overview**

24. 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 of real property acquired by way of a supply made through a supplier's property manager.

## **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]

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### ***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)(i)

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

Acquisitions and supplies by agents

Attribution rules

Creditable acquisition

GST input tax credits & creditable acquisitions

Taxable supply

Tax invoices

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**Tax Office references**

NO:  
ISSN:

DRAFT FOR CONSULTATION