



A New Tax System (Goods and Services Tax) Waiver of Tax Invoice Requirement (Creditable Acquisition of Taxi Travel) 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 of taxi travel to hold a tax invoice for an input tax credit to be attributable to a tax period when they hold a document for the supply of taxi travel that meets certain conditions.
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 legislative instrument commences on 1 July 2010 and applies to 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 of taxi travel (including a reimbursement of taxi travel to an employee, associate, agent, officer or partner) 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 those set out in circumstances under which documents that contained the taxi driver's licence or accreditation number and the driver's ABN, were treated as tax invoices in the 'Record Keeping' section of the Taxi Industry Issues Register. Suppliers that applied the previous information requirements therefore do not have to change their software or accounting systems to comply with this instrument.

8. If this instrument were not applied retrospectively, a recipient could be liable to an administrative penalty and the imposition of the General Interest Charge in respect of input tax credits attributed to a tax period in which the recipient held a document that contained the taxi driver's licence or accreditation number after the withdrawal of the issues register item. This is because such a document held by the recipient at the time of lodging its Activity Statement² 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 of taxi travel 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 contain the taxi driver's licence or accreditation number in the 'Record Keeping' section of the Taxi Industry Issues Register as a tax invoice.

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. The Commissioner had stated in the Taxi Industry Issues Register particular circumstances in which the discretion under former subsection 29-70(1) to treat a document as a tax invoice would be exercised. 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 an administrative discretion, and can only be exercised on a case by case basis. The views in the particular circumstances set out in the Taxi Industry Issues Register 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 Taxi Industry Issues Register, the Commissioner has chosen to make a determination under subsection 29-10(3) to allow these administrative practices to continue.

Explanation

18. Provided the requirements of this instrument are met, for the purposes of attributing an input tax credit for a creditable acquisition to a tax period, a recipient that makes a creditable acquisition of taxi travel where the value exceeds \$75 is not required (under subsection 29-10(3) of the GST Act) to hold a tax invoice for the creditable acquisition.

Creditable acquisition of a supply of taxi travel

19. A recipient may make a creditable acquisition of taxi travel where the value of the supply received exceeds \$75. However, the document issued by the taxi driver, for example, a CabCharge or EFTPOS receipt, is not a tax invoice as it does not contain enough information to clearly ascertain the identity of the taxi driver.⁵

20. Rather, the document contains the taxi driver's licence or accreditation number issued by a State or Territory government regulatory body authorising a person to drive a taxi. This is because of the limitation of the EFTPOS terminal which links to the taxi meter for which the taxi driver's licence or accreditation number is the unique identifier.

21. However, it means that an input tax credit for a creditable acquisition of the taxi travel would not be attributable to a tax period until the recipient holds a tax invoice that the recipient may never be able to obtain. This instrument recognises this difficulty and provides that where a recipient holds a document that contains the taxi driver's licence or accreditation number and the driver's ABN, and that otherwise satisfies the requirements of subsection 29-70(1), the input tax credit for a creditable acquisition of the taxi travel can be attributed at the time the recipient gives their GST return for the tax period to the Commissioner.

22. This instrument avoids the need for the Commissioner to exercise the administrative discretion for each creditable acquisition of taxi travel that a recipient makes.

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

⁵ 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.

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 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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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 for a creditable acquisition is attributable to a tax period when they hold a document for a supply of taxi travel that contains the taxi driver's licence or accreditation number and the driver's ABN.

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]

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

Other references

Taxi Industry issues register

Subject references

Goods and services tax
Acquisitions and supplies by agents
Attribution rules
Creditable acquisition
GST input tax credits & creditable acquisitions
Reimbursement of employees
Taxable supply
Tax invoices

Tax Office references

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