



Legislative Instrument

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

I, James O'Halloran, Deputy Commissioner of Taxation, make this legislative instrument under subsection 29-10(3) of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).

1. Name of instrument

This legislative instrument is the *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*.

2. Commencement and application of this instrument

- (a) This legislative instrument commences on 1 July 2010.
- (b) This legislative instrument applies to net amounts for tax periods commencing on or after 1 July 2010.
- (c) This legislative instrument does not revoke, amend or vary any previous legislative instrument made by the Commissioner or delegate.

3. Relief from the requirement to hold a tax invoice

For the purposes of attributing an input tax credit for a creditable acquisition to a tax period, an employer that makes a creditable acquisition by way of a lease of a motor vehicle through a full or split full novation arrangement is not required (under subsection 29-10(3) of the GST Act) to hold a tax invoice for the creditable acquisition if the requirements provided by this instrument are satisfied. However, this instrument does not apply to acquisitions covered by Division 111.

4. Requirements for relief from holding a tax invoice

At the time the employer gives its GST return for the tax period to the Commissioner, the employer must hold:

- (a) a tripartite agreement (or deed of novation) between the employer, their employee and the finance company for the creditable acquisition by way of a lease of the motor vehicle; and
- (b) a tax invoice issued to their employee for the acquisition by way of a lease of the motor vehicle by the employee prior to the novation; and

those documents must meet the document information requirements set out in subclause 5.

5. Document information requirements

- (1) The document referred to in subclause 4(a) must contain enough information to enable the following to be clearly ascertained:
 - (a) the employer's identity and ABN as the recipient of the supply of the motor vehicle under the lease;
 - (b) a description of the motor vehicle being leased; and
 - (c) that the employer has taken over all or part of their employee's rights and obligations under the original lease of the motor vehicle.
- (2) The document referred to in subclause 4(b):
 - (a) otherwise meets the requirements of subsection 29-70(1) of the GST Act other than subparagraph 29-70(1)(c)(ii); and
 - (b) contains enough information to enable the identity of the employee to be clearly ascertained from the document.

6. Definitions

- (1) **Novation** refers to a tripartite arrangement (or deed of novation) 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 between the employee and the finance company. It results in the original lease being rescinded in favour of a new lease being entered into on the same terms between the employer and the finance company.
- (2) **Full Novation** involves a transfer of all the rights and obligations in a motor vehicle lease, or in a lease and sub-lease arrangement. As a result the employer takes over all the rights and obligations contained in the original lease agreement for the motor vehicle.
- (3) **Split Full Novation** is a variation on the full novation whereby an employee's rights and obligations under a motor vehicle lease are transferred to the employer with the exception of the residual payment obligation.
- (4) Other expressions in this legislative instrument have the same meaning as in the GST Act.

Your comments

You are invited to comment on this draft legislative instrument, which is explained in the attached draft explanatory statement. Please forward your comments to the contact officer by the due date.

In particular, your comments are sought as to whether:

- (1) there are situations where the tripartite agreement (or deed of novation) does not itself meet the tax invoice requirements; and
- (2) a finance company would issue a tax invoice to the employee rather than the employer where a tripartite agreement (or deed of novation) exists.

Compendium of comments

A compendium of comments is also prepared for the consideration of the relevant Rulings Panel or relevant tax officers. An edited version (names and identifying information removed) of the compendium of comments will also be prepared to:

- provide responses to persons providing comments; and
- publish on the ATO office website at www.ato.gov.au.

Please advise if you do not want your comments included in the edited version of the compendium.

Due date: 7 September 2012
Contact officer: Grant Murphy
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Your City, State, Postcode

Dated this DD MMMM 2012

James O'Halloran
Deputy Commissioner of Taxation