



GSTA TPP 056 - Goods and services tax: Where an employee novates a lease to his or her employer, can an invoice to the employee be treated as being received by the employer through its agent (the employee)?

 This cover sheet is provided for information only. It does not form part of *GSTA TPP 056 - Goods and services tax: Where an employee novates a lease to his or her employer, can an invoice to the employee be treated as being received by the employer through its agent (the employee)?*

 This document has changed over time. This is a consolidated version of the ruling which was published on *14 June 2005*



Goods and Services Tax Advice

Goods and services tax: Where an employee novates a lease to his or her employer, can an invoice to the employee be treated as being received by the employer through its agent (the employee)?

Preamble

*This document is a ruling for the purposes of section 37 of the Taxation Administration Act 1953. It illustrates the principles contained in **Goods and Services Tax Ruling GSTR 2000/17 on tax invoices**. You can rely on the information presented in this document, which provides advice on the operation of the GST system.*

Answer

The treatment of tax invoices depends on the type of novated lease arrangement in place.

Background

An employee leases a motor vehicle and novates that lease to the employer. The novation is a full novation. The employee makes an acquisition of the car. The finance company provides the invoice to the employee.

Explanation

Where the novation in question is a full novation, all rights and obligations under an agreement are transferred from the employee to the employer. This is commonly done through a tripartite agreement involving the lessor, lessee (employee) and employer. In this case, the employee is not considered to be acting in the capacity of an agent of the employer. Where there is a new agreement to effect the novation, the tax invoice will need to be issued to the employer (and specifically state the recipient's name) for the invoice to be a valid tax invoice.

Subsection 29-70(1) of the GST Act allows the Commissioner to treat a fully novated lease agreement (in the form of a tripartite agreement) as a tax invoice provided it satisfies the other information requirements for tax invoices. The subsection also allows the Commissioner to exercise discretion to treat a tax invoice held by the employer but issued to the employee as a tax invoice issued to the recipient of the supply. The Commissioner will ordinarily do so where he

believes there would be large compliance costs on entities to reissue such documents to employers.

Where the arrangement does not involve the legal assumption of the employee's obligations under the lease and is merely a reimbursement or payment by the employer on behalf of the employee, Division 111 of the GST Act may apply. Where Division 111 requirements are met, the reimbursement is treated as consideration for an acquisition that the employer has made from the employee and the employer may claim input tax credits even where it holds a tax invoice issued to the employee.

Application of this GST Advice

This GST Advice is based on GSTR 2000/17. It explains our view of the law as it applied from 1 July 2000. You can rely upon this GST Advice on and from its date of issue for the purposes of section 37 of the *Taxation Administration Act 1953*. Goods and Services Tax Ruling GSTR 1999/1 explains the GST rulings system and our view of when you can rely on our interpretation of the law in GST public and private rulings.

If this GST Advice conflicts with a previous private ruling that you have obtained, this public ruling prevails. However, if you have relied on a private ruling, you are protected in respect of what you have done up to the date of issue of this public ruling. This means that if you have underpaid an amount of GST, you are not liable for the shortfall prior to the date of issue of this later ruling. Similarly, you are not liable to repay an amount overpaid by the Commissioner as a refund.

Commissioner of Taxation
Date

Subject references:

lease
novation
invoice
agency

Legislative references:

ANTS(GST)A 1999 29-70(1)
ANTS(GST)A 1999 Div 111

Other references:

Novated leases questions and answers

ATO references

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