



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 *31 October 2012*



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 was published prior to 1 July 2010 and was a public ruling for the purposes of former section 37 of the **Taxation Administration Act 1953** and former section 105-60 of Schedule 1 to the **Taxation Administration Act 1953**.*

*From 1 July 2010, this document is taken to be a public ruling under Division 358 of Schedule 1 to the **Taxation Administration Act 1953**.*

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

[Note: This is a consolidated version of this document. Refer to the Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.]

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 Advice applies [to tax periods commencing] both before and after its date of issue. However, this Advice will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Advice (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Related Rulings/Determinations/GST Advice:

TR 2006/10

Subject references:

lease
novation
invoice
agency

Legislative references:

ANTS(GST)A 1999 29-70(1)
ANTS(GST)A 1999 Div 111
TAA 1953 Sch 1 Div 358

Other references:

Novated leases questions and answers

ATO references

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