GSTR 2013/1EC - Compendium

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Ruling Compendium – GSTR 2013/1

This is a compendium of responses to the issues raised by external parties to draft GSTR 2012/D3 *Goods and services tax: tax invoices*

This compendium of comments has been edited to maintain the anonymity of entities that commented on the draft Ruling.

Summary of issues raised and responses

Issue No.	Issue raised	ATO Response/Action taken
1.	*Paragraph 29 – Extent to which each supply is a taxable supply* Although this paragraph advises that tax invoices can include a reference mark to denote each taxable supply, taxpayers should be permitted to use reference marks or any other method of identification to denote non-taxable/non GST impacting transactions (for example GST free, input taxed, out of scope). This would allow taxpayers who predominantly make taxable supplies to identify by exception non-taxable/non GST impacting transactions.	Subparagraph 29-70(1)(c)(iv) provides that one of the requirements for a tax invoice is that it contains enough information to enable the extent to which each supply is a taxable supply to be clearly ascertained. The Commissioner has listed a number of ways of how a supplier may represent this information on a tax invoice to be able to satisfy this requirement, including for supplies that are mixed supplies. The Commissioner does, however, acknowledge that there are other ways to represent the information on a tax invoice so that the extent to which a supply is a taxable supply could be determined. Unfortunately, it is not possible to address all of these situations in the final Ruling and the list is non-exhaustive. There are no legislative restrictions to identifying non-taxable supplies with a reference mark. However, the requirement that the extent to which each supply that is a taxable supply can be clearly ascertained must be satisfied.
2.	*Paragraph 45 – Circumstances in which the Commissioner may exercise the discretion to treat a document as a tax invoice* Although GSTR 2011/D1 has been withdrawn and replaced with GSTR 2012/D3, we have reviewed the compendium of comments for GSTR 2011/D1 and believe that an issue has been raised by the ATO's response to the comment at A.6.4.	The draft legislative instrument *A New Tax System (Goods and Services Tax) Waiver of Tax Invoice Requirement (Offer Documents and Renewal Notices) Legislative Instrument* relieves a recipient from the requirement to hold a tax invoice before an input tax credit for a creditable acquisition is attributed to a tax period when the recipient holds an offer document, or a renewal notice (including an insurance renewal notice), that meets the requirements of the instrument.
2. cont	The comment concerns the treatment of insurance renewal	Offer documents are defined in the instrument to mean 'a document that

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	notices and, although the response satisfies the concern raised, it only addresses insurance renewal notices. This leaves a number of similar arrangements, such as with the issue of subscription notices, remaining unresolved. We therefore suggest that the Commissioner addresses similar arrangements by extending the treatment outlined in the response to the comment at A.6.4 to documents other than insurance renewal notices – in other words, adopting a general concept that documents become tax invoices upon payment of an offer. Also, under this heading and again in paragraph 118, to assist with clarifying this area, the ruling should provide examples of where the requirement for the recipient to hold a tax invoice may impose a disproportionate burden on a supplier or recipient, particularly if that document substantially complies with the requirements for a tax invoice.	allows the total price of, and GST payable on, a proposed supply to be clearly ascertained when the offer is accepted and complete. Common examples include subscription notices or renewals; offers of membership to trade or professional associations (or renewals of membership); and offers to attend training courses or conferences.' The instrument is intended to effect the same general treatment as when the Commissioner had exercised the discretion to treat offer documents and insurance renewal notices as a tax invoice in GSTR 2000/17. Appendix 2 of the final Ruling includes a table outlining all of the circumstances where the Commissioner has determined under subsection 29-10(3) that an input tax credit may be attributable without a tax invoice. Further, the Commissioner will consider the exercise of the discretion under subsection 29-70(1)(B) to treat a document as a tax invoice at the time of a request by a taxpayer based on the particular facts and circumstances of each individual case.
3.	*Paragraphs 56, 116-117 and 133-135.* The draft GSTR should include a reference to the proposed Legislative Instrument on Agency Relationships and include a summary of the Instrument. Further, despite its importance, the proposed Instrument, *A New Tax System (Goods and Services Tax) Waiver of Tax Invoice Requirement (Acquisitions under an Agency Relationship) Legislative Instrument (No. 1) 2012,* only has a reference to disclosed and undisclosed principals in Footnote 2. Although we believe this is fundamental to the Instrument and warrants more prominence in the Instrument, it should be dealt with more comprehensively in the GSTR.	Appendix 2 of the final Ruling includes a table outlining all of the circumstances where the Commissioner has determined under subsection 29-10(3) that an input tax credit may be attributable without a tax invoice. This includes the draft legislative instrument dealing with agency relationships and a brief overview of that instrument. Once an agency relationship is established, the Legislative Instrument will have application whether that relationship is disclosed or undisclosed. GSTR 2000/37 which deals with agency relationships will be amended to reflect the legislative amendments to section 29-70 and to confirm that a tax invoice will satisfy the requirements of subparagraph 29-70(1)(c)(i) where it contains either the identity and Australian Business Number (ABN) of the supplier or the supplier's agent.
3. cont	The use of clear and separate examples should be provided on the tax invoice requirements where Agency/Intermediary arrangements apply pursuant to Subdivision 153-A and Subdivision 153-B.	

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4.	*Taxi travel* The requirements of the proposed Legislative Instrument, *A New Tax System (Goods and Services Tax) Waiver of Tax Invoice Requirement (Creditable Acquisition of Taxi Travel) Legislative Instrument (No. 1) 2012* place a greater burden on taxpayers using corporate credit cards to pay for taxi travel than those using corporate credit cards for non-taxi related travel (as outlined by Clause 7 of *Goods and Services Tax*: *Waiver of Tax Invoice Requirement (Corporate Card Statements) Legislative Instrument (No.1) 2008)* (WTI 2008/1). Employees using Corporate Cards for employee business related taxi travel should be able to rely on their Corporate Card statements from providers rather than needing to comply with the proposed Instrument. Consequently, if this cannot be dealt with in the draft GSTR, a statement should be included in the body of the Instrument that WTI 2008/1 will apply where Taxi Travel is recorded on the Corporate Card statement issued by the eligible Corporate Card providers (Clauses 4 (a) and (b) of WTI 2008/1).	Entities may be able to apply the Legislative Instrument (once registered) dealing with creditable acquisitions of taxi travel or WTI 2008/1 depending on which one is relevant to their particular circumstances. If they acquire taxi travel using a corporate credit card, they can claim an input tax credit without holding a valid tax invoice if the requirements of WTI 2008/1 are satisfied.

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5.	The examples in GSTR 2011/D1 concerning when it would be fair and reasonable for the Commissioner to exercise his discretion to treat a document as a tax invoice have been removed. In particular, paragraph 102(d)(v) of GSTR 2011/D1 provided an example of the use of this discretion in relation to lease agreements. This paragraph has been removed from GSTR 2012/D3 and has not been replaced with an equivalent paragraph. It is understood that the Commissioner intends to provide for the outcomes contemplated by GSTR 2000/17 and GSTR 2011/D1 through the use of legislative instruments (drafts of which are listed in Appendix 2 of GSTR 2012/D3). However, there is no draft legislative instrument that deals with lease agreements.	Where a lease agreement provided for a CPI uplift factor to lease payments or for the lessee to be liable for certain outgoings and the lessee was notified of the CPI uplift factor or outgoing in another document, paragraph 102(d)(v) of GSTR 2011/D1 stated that it would be fair and reasonable for the Commissioner to exercise a discretion (under subsection 29-70(1B) of the GST Act) to treat the documents as a tax invoice. This was not replicated in GSTR 2012/D3 as it is considered that the circumstances described above are covered by subsection 29-70(1A). This provision can be applied by a recipient of a supply, if the requirements of the subsection are satisfied. In this case, there is no need for the recipient to request an exercise of the discretion under subsection 29-70(1)(B).
6.	GSTR 2012/D3 maintains the interpretation that the content of a tax invoice must follow the prescriptive approach of the previous law. The restrictive interpretation of subsection 29-70(1) to the content of a tax invoice is contrary to the aim of simplification and flexibility that were the reasons for the reform. Subsection 29-70(1) does not require that the information on the document (that is enough to enable the items listed in paragraph (c) to be able to be clearly ascertained) is to be ascertained solely 'from the document.' Interpreting paragraph (c) in this manner has the effect of adding wording that is not in the legislation. In paragraph 86 of the draft Ruling, the ATO accepts that the business name (presumably because it can be linked to the legal name of the supplier) is sufficient to meet the requirements of paragraph (c), however the same principles are not applied to the remaining criteria in paragraph (c).	The Commissioner's view remains that matters listed in (i) to (viii) of paragraph 29-70(1)(c) must be clearly ascertainable from the tax invoice rather than another document or documents or external sources. Paragraph 21 of the final Ruling provides guidance on the meaning of the term 'identity' in section 29-70. It indicates that the registered business name is one way of establishing the identity of the supplier and/or the recipient. However, the identity of the supplier and/or recipient must still be clearly ascertainable from the document.

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6. cont	The 'alternative view' in paragraphs 80 – 85 is the preferred view of the interpretation of the section.	
7.	In the recent legislative instrument dealing with adjustment notes, the term used in the draft Ruling that the document 'must contain enough information to enable the following to be clearly ascertained from the document' is substituted for the requirement that the adjustment note 'must contain… enough information in the adjustment note to enable the following to be clearly ascertained.' We submit that the variation in expression of the test in the legislative instrument supports the interpretation that subsection 29-70(1) is satisfied if the information in the document is sufficient for the specified information to be identified.	Disagree. The purpose of the legislative instrument *A New Tax System (Goods and Services Tax) Adjustment Note Information Requirements Determination 2012* is to align the other information requirements for adjustment notes (paragraph 29-75(1)(c)) with the more flexible approach taken for tax invoices following the legislative amendments to section 29-70.
8.	**Draft legislative instruments** GSTR 2012/D3 substantially limits the preparedness of the Commissioner to exercise his discretion. The draft Ruling changes the fundamental view and approach to the exercise of the discretion in subsection 29-70(1B). We consider that this change renders the proposed approach not capable of compliance by taxpayers generally. We submit that a series of legislative instruments (LIs) is an inappropriate mechanism to address the mischief when normal commercial and accepted practices can be used to satisfy the tax invoice requirement. Further, the LIs require that the document that is issued by the supplier complies with paragraph 29-70(1)(d) in that the document must show that it is intended to be a tax invoice – this is an impossible requirement in practice.	The discretion that allows the Commissioner to treat a document as a tax invoice is an administrative discretion. The exercise of the Commissioner's discretion cannot be fettered. The Commissioner will consider the particular facts and circumstances of each individual case at the time a request has been made to exercise the discretion. The Commissioner has made a number of determinations under subsection 29-10(3) to reduce uncertainty and facilitate compliance in situations where the discretion had previously been exercised in GSTR 2000/17 and other rulings products. However, we agree with the concern about meeting the paragraph 29-70(1)(d) (intended as a tax invoice) requirement in the context of the LI's. The information requirements in the determinations made under subsection 29-10(3) have been modified so that subsection 29-70(1)(b) (approved form) and subsection 29-70(1)(d) (intended as a tax invoice) do not need to be met where an alternative document to a tax invoice is required.

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8. cont	The above is also a very strange requirement in an LI that is stating that a tax invoice is not required. The two positions would seem to be mutually exclusive. There is a legislative requirement to issue tax invoices in the correct form, and many contracts (and government agencies) have conditions imposed that require a valid tax invoice to be issued as a condition of payment. As such, a legislative instrument stating that a recipient does not need a tax invoice is not an appropriate response. We submit that the Commissioner is required to exercise his discretion to vary the tax invoice rules and that this discretion is fundamental to the efficient working of the tax invoice system.	
9	We consider that it is sufficient that the trading name be either the registered trading name or the name by which the entity is commonly known. We do not agree with the view expressed at paragraph 87. In our view, a builder's registration number or licence number would generally be sufficient to identify the relevant party for tax invoice purposes. Such an identifier could be used to trace the legal identity of the relevant party.	Paragraph 21 of the final Ruling provides guidance on the meaning of the term 'identity'. It provides a number of examples of information that would be sufficient to identify the supplier and/or the recipient however these are not exhaustive. The registered business name of the entity is sufficient information to identify the supplier and/or recipient. A builder's registration number or licence number would not be sufficient information to identify the supplier and/or recipient as there is a requirement to go to an external source (that is the relevant builder's registration authority) to determine the identity of the entity. In this situation, the identity of the supplier and/or recipient cannot be clearly ascertained from the document. A recipient may still be able to apply subsection 29-70(1A) where they have another document that was given to them by the supplier and identifies the supplier.

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10	It would be beneficial for the draft Ruling to address the issue of the ABN which should be disclosed on the tax invoice where the relevant business is conducted via a partnership which, like a trust, is not regarded as having a separate legal identity for tax purposes.	GSTR 2003/13, which is about general law partnerships, will be amended to reflect the legislative amendments to section 29-70. The Commissioner had exercised his discretion under former subsection 29-70(1) in that Ruling. As the discretion under which the Commissioner had treated a document that identified a partner instead of the partnership as a tax invoice is an administrative discretion, the Commissioner cannot treat the document as a tax invoice in the same manner as in GSTR 2003/13. However, to reduce uncertainty, the Commissioner has created a proposed legislative instrument under subsection 29-10(3) such that an input tax credit is attributable to a tax period where the recipient holds a document that contains enough information to enable the identity and ABN of the partner of a partnership (either as the recipient or the supplier as the case may be) to be clearly ascertained from the document.
11	Paragraphs 61 to 65 of GSTR 2000/17 acknowledged that agents who made taxable supplies on behalf of principals could issue a tax invoice for the supply showing the agent's name and ABN. We believe that approach to tax invoices issued by agents in the draft Ruling is not correct. We further believe that the draft Ruling should clarify that the ongoing adoption of the approach taken in GSTR 2000/17 is consistent with the guiding principles underpinning section 29-70.	The discretion that allows the Commissioner to treat, as a tax invoice, a document that would not otherwise meet the tax invoice requirements is an administrative discretion. The exercise of the Commissioner's discretion cannot be fettered. The Commissioner will consider the particular facts and circumstances of each individual case at the time a request has been made for the exercise of the discretion. However, to reduce uncertainty as to whether a document that contains enough information to clearly ascertain the identity and ABN of the agent would be treated as a tax invoice, the Commissioner has created a draft legislative instrument under subsection 29-10(3) such that an input tax credit is attributable to a tax period without the recipient being required to hold a tax invoice for a taxable supply provided they hold a document issued by the agent and which contains the agent's identity and ABN (see *A New Tax System (Goods and Services Tax) Waiver of Tax Invoice Requirement (Acquisitions under an Agency Relationship) Legislative Instrument 2013*).