

GSTD 2004/D1 - Goods and services tax: can a recipient created tax invoice be an invoice for attribution purposes under Division 29 of the A New Tax System (Goods and Services Tax) Act 1999?

 This cover sheet is provided for information only. It does not form part of *GSTD 2004/D1 - Goods and services tax: can a recipient created tax invoice be an invoice for attribution purposes under Division 29 of the A New Tax System (Goods and Services Tax) Act 1999?*

This document has been finalised.



Draft Goods and Services Tax Determination

Goods and services tax: can a recipient created tax invoice be an invoice for attribution purposes under Division 29 of the *A New Tax System (Goods and Services Tax) Act 1999*?

Preamble

*This document is a draft for industry and professional comment. As such, it represents the preliminary, though considered views of the Australian Taxation Office. This draft may not be relied on by taxpayers and practitioners as it is not a ruling or advice for the purposes of section 37 of the **Taxation Administration Act 1953**. The final Determination will be a public ruling for the purposes of section 37 and may be relied upon by any entity to which it applies.*

1. Yes. A recipient created tax invoice (RCTI)¹ can be an invoice for the purposes of Division 29 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).

Background

2. GST on taxable supplies is accounted for in tax periods. The GST payable and the corresponding entitlement to input tax credits are attributable to a tax period in which certain requirements under Division 29 of the GST Act are met.

3. The requirements for attributing GST to a tax period for entities that do not account on a cash basis are in subsection 29-5(1) of the GST Act:

- (1) The GST payable by you on a taxable supply is attributable to:
 - (a) the tax period in which any of the consideration is received for the supply; or
 - (b) if, before any of the consideration is received, an invoice is issued relating to the supply – the tax period in which the invoice is issued.

4. The requirements for attributing input tax credits to a tax period for entities that do not account on a cash basis are in subsection 29-10(1) of the GST Act:

- (1) The input tax credit to which you are entitled for a creditable acquisition is attributable to:

¹ A 'recipient created tax invoice' is a tax invoice that belongs to a class of tax invoices that the Commissioner has determined in writing may be issued by the recipient of a taxable supply: subsection 29-70(3). Regulation 29-70.02 of the *A New Tax System (Goods and Services Tax) Regulations 1999* sets out the information that must be contained in an RCTI.

GSTD 2004/D1

- (a) the tax period in which you provide any of the consideration for the acquisition; or
- (b) if, before you provide any of the consideration, an invoice is issued relating to the acquisition – the tax period in which the invoice is issued.

5. The time when an 'invoice is issued' will often determine the tax period to which GST and input tax credits must be attributed.

6. 'Invoice' is defined in section 195-1 of the GST Act to mean 'a document notifying an obligation to make a payment'. 'Issue' is not defined in the GST Act. The Commissioner considers that an invoice is issued when the supplier 'sends' the invoice to the recipient. The date when the invoice issues is the date that the invoice is electronically transmitted, posted, couriered, hand delivered or is sent by similar method.²

7. Under the GST Act, 'invoices' are distinct from 'tax invoices'.³ They serve different purposes. An invoice is used for attributing GST and input tax credits, whereas a tax invoice must be held to claim an input tax credit. However, a document may at the same time be both an invoice and a tax invoice, or it may be one but not the other, depending on its characteristics.⁴

8. Tax invoices must be issued by the supplier,⁵ subject to the following exception. The Commissioner has determined under section 29-70 of the GST Act that, in certain specified circumstances, the recipient of a taxable supply may issue a tax invoice. These tax invoices are called recipient created tax invoices or RCTIs. It is usually necessary for a recipient to hold a tax invoice in order to attribute an input tax credit to a tax period,⁶ but holding a tax invoice is not of itself *sufficient* for attribution. The correct tax period must be first worked out under subsections 29-10(1) and (2) of the GST Act.

Explanation

9. It is usual commercial practice for an invoice to be issued by the supplier of goods or services to a recipient. However, the GST Act does not expressly state that invoices must be created or issued by the supplier, or by any particular person, to satisfy the attribution rules in Division 29. The Commissioner has acknowledged that a third party, who is authorised to determine and notify an amount payable by one party to another, can issue an invoice for the purposes of sections 29-5 and 29-10 of the GST Act.⁷ The Commissioner has also acknowledged that in certain industries it is commercial practice for the recipient to create a tax invoice.⁸

10. The word 'notifying' is used in the definition of invoice in section 195-1 of the GST Act. The verb 'notify', means to 'give notice to, or inform, of something'.⁹ This word could be interpreted narrowly to mean something like 'putting on notice'. That interpretation would support the view that it is the entity that is obliged to pay that must be notified and, since an entity cannot 'notify' itself of something, it follows that a recipient cannot issue an invoice to a supplier.

² Paragraph 33 of Goods and Services Tax Ruling GSTR 2000/34 (which explains what is an invoice for the purposes of the GST Act).

³ The term 'tax invoice' is defined in section 195-1 of the GST Act as 'a document that complies with the requirements of subsection 29-70(1) and (if applicable) section 54-50.'

⁴ Paragraph 58 of GSTR 2000/34.

⁵ Paragraph 29-70(1)(a) of the GST Act.

⁶ Subsection 29-10(3) of the GST Act.

⁷ Paragraph 32 of GSTR 2000/34.

⁸ Paragraph 8 of GSTR 2000/10 (which deals with the requirements for recipient created tax invoices).

⁹ The Macquarie Dictionary, Revised Third Edition, 2001.

11. However, paragraphs 29-5(1)(b) and 29-10(1)(b) of the GST Act contemplate that attribution should occur when both the supplier and the recipient are notified or informed of the obligation to pay. These paragraphs use the phrase: 'the tax period in which the invoice is issued'. The definition of 'invoice' does not expressly state whom the document has to notify of the obligation to make a payment, nor who is to do the 'notifying'. It merely states that a document notifying an obligation to make a payment must be 'issued'.

12. We consider that the legislation is not intended to restrict who may notify the obligation and who must be notified of the obligation. It does not matter, in our view, whether the supplier issues a document to the recipient or the recipient issues a document to the supplier (notifying the supplier of the recipient's obligation to make a payment). In either case an invoice has been issued.

13. We state in GSTR 2000/34 that a document will be an invoice if it notifies a presently existing obligation.¹⁰ Therefore, if on an objective assessment the RCTI notifies an obligation to make a payment, then the RCTI will meet the definition of an invoice in section 195-1 of the GST Act.

14. We also explain in GSTR 2000/34 when the obligation to make a payment exists. Briefly, the Ruling states that the words 'obligation to make a payment' refer to a legal obligation which is analogous to being 'required to pay'.¹¹

15. Whether an RCTI issued by a recipient notifies an obligation to make a payment or notifies that the recipient is 'required to pay' an amount to the supplier is a question of fact. Regard should be had to the RCTI agreement or any contractual or trade agreements between the parties to determine the terms of trade and the primary source document used for accounting purposes. This will assist to establish whether an obligation to make a payment or a right to receive payment has crystallised.

16. The RCTI issued by the recipient to the supplier would normally contain, in addition to the other information required by regulation 29-70.02,¹² the date of issue, the name of the supplier, the name of the recipient and the amount payable. It would also be expected that the RCTI, in the absence of an invoice issued by the supplier, would be the primary source document used for accounting purposes by both the recipient and the supplier. That is, if upon receipt of the RCTI, the supplier recognises an account receivable from the recipient and the recipient raises a debt owing to the supplier, then this is an indication that both parties recognise the RCTI as notifying an obligation to make a payment and that it is therefore an invoice.

17. When the recipient sends a document that notifies the supplier of the recipient's obligation to pay, an invoice is issued.¹³ Therefore, an RCTI issued by the recipient of a supply can be an invoice. The actual date of issue of an invoice (including an invoice that is also an RCTI) is the date when the invoice is electronically transmitted, posted, couriered, hand delivered or is sent by similar method.¹⁴ The date of issue determines the tax period to which the GST payable and input tax credits are attributable.

¹⁰ Paragraph 28 of GSTR 2000/34.

¹¹ Paragraph 25 of GSTR 2000/34.

¹² The A New Tax System (Goods and Services Tax) Regulations 1999.

¹³ Refer to paragraph 6 of this Determination.

¹⁴ Paragraph 33 of GSTR 2000/34.

GSTD 2004/D1

Example

18. *Mighty Motors Ltd ('Mighty Motors') manufactures motor vehicles. O'Reilly's Windscreens Pty Ltd ('O'Reilly's') supplies windscreens to Mighty Motors in the manufacture of their motor vehicles. Both parties account for GST on a non-cash basis.*
19. *The parties agree that Mighty Motors issue RCTIs to O'Reilly's for windscreens supplied. The RCTIs are in the approved form and contain the date of issue, the name of the supplier, the name of the recipient and the amount payable. Under their terms of trade, Mighty Motors has an obligation to make payment to O'Reilly's within 30 days from the date specified on the RCTI. Mighty Motors issues RCTIs through the post.*
20. *The RCTI agreement between the parties provides, amongst other things, that O'Reilly's shall not issue any invoice, tax invoice or any other document that may require Mighty Motors to attribute input tax credits for any supplies of goods or services made by O'Reilly's.*
21. *Both parties account for respective debtors and creditors in their books of account on the basis of the RCTI as no other documentation flows between them.*
22. *The RCTI issued by Mighty Motors is also an invoice for GST purposes. Mighty Motors must attribute input tax credits, and O'Reilly's must attribute GST payable, in the tax period that the RCTI is issued.*

Date of effect

23. This draft Determination represents the preliminary, though considered, view of the Australian Taxation Office. This draft may not be relied on by taxpayers or practitioners. When the final Determination is officially released, it will explain our view of the law as it applies from 1 July 2000.
24. The final Determination will be a public ruling for the purposes of section 37 of the *Taxation Administration Act 1953* and may be relied upon, after it is issued, by any entity to which it applies. 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.
25. If the final public ruling conflicts with a previous private ruling that you have obtained, the 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 the final 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 the later ruling. Similarly, you are not liable to repay an amount overpaid by the Commissioner as a refund.

Your comments

26. We invite you to comment on this draft Goods and Services Tax Determination. Please forward your comments to the contact officer by the due date.

Due date: 13 August 2004

Contact officer: Brian Hayes, GST Rulings Unit

E-mail address: brianl.hayes@ato.gov.au

Telephone: 07 3213 5610

Facsimile: 07 3213 5055

Address: GST Rulings Unit
GPO Box 920
BRISBANE QLD 4001

Commissioner of Taxation

14 July 2004

Previous draft:

Not previously issued in draft form

Related Rulings/Determinations:

GSTR 1999/1; GSTR 2000/10;
GSTR 2000/34

Subject references:

- invoice
- recipient created tax invoice
- tax invoice
- tax period

Legislative references:

- ANTS(GST)A 1999 Div 29
- ANTS(GST)A 1999 29-5
- ANTS(GST)A 1999 29-5(1)
- ANTS(GST)A 1999 29-5(1)(a)
- ANTS(GST)A 1999 29-5(1)(b)

- ANTS(GST)A 1999 29-10
- ANTS(GST)A 1999 29-10(1)
- ANTS(GST)A 1999 29-10(1)(a)
- ANTS(GST)A 1999 29-10(1)(b)
- ANTS(GST)A 1999 29-10(2)
- ANTS(GST)A 1999 29-10(3)
- ANTS(GST)A 1999 29-70
- ANTS(GST)A 1999 29-70(1)
- ANTS(GST)A 1999 29-70(1)(a)
- ANTS(GST)A 1999 29-70(3)
- ANTS(GST)A 1999 54-50
- ANTS(GST)A 1999 195-1
- ANTS(GST)R 1999 29-70.02
- TAA 1953 37

Other references:

- The Macquarie Dictionary, Revised Third Edition, 2001

ATO references:

NO: 2004/6238
ISSN: 1443-5179