



A New Tax System (Goods and Services Tax)
(Particular Attribution Rules for Certain Motor Vehicle
Incentive Payments Made to Motor Vehicle Dealers)
Legislative Instrument 2015

Explanatory Statement

General outline of this instrument

1. This legislative instrument is made under subsection 29-25(1) of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).
2. This instrument is necessary to prevent the provisions of Division 29 and Chapter 4 of the GST Act applying in a way that is inappropriate in circumstances involving a supply or acquisition for which payment is made or an invoice is issued, but use, enjoyment and passing of title will occur at some time in the future.¹ In particular, it applies in circumstances where:
 - (a) a motor vehicle dealer either:
 - (i) receives a **third party motor vehicle incentive payment** in a tax period; or
 - (ii) issues an invoice for a **third party motor vehicle incentive payment** in a tax period, before receiving the payment; and
 - (b) the **third party motor vehicle incentive payment** relates to a supply of a motor vehicle by the motor vehicle dealer where use, enjoyment and passing of title will occur in a later tax period; and
 - (c) the motor vehicle dealer does not know the total consideration for the supply of the motor vehicle by the end of the tax period during which:
 - (i) if clause 3(a)(i) applies – the **third party motor vehicle incentive payment** was received; or
 - (ii) if clause 3(a)(ii) applies – the invoice for the **third party motor vehicle incentive payment** was issued; and
 - (d) the supply of the motor vehicle will be a taxable supply.
3. This instrument is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

¹ Paragraph 29-25(2)(b) of the GST Act.

Commencement of this instrument

4. This instrument is taken to have commenced on 1 January 2015. Therefore, it will apply where a motor vehicle dealer (dealer) receives a **third party motor vehicle incentive payment** (or issues an invoice for a **third party motor vehicle incentive payment** before receiving the payment) on or after 1 January 2015, provided the other requirements for the instrument to apply are satisfied.

5. The retrospective application of this instrument does not have an adverse effect on the rights or liabilities of any person.² The effect of this instrument is to the advantage of affected parties. If this instrument applies, a dealer's liability to pay goods and services tax (GST) will be deferred to a later time.

What is this instrument about?

6. This instrument overrides the basic attribution rules (under section 29-5 of the GST Act), by specifying different rules that apply to attribute GST payable on an intended taxable supply of a motor vehicle by a dealer.

7. Broadly, it applies in circumstances where a dealer receives a **third party motor vehicle incentive payment** (or issues an invoice for a **third party motor vehicle incentive payment** before receiving the payment) before it has sold the motor vehicle to a customer and therefore before use, enjoyment and passing of title occurs (clause 3). In these circumstances, the dealer will not know the total consideration for the sale of the motor vehicle at the time the **third party motor vehicle incentive payment** is received or the invoice is issued.

8. A **third party motor vehicle incentive payment** is consideration provided by a motor vehicle manufacturer, distributor or importer to the dealer that is part of the consideration for the supply of the motor vehicle to the customer (see the definition in clause 5).

What is the effect of this instrument?

9. This instrument defers the attribution of GST payable until the tax period in which the total consideration for the supply of the motor vehicle is known, where the circumstances in clause 2 apply.

10. This instrument has no effect where a dealer receives or issues the invoice for a motor vehicle incentive payment **after** making a supply of a motor vehicle to a customer.

11. This instrument also has no effect where the motor vehicle incentive payment is **not** third party consideration for the supply of the motor vehicle, by the dealer, to the customer. That is, the payment is not part of the consideration provided by the manufacturer, distributor or importer for the sale of the motor vehicle, by the dealer, to the customer.

12. Compliance Cost Impact: Minor – There will be minimal implementation impacts and no ongoing compliance cost impacts. The legislative instrument is minor or machinery in nature.

² Subsection 12(2) of the *Legislative Instruments Act 2003* provides that a retrospective legislative instrument (or provision of that instrument) will be of no effect if it applies to adversely affect the rights or liabilities of any person other than the Commonwealth or an authority of the Commonwealth.

Background

13. Generally, GST payable on a taxable supply of a motor vehicle by a dealer is attributable to the tax period in which any of the consideration is received.³ Alternatively, if the dealer issues an invoice before receiving any of the consideration, then the GST payable is attributable to the tax period in which the invoice is issued.⁴

14. There are some circumstances however where a dealer receives a payment that is 'third party' consideration for a taxable supply of a motor vehicle, or issues an invoice for a payment of this type before receiving the payment, but the dealer has not entered into a contract to sell the motor vehicle to a customer.

15. In these cases the dealer does not know the price at which it will sell the motor vehicle to the customer. Also, the use, enjoyment and passing of title will occur at an unknown time in the future. Despite this, under the attribution rule in subsection 29-5(1) of the GST Act, the dealer would have to attribute the total GST payable on the intended supply of the motor vehicle to the tax period in which that payment is received or the invoice is issued.

16. However, the practical result would then be that the dealer has to account for GST at a time when they are unable to accurately determine the amount of GST that should be attributed to the tax period. Also, the dealer may not be able to calculate any amount of luxury car tax that may be payable on the taxable supply.⁵

17. In accordance with subsection 13-15(1) of the *A New Tax System (Luxury Car Tax) Act 1999*, luxury car tax payable is attributable to the same tax period as the GST on the taxable supply.

18. Consequently, this legislative instrument is necessary to ensure that Division 29 and Chapter 4 of the GST Act apply in a way that is appropriate in these circumstances.

Explanation

19. This instrument will only apply to motor vehicle incentive payments that are third party consideration. That is, an incentive payment that is part payment for the supply of the motor vehicle, by the dealer, to the customer.⁶

20. The instrument will apply if a dealer receives a **third party motor vehicle incentive payment**, or issues an invoice for a **third party motor vehicle incentive payment** before receiving the payment, in a tax period before the tax period in which the use, enjoyment and passing of title of a motor vehicle will take place and before the total consideration for the taxable supply of the motor vehicle is known. That is, a dealer may negotiate the sale of a motor vehicle with a customer in a later tax period than when it receives or issues the invoice for the **third party motor vehicle incentive payment**. Once the dealer enters into a contract for the sale of the motor vehicle with a customer it will then know the total consideration for the supply of the motor vehicle. The use, enjoyment and passing of title in the motor vehicle will also then occur.

21. In these circumstances, the GST payable (and consequently and luxury car tax payable and attributable in accordance with subsection 13-15(1) of the *A New Tax System (Luxury Car Tax) Act 1999*) will be attributable to the tax period in which the total

³ Paragraph 29-5(1)(a) of the GST Act. However, the attribution rules differ if the dealer accounts on a cash basis in which case the GST payable will be attributable to the extent that the consideration is received in a tax period (subsection 29-5(2) of the GST Act).

⁴ Paragraph 29-5(1)(b) of the GST Act.

⁵ See *A New Tax System (Luxury Car Tax) Act 1999*.

⁶ The issue of whether a payment from a motor vehicle manufacturer, distributor or importer to a dealer is consideration for a supply of a vehicle by the dealer to a customer was considered in *AP Group Ltd v. Federal Commissioner of Taxation* (2013) 214 FCR 301; [2013] FCAFC 105.

consideration for the supply of the motor vehicle is known. It is expected that this will be the tax period in which the dealer and customer enter into a contract for the sale of the motor vehicle. It will not necessarily be the same tax period in which the use, enjoyment or passing of title occurs. None of the GST payable by the dealer is attributable to the tax period in which the **third party motor vehicle incentive payment** is received, or the invoice is issued, despite subsections 29-5(1) and (2) of the GST Act.

Consultation

22. Section 18 of the *Legislative Instruments Act 2003* specifically provides for circumstances where consultation may not be necessary or appropriate. One of those circumstances is where the instrument is considered minor or machinery in nature, and does not substantially change the law.

23. The instrument is considered minor or machinery in nature, and does not substantially change the law. However, targeted consultation was undertaken. Industry representatives were invited to comment on the draft instrument and explanatory statement. Comments received as part of the consultation were taken into account in developing the final instrument and explanatory statement.

24. The purpose of a retrospective application for this legislative instrument is to ensure that motor vehicle dealers that received payments in the circumstances outlined in the legislative instrument, but before it has application, are not disadvantaged. It is understood from consultation with the industry in drafting the legislative instrument that such payments were made from 1 January 2015.

Tim Dyce
Deputy Commissioner of Taxation

19 November 2015

Legislative references

A New Tax System (Goods and Services Tax) Act 1999

Division 29

29-5

29-5(1)

29-5(1)(a)

29-5(1)(b)

29-5(2)

29-25(1)

29-25(2)(b)

Chapter 4

A New Tax System (Luxury Car Tax) Act 1999

13-15(1)

Legislative Instruments Act 2003

12(2)

18

Human Rights (Parliamentary Scrutiny) Act 2011

Part 3
3

Case references

AP Group Ltd v. Federal Commissioner of Taxation (2013) 214 FCR 301; [2013] FCAFC 105

Subject references

Goods and services tax

Attribution rules

Creditable acquisition

GST input tax credits & creditable acquisitions

Taxable supply

Tax Office references

NO:

ISSN:

Statement of Compatibility with Human Rights

This Statement is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

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This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

This instrument sets out an alternative GST attribution rule in circumstances where a motor vehicle dealer receives a motor vehicle incentive payment in an earlier tax period than the tax period in which the motor vehicle was supplied by the dealer. In these situations, the GST payable will be attributable to the tax period in which the total consideration for the supply of the motor vehicle by the dealer is known. It is expected that this will be the tax period in which the dealer and customer enter into a contract for the sale of the motor vehicle.

Human Rights Implications

On an assessment of the compatibility of this instrument with the seven core international human rights treaties to which Australia is a party, it has been determined that this instrument does not engage any of the applicable rights or freedoms because the instrument is minor or machinery in nature.

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.