



A New Tax System (Goods and Services Tax) Waiver of Tax Invoice Requirement (Offer Documents and Renewal Notices) Legislative Instrument 2013

Explanatory Statement

General outline of this instrument

1. This legislative instrument is made under subsection 29-10(3) of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).
2. This instrument waives the requirement for a recipient making a creditable acquisition to hold a tax invoice for an input tax credit to be attributable to a tax period when they hold an offer document or a renewal notice that meets the requirements prescribed in this instrument.
3. This instrument is a legislative instrument under the *Legislative Instruments Act 2003*.
4. All legislative references in this explanatory statement are to provisions in the GST Act unless otherwise specified.

Commencement and application of this instrument

5. This instrument commences on 1 July 2010 and applies to net amounts for tax periods commencing on or after that date.
6. The retrospective application of this instrument does not have an adverse effect on the rights or liabilities of any person other than the Commonwealth.¹ The effect of this instrument is to the advantage of affected parties. It waives the requirement for a recipient to hold a tax invoice before an input tax credit is attributable to a tax period when the recipient holds an offer document or a renewal notice that meets the requirements prescribed in this instrument.
7. These prescribed requirements are not substantively different to the requirements under which offer documents and insurance renewal notices were treated as tax invoices in *Goods and Services Tax Ruling GSTR 2000/17 – Goods and services tax: tax invoices* (withdrawn on 25 May 2011). This means that suppliers or their agents do not have to change their software or accounting systems to issue a document that would comply with this instrument.

¹ 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.

8. This instrument applies retrospectively to align to the date of effect of the legislative change for tax invoices.²

What is this instrument about?

9. The effect of this instrument is that an input tax credit for a creditable acquisition is attributable to a tax period for acquisitions made after the acceptance of an offer (including a renewal) when the recipient holds a document other than a tax invoice. This instrument also sets out the particular information that must be included in this document for the input tax credit to be attributed to that tax period.

What are the effects of this instrument?

10. This instrument waives the requirement for a recipient to hold a tax invoice before an input tax credit for a creditable acquisition is attributable to a tax period when the recipient holds an offer document, or a renewal notice, that meets the requirements of this instrument.

11. This instrument intends to give effect to the same general treatment as when the Commissioner exercised the discretion in GSTR 2000/17 to treat offer documents and insurance renewal notices as a tax invoice.

12. Compliance cost impact: An assessment of the compliance cost impact indicates that the impact will be minimal for both the implementation and on-going compliance costs. The instrument is routine in nature.

Background

13. Generally, when a recipient makes a creditable acquisition, an input tax credit for the acquisition is not attributable to a tax period until they hold a tax invoice. A tax invoice is a document that meets the requirements of subsection 29-70(1).

14. In some cases, the necessity for the recipient to hold a document that meets the requirements of subsection 29-70(1) may impose a disproportionate burden on a supplier or a recipient, particularly if the document that they hold has most of the required features of a tax invoice. Offer documents and renewal notices are examples of this kind of document.

15. GSTR 2000/17 outlined circumstances under which offer documents and insurance renewal notices were treated as tax invoices because the Commissioner exercised the discretion under former subsection 29-70(1). The Commissioner's discretion to treat a document as a tax invoice is now contained in subsection 29-70(1B).

16. The Commissioner's discretion under subsection 29-70(1B) is administrative, and can only be exercised on a case by case basis. Therefore it is no longer appropriate to deal with this matter in a public ruling. Instead, the Commissioner is making a determination under subsection 29-10(3) to ensure that taxpayers do not have to change their administrative practices.

² See *Tax Laws Amendment (2010 GST Administration Measure No.2) Act 2010* and the repeal of regulations 29.70.01 and 29.70.02 to the *A New Tax System (Goods and Services Tax) Regulations 1999* by the *A New Tax System (Goods and Services Tax) Amendment Regulations 2010 (No.1)* (206 of 2010).

Explanation

Documents that are merely offers

17. A supplier may issue to a prospective recipient a document that offers to make a supply. This may, for example, include subscriptions to trade magazines, access to online databases, membership of trade or professional associations, or offers to attend training courses, seminars, or conferences. When they issue the document, the supplier does not know whether the recipient will accept the offer, and the supply will proceed. In addition, the offer may give the prospective recipient a choice of supplies or pricing options that may make the final price unknown when the offer is issued. Because of these uncertainties, the offer document cannot be a tax invoice when it is issued.

18. This instrument is intended to save suppliers from having to issue another document if the offer is accepted. Accordingly, where a recipient or their agent holds an offer document, this instrument has the effect of allowing the input tax credit for a creditable acquisition to be attributed at the time the recipient gives their GST return for the tax period to the Commissioner in certain circumstances.

19. The offer must be made to multiple parties (for example, a substantial number of members of an association, or a mailing list of subscribers). This instrument does not apply to offers made by a supplier to a single recipient, such as a 'quote' given by a professional or tradesperson.

20. The offer document must also contain enough information to be able to determine the supplies offered to be acquired or to be renewed, the extent to which each supply is a taxable supply and the price and GST payable when the offer or renewal is accepted by the recipient.

Renewal notices (including insurance renewal notices)

21. When a supplier issues a renewal notice they do not know whether they will make the supply. As a result of this uncertainty, the document cannot be a tax invoice.

22. This instrument is intended to save suppliers from having to issue another document when a renewal occurs. Accordingly, where a recipient or their agent holds a renewal notice, and it otherwise satisfies the requirements of paragraphs 29-70(1)(a) and 29-70(1)(c), this instrument has the effect of allowing the input tax credit for a creditable acquisition to be attributed at the time the recipient gives their GST return for the tax period to the Commissioner.

23. Previously, for insurance supplies, a tax invoice relating to the supply where the GST payable was less than 1/11th of the price,³ could in lieu of showing the GST exclusive value of the supply, include a statement to the effect that the input tax credit entitlement is based on the GST amount shown and that the GST amount may be less than 1/11th of the total amount payable.

24. There is no longer a requirement to show the GST-exclusive value on tax invoices. As a result, the statement as an alternative to showing the GST exclusive value for supplies has not been included as a requirement in this instrument.

25. However, a tax invoice may include the statement or indicate the GST exclusive value of the supply if renewed in the renewal notice.

³ A supply of insurance may be fully taxable but the GST amount may be less than 1/11th as stamp duty is not included in working out the GST on insurance premiums (section 78-5).

Consultation

26. 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.

27. Although the instrument was considered minor or machinery in nature, and does not substantially change the law, comment was invited from members of the community through the publication of a consultation draft of this instrument and explanatory statement.

James O'Halloran
Deputy Commissioner of Taxation

19 March 2013

Related Rulings / Determinations

GSTR 2000/17 (Withdrawn)

Legislative references

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

29-10(3)

29-70(1)

29-70(1)(a)

29-70(1)(c)

29-70(1B)

78-5

Legislative Instruments Act 2003

12(2)

18

Human Rights (Parliamentary Scrutiny) Act 2011

Part 3

3

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

29-70.01

29-70.02

Subject references

Goods and services tax

Attribution rules

Creditable acquisition

GST input tax credits & creditable acquisitions

GST insurance

Taxable supply

Tax invoices

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 waives the requirement for a recipient making a creditable acquisition to hold a tax invoice for an input tax credit to be attributable to a tax period when they hold an offer document or a renewal notice that meets certain conditions.

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.

James O'Halloran
Deputy Commissioner of Taxation