

WAN 2008/1 - Explanatory statement -



Goods and Services Tax: Waiver of Adjustment Note Requirement (Corporate Card Statements) Legislative Instrument (No.1) 2008

Explanatory Statement

General Outline of Instrument

1. This determination is made under subsection 29-20(3) of the *A New Tax System (Goods and Services Tax) Act 1999*.
2. This determination allows corporate credit and charge card holders to claim decreasing adjustments without holding an adjustment note in certain circumstances.
3. The following legislative instruments are revoked on the commencement of this determination:
 - (a) F2005B01943 - *A New Tax System (Goods and Services Tax) Waiver of Adjustment Note Requirement Determination (No. 2) 2004 - Business Travel Account Holder of American Express International Inc;*
 - (b) F2005B01949 - *A New Tax System (Goods and Services Tax) Waiver of Adjustment Note Requirement Determination (No. 3) 2004 - Corporate Purchasing Account Holder of American Express International Inc;*
 - (c) F2005B01950 - *A New Tax System (Goods and Services Tax) Waiver of Adjustment Note Requirement Determination (No. 4) 2004 - Corporate Card members of American Express International Inc;*
 - (d) F2005B01970 - *A New Tax System (Goods and Services Tax) Waiver of Adjustment Note Requirement Determination (No. 5) 2004 - American Express International Inc. KR 1025 Electronic Data Feed;* and
 - (e) F2005B01971 - *A New Tax System (Goods and Services Tax) Waiver of Adjustment Note Requirement Determination (No. 6) 2004 - American Express Australia Limited.*
4. This determination is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Date of effect

5. This instrument commences on 1 October 2008 and applies to tax periods commencing on or after that date. This instrument will not apply retrospectively.

What this instrument is about

6. This instrument:
 - revokes and consolidates into a single instrument the instruments referred to in paragraph 3 (the 'revoked instruments');
 - permanently reinstates the *signed statement method* (previously used in the revoked instruments);
 - modifies certain information requirements for using the signed statement method; and
 - makes minor technical changes to ensure the consolidated instrument operates as intended, and is consistent with the GST requirements for adjustment notes.

What are the effects of this instrument

7. The revoked instruments do not apply to tax periods commencing on or after 1 October 2008.
8. For tax periods commencing on or after 1 October 2008:
 - the GST adjustment note record keeping concessions contained in the revoked instruments continue to operate in a similar way; however
 - the signed statement method is reinstated and operates indefinitely; and
 - the accuracy of corporate card statements is improved where the signed statement method is used.
9. Compliance cost impact: Low. The instrument will affect only a small proportion of businesses and confirms existing practice. There is no ongoing compliance cost impact and a low implementation impact, reflecting the need for some taxpayers to be aware of the change and make some minor adjustments to their processes.

Background

10. The *Goods and Services Tax: Waiver of Adjustment Note Requirement (Corporate Card Statements) Legislative Instrument (No.1) 2008* (the instrument) is a continuation of the GST record keeping concession contained in the revoked instruments.
11. The concession was granted to reduce compliance costs for entities claiming decreasing adjustments arising from adjustment events, by permitting the entity (the holder of certain corporate credit or charge cards) to claim a decreasing adjustment without holding an adjustment note. Instead, the cardholder was required to hold a corporate card statement (issued by the corporate card provider) that met certain information requirements specified in the instruments.
12. Some payment systems transmitted sufficient information that allowed the card provider to issue card statements containing the specified information (such as the merchant's ABN and the amount of an adjustment for each acquisition). In such cases, the cardholder could use the concession indefinitely.
13. However, a card provider or card acquirer (being an entity that allows a merchant to access the payment system) may have used a payment system that did not enable card statements to be issued with all the specified information. In such cases, the cardholders could hold card statements to claim decreasing adjustments where further requirements were satisfied by the card provider/acquirer and the merchant. The

further requirements of this additional concession (called the *signed statement method*) were, broadly:

- the corporate card provider/acquirer had to obtain a signed statement from a merchant containing certain details about the supplier, the type of supplies made by the merchant, and whether GST for each supply was 1/11th of the price; and
 - the card statement had to indicate each supply that may not be a taxable supply, or for which GST payable was less than 1/11th of the price, and advise the cardholder to obtain an adjustment note if a decreasing adjustment was to be claimed for such an acquisition.
14. The benefit of the signed statement method was, where a merchant only made taxable supplies where GST was 1/11th of the price, the card provider/acquirer could calculate this amount of GST, and the cardholder could rely on this figure to claim decreasing adjustments. This concession was originally permitted until 30 June 2004, by which time it was expected the relevant systems would be upgraded to enable the card statement to display the specified information.
15. However, payment systems were not updated by 30 June 2004, and soon after that date the use of the signed statement method was extended to 30 June 2006. Payment systems were again not upgraded by the deadline, and after consultation with corporate card provider/acquirers and payment system providers, the Commissioner of Taxation agreed to reinstate the signed statement method and to do so on a permanent basis. Administrative discretions were issued by the Commissioner to relevant card providers to allow the signed statement method to be used in the interim.
16. During consultation it was agreed to consolidate the five revoked instruments into one legislative instrument, and to update the information requirements in the instruments to more accurately reflect industry practice, while preserving the integrity of the record keeping requirements in the GST Act. There are also some minor technical changes to ensure the consolidated instrument operates as intended.

Explanation

17. Provided the requirements of this instrument are met, for the purposes of attributing a decreasing adjustment (arising from an adjustment event in respect of an acquisition) to a tax period, a cardholder is not required (under subsection 29-20(3) of the GST Act) to hold an adjustment note for the decreasing adjustment [clause 5]. In summary, the corporate card statement may be used to claim decreasing adjustments where:
- the cardholder holds a corporate card statement for the decreasing adjustment that contains the information set out in clause 7;
 - the GST related information on the corporate card statement meets the accuracy requirements set out in clause 11;
 - the cardholder meets the requirements of clause 12 that ensure the cardholders use the statement accurately to claim decreasing adjustments;
 - clause 13 does not apply. This clause requires the cardholder to hold an adjustment note in relation to the decreasing adjustment where the statement shows an estimated adjustment amount, or there is an error in relation to the decreasing adjustment; and
 - the card statement issued by the corporate card provider meets the information requirements specified in this instrument by using either of two methods:
 - the accurate method provided by paragraph 6(2)(b); or

- the signed statement method provided by paragraph 6(2)(c).
18. The term 'estimated adjustment amount' has been used to distinguish it from 'adjustment'. The latter may be relied upon to claim decreasing adjustments, but the former may not.

Definition of corporate card provider

19. The definition of *corporate card provider* (in clause 4) requires the corporate card provider issuing the statement to be named in this instrument. This instrument expands this definition to include new card providers not mentioned in the revoked instruments; and entities authorised by the named card providers. If a card provider is named, it is not compulsory for the corporate card provider to offer card products that meet these requirements.
20. Cardholders should verify that their corporate card statement is intended to meet the requirements.

Information requirements for corporate card statement

21. Clause 7 sets out the transaction information that a corporate card statement must contain. The information is similar to that required on an adjustment note, with some changes to take into account the information that is readily available to card providers.

Accuracy requirements for the corporate card statement

22. Clause 11 sets out accuracy requirements for the corporate card statement. Subclause 11(1) clarifies that, if the card provider does not hold a supplier's ABN or has information that the supplier is not registered for GST, the card provider must not display an adjustment or an estimated adjustment amount on the corporate card statement. Subclause 11(2) contains a new requirement to ensure card providers do not place GST related information on a statement if they consider the information may be inaccurate. This ensures that any GST related information placed on the statement is required to be accurate, for example low value transactions that do not require a tax invoice must not display a GST figure if this is not accurate.

Cardholder requirements

23. Clause 12 provides:
- the cardholder must be able to take into account transactions of a private or domestic nature. This is because the card transaction may not break up the separate acquisitions, or adjustments in the same way as an adjustment note; and
 - a new requirement that the cardholder has policies in place to ensure that the adjustment note and the corporate card statement are not used to claim an decreasing adjustment for the same adjustment event more than once.
24. The first requirement of clause 12 above is unchanged from the similar requirements in the revoked instruments. The second requirement is to address potential risks evident in the revoked instruments.
25. Clause 13 requires a cardholder to hold an adjustment note if there is an estimated adjustment amount, or an error in relation to a particular transaction on a corporate card statement.

Use of any accurate method that meets information requirements

26. Where the signed statement method is not used, the card provider is required to use an accurate method to obtain the required transaction information [paragraph 6(2)(b)]. This method differs from the method provided by the revoked instruments, which required that the merchant provide all the information to the card provider, such as via

the EFTPOS system. This change increases flexibility for card providers. For example some cards can only be used to purchase taxable supplies of fuel and oil, and as such, card providers may still be able to provide accurate adjustment amounts without having the supplier transmit the adjustment for each transaction.

Use of signed statement method where information requirements are not met

27. In some instances all of the required information will be available to a card provider except for the adjustment to the GST payable. The signed statement method can be used in these circumstances [paragraph 6(2)(c)]. The requirements in clauses 11, 12 and 13 must be also met when using the signed statement method.
28. In many card systems a separate entity called an acquirer (not the card provider) provides the supplier with access to the card system. In such cases the acquirer may also use the signed statement method.
29. To use the signed statement method, the card provider/acquirer is required to obtain a signed statement from each merchant that, amongst other things:
 - contains information on the type of supplies (i.e. taxable, GST-free and/or input taxed supplies) made by the supplier and for which the corporate card is accepted as payment;
 - where the supplier only makes taxable supplies – states whether or not GST is calculated at 1/11th of the price for all the taxable supplies made by the supplier; and
 - provides the corporate card provider/acquirer with an undertaking that the corporate card provider/acquirer will be notified when the supplier:
 - ceases to be registered for GST; or
 - ceases to make only taxable supplies where the GST is calculated at 1/11th of the price [subclause 9(1)].
30. This instrument clarifies that the requirement to state the type of supplies made by a supplier refers to only supplies for which the corporate card is accepted as payment [paragraph 9(1)(c)].
31. This instrument now requires that an adjustment to the GST payable can only be calculated as 1/11th of the change in price where the supplier has indicated (on the signed statement) that it only makes taxable supplies where the GST is 1/11th of the price [paragraph 10(a)]. The cardholder may then rely on this calculation for claiming decreasing adjustments. Previously, the revoked instruments allowed the corporate card provider to calculate an adjustment for a supply for which GST payable was not 1/11th of the price.
32. Paragraph 10(b) provides that, where a supplier has indicated on the signed statement that the supplier makes taxable supplies where GST may not be 1/11th of the price, or is a mixed transaction supplier, the corporate card provider/acquirer may calculate an *estimated* adjustment to GST payable as 1/11th of the change in price of the relevant transaction. The estimated adjustment to the GST payable may be provided on the corporate card statement, but the estimate is for information purposes only as it cannot be relied upon to claim decreasing adjustments. The estimated adjustment amount can only be calculated in this way if:
 - the corporate card provider/acquirer indicates on the corporate card statement that the estimated adjustment amount for this transaction must be verified;
 - the corporate card provider/acquirer advises the cardholder to obtain an adjustment note for the supply before attributing a decreasing adjustment to a tax period (if required by subsection 29-20(3) of the GST Act); and

- at least one of the two requirements above is prominently displayed on the corporate card statement [subparagraphs 10(b)(i)-(iii) respectively].
33. This last requirement (provided by subparagraph 10(b)(iii)) is new and is to ensure cardholders are more clearly informed they cannot rely upon these estimated adjustment amounts. It is the cardholder's responsibility to adhere to the guidance provided on the statement, for example by putting in place systems that ensure employees collect and hold adjustment notes for estimated adjustment amounts when required.
34. An example of where the subparagraph 10(b)(iii) requirement is met is where the words 'Adjustment note required *' is prominently located adjacent to the estimated adjustment amount for a transaction, and there is a footnote with a further explanation regarding why the amount needs to be verified.
35. However, for electronic data files where all data may be numeric, the requirements of paragraph 10(b) will be met if the card provider provides sufficient guidance regarding how to identify these transactions.
36. *Mixed transaction supplier* is defined in clause 4. An example of a mixed transaction supplier is a service station that sells taxable fuel and GST-free food items.

Other changes to requirements

37. As part of the process of developing this instrument, minor changes were implemented to ensure that the instrument operates as intended, to address other minor risks, to remove redundant requirements and to reflect adjustment note requirements. The most important changes are:
- The date of issue of the statement has been included as a requirement. This is important as it provides evidence that the cardholder held the file on the date that they lodge their business activity statement (BAS), and reflects adjustment note requirements [paragraph 7(a)];
 - *Supplier* is defined to include an agent that a supplier makes a supply through. This ensures coverage for transactions where the merchant is acting as an agent for the supplier and reflects adjustment note requirements [clause 4];
 - the meaning of the term *corporate card* has been broadened to ensure it includes similar products that do not have a physical card issued [clause 4];
 - the meaning of the term *corporate card statement* has been broadened to ensure it includes electronic data files. This recognises that paper based statements are in some cases no longer issued to some cardholders [clause 4]; and
 - The following terms have been updated to better reflect their intended meaning: *member* has been replaced by *cardholder*; *mixed supply* has been replaced by *mixed transaction supplier*; and *merchant* has been replaced by *supplier* [clause 4].

No time limit on use of the signed statement method

38. Use of the signed statement method was previously allowed until 30 June 2004 and was then extended to 30 June 2006. Provided the requirements of this instrument are satisfied, use of this method is now permitted until this instrument ceases to have effect.

Waiver of tax invoice instrument

39. The requirements of this instrument are designed to work in conjunction with the related Waiver of Tax Invoice Instrument - *Goods and Services Tax: Waiver of Tax Invoice Requirement (Corporate Card Statements) Legislative Instrument (No. 1) 2008*.

Consultation:

40. The consultation was undertaken in conjunction with the consultation for the Waiver of Tax Invoice Instrument - *Goods and Services Tax: Waiver of Tax Invoice Requirement (Corporate Card Statements) Legislative Instrument (No. 1) 2008*, as the substantive requirements are similar. All card providers named on either the waiver of tax invoice or waiver of adjustment note instruments were notified and invited to comment on the proposed changes, as these are the entities that provide compliant products to the users of the instruments (being the cardholders). A tax practitioner industry forum and sample of cardholders were also consulted.
41. This consultation included feedback on the signed statement concession and other proposed substantive changes. Card providers provided feedback from cardholders who relied on the statements and provided comments on perceived risks. Some stakeholders had concerns that the current statements did not clearly indicate when adjustment notes were required, and that some users of the statements may inadvertently be claiming decreasing adjustments without holding a required adjustment note. As a result, the signed statement method was modified to balance cardholder and card provider needs with the requirement that the card statements contain accurate GST information comparable to an adjustment note, and to ensure that information was appropriately used by cardholders.
42. Some card providers indicated that they could not practically implement the signed statement method and would like an alternative to be available. This request was addressed by broadening the requirements to allow any accurate method to be adopted. This new method provides card providers with the flexibility to develop methods that meet their specific circumstances.

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Deputy Commissioner of Taxation
[27 August 2008]

Legislative references:

A New Tax System (Goods and Services Tax) Act 1999
Legislative Instruments Act 2003