

# ***MT 2009/1A1 - Addendum - Miscellaneous taxes: notification requirements for an entity under section 105-55 of Schedule 1 to the Taxation Administration Act 1953***

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! Tax Laws Amendment (2009 GST Administration Measures) Act 2010 received Royal Assent on 24 March 2010 and will affect this publication. The relevant amendments apply to GST returns lodged and GST assessments issued from the time of announcement (7.30 pm Australian Eastern Standard Time on 12 May 2009). The relevant amendments also apply to revisions to these returns and amended assessments issued or made after this time. For more details refer to the [new legislation](#).

! View the [consolidated version](#) for this notice.



## Addendum

### Miscellaneous Taxation Ruling

#### Miscellaneous taxes: notification requirements for an entity under section 105-55 of Schedule 1 to the *Taxation Administration Act 1953*

This Addendum amends Miscellaneous Taxation Ruling MT 2009/1 to reflect the amendments made to section 105-55 of Schedule 1 to the *Taxation Administration Act 1953* under the *Tax Laws Amendment (2009 GST Administration Measures) Act 2010*.

These amendments introduced subsection 105-55(2A), which provides that a request that an entity makes to the Commissioner to treat a document as tax invoice for the purposes of attributing a credit to a tax period is taken to be notification of the entity's entitlement to the credit for the purposes of paragraph 105-55(1)(a) if certain conditions are satisfied.

#### Miscellaneous Taxation Ruling MT 2009/1 is amended as follows:

##### 1. Paragraph 9

Omit 'An entitlement does not cease to exist'; substitute 'An entitlement does not cease to exist under section 105-55'.

##### 2. Paragraph 10

After the paragraph insert:

10A. *Tax Laws Amendment (2009 GST Administration Measures) Act 2010* introduced subsection 105-55(2A), which provides that a request by an entity to the Commissioner to treat a document as a tax invoice for the purposes of attributing a credit to a tax period is taken to be a notification, for the purposes of paragraph 105-55(1)(a), of the entity's entitlement to the credit if:

- (a) the entity made the request within the four-year period referred to in that paragraph in relation to the credit, and
- (b) the Commissioner agrees to the request (whether or not the Commissioner's agreement occurs within that four-year period).

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### 3. Paragraph 16

After the paragraph insert:

16A. Under subsection 105-55(2A), a request an entity makes to the Commissioner to treat a document as a tax invoice for the purposes of attributing a credit to a tax period is taken to be a valid notification, for the purposes of paragraph 105-55(1)(a), of the entity's entitlement to the credit if:

- the entity makes the request within the four-year period referred to in that paragraph in relation to the credit;<sup>2A</sup>
- the Commissioner agrees to that request (whether or not within that four-year period); and
- the request relates to an acquisition that is (or will be) taken into account in an activity statement that is lodged after 7.30 pm Australian Eastern Standard Time on 12 May 2009 or an acquisition that is (or will be) taken into account in an assessment made by the Commissioner under Subdivision 105-A after that time<sup>2B</sup> (it does not matter whether the request itself was made before, on or after 12 May 2009).

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<sup>2A</sup> To ensure that an entitlement to an input tax credit does not cease under section 93-5 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act), an entity must make the request not later than four years after the end of the tax period to which the credit would be attributable under subsection 29-10(1) or (2) of the GST Act (see paragraph 93-10(3)(b) of the GST Act). To ensure that an entitlement to a fuel tax credit for an acquisition of taxable fuel does not cease to exist under section 47-5 of the *Fuel Tax Act 2006*, an entity must make the request not later than four years after the end of the tax period to which the credit would be attributable under subsection 65-5(1) of the *Fuel Tax Act 2006* (see paragraph 47-10(3)(b)).

<sup>2B</sup> Item 19 in Schedule 1 to the *Tax Laws Amendment (2009 GST Administration Measures) Act 2010*. Under this item, a request may also constitute a valid notification if it relates to an acquisition that is taken into account in an amendment of an activity statement that was lodged after 7.30 pm Australian Eastern Standard Time on 12 May 2009 or an amendment of an assessment that was made by the Commissioner under Subdivision 105-A after that time.

**4. Paragraph 44**

Omit the paragraph; substitute:

44. In some cases the manner in which the notification relates to each tax period may be obvious and not require detailed elaboration, particularly where the notification identifies a discrete error made by an entity in its activity statements over a period of time. For example, an entity explains in a letter to the Commissioner that it conducted an enterprise in which it acquired cans of soft drink and held tax invoices for each acquisition, but failed to claim input tax credits for those acquisitions on the mistaken understanding that the supplies of the soft drink to it were GST-free. The letter notes that these input tax credits were attributable to each tax period from 1 January 2007 to 30 September 2008. The letter does not need to further elaborate how the entitlement relates to each tax period, nor does it need to separately list each tax period between 1 January 2007 and 30 September 2008.

**5. Paragraph 60**

After the paragraph insert:

**Request for the Commissioner to treat a document as a tax invoice**

60A. Under subsection 105-55(2A), a request an entity makes to the Commissioner to treat a document as a tax invoice for the purposes of attributing a credit to a tax period is taken to be a valid notification of the entity's entitlement to the credit if:

- the entity makes the request within the four-year period referred to in that paragraph in relation to the credit;<sup>11</sup>
- the Commissioner agrees to that request (whether or not within that four-year period); and

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<sup>11</sup> To ensure that an entitlement to an input tax credit does not cease under section 93-5 of the GST Act, an entity must make the request not later than four years after the end of the tax period to which the credit would be attributable under subsection 29-10(1) or (2) of the GST Act (see paragraph 93-10(3)(b) of the GST Act). To ensure that an entitlement to a fuel tax credit for an acquisition of taxable fuel does not cease to exist under section 47-5 of the *Fuel Tax Act 2006*, an entity must make the request not later than four years after the end of the tax period to which the credit would be attributable under subsection 65-5(1) of the *Fuel Tax Act 2006* (see paragraph 47-10(3)(b)).

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- the request relates to an acquisition that is (or will be) taken into account in an activity statement that is lodged after 7.30 pm Australian Eastern Standard Time on 12 May 2009 or an acquisition that is (or will be) taken into account in an assessment made by the Commissioner under Subdivision 105-A after that time<sup>12</sup> (it does not matter whether the request itself was made before, on or after 12 May 2009),

60B. Subsection 29-70(1B) of the *A New Tax System (Goods and Services Tax) Act 1999* provides that the Commissioner may treat as a tax invoice a document that would not otherwise be a tax invoice. Law Administration Practice Statement PS LA 2004/11 sets out the matters that the Commissioner will take into account in deciding whether to exercise this discretion in any given case. Amongst other things, the Commissioner considers that regard must be had to whether, on the available evidence, it is reasonable to conclude that a creditable acquisition has been made. For this reason, an entity that is considering making a request to the Commissioner to treat a document as a tax invoice should, if the entity would like that request to also constitute a valid notification for section 105-55 purposes, provide the same level of information required of other section 105-55 notices (summarised in the second dot point in paragraph 12 of this Ruling). Failure to do so may mean that the Commissioner does not agree to the request on the basis that it is speculative and there is not enough information to conclude that there has been a creditable acquisition. This, in turn, would mean that the request would not constitute a valid notification for the purposes of section 105-55.

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<sup>12</sup> Item 19 in Schedule 1 to the *Tax Laws Amendment (2009 GST Administration Measures) Act 2010*. Under this item, a request may also constitute a valid notification if it relates to an acquisition that is taken into account in an amendment of an activity statement that was lodged after 7.30 pm Australian Eastern Standard Time on 12 May 2009 or an amendment of an assessment that was made by the Commissioner under Subdivision 105-A after that time.

60C. Subsection 105-55(2A) is not restricted to applying to input tax credits and may apply in relation to any type of credit for which a tax invoice is required in order to attribute the credit to a tax period. Paragraph 65-5(1)(a) of the *Fuel Tax Act 2006* provides that a fuel tax credit that an entity that is registered or required to be registered for GST is entitled to for a creditable acquisition of fuel is attributable to the same tax period that the input tax credit for the fuel is attributable to under the GST Act. If a tax invoice is required to attribute the input tax credit for the creditable acquisition of fuel to a tax period, it follows that the invoice would also be required to attribute the fuel tax credit. Accordingly, in such an instance, a request that an entity makes to the Commissioner to treat a document as a tax invoice may, if the requirements of section 105-55(2A) are met, be taken to be a valid notification of the entity's entitlement to both an input tax credit and a fuel tax credit. To avoid any doubt that the purpose of a request is to attribute a fuel tax credit to a tax period (in addition to an input tax credit), an entity should consider providing the same level of information about the fuel tax credit that it would be required to provide under other section 105-55 notices (summarised in the second dot point in paragraph 12 of this Ruling).

***Should the request be in writing?***

60D. Neither subsection 105-55(2A) nor subsection 29-70(1B) of the GST Act expressly state that a request by the entity to treat a document as a tax invoice should be in writing. However, the Commissioner would need to have sufficient evidence to be able to conclude that the entity made a creditable acquisition. It would only be in very rare circumstances that a request made orally would be able to satisfy this requirement. Accordingly, an entity should make such a request in writing.

**6. Paragraph 70**

Insert:

Request for the Commissioner to treat a document as a tax invoice	60A
<i>Should the request be in writing?</i>	60D

**7. Legislative references**

Insert:

- TAA 1953 Sch 1 Subdiv 105-A
- TAA 1953 Sch 1 105-55(2A)
- ANTS(GST)A 1999 29-10(1)
- ANTS(GST)A 1999 29-10(2)

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- ANTS(GST)A 1999 29-70(1B)
- ANTS(GST)A 1999 93-5
- ANTS(GST)A 1999 93-10(3)(b)
- FTA 2006 47-5
- FTA 2006 47-10(3)(b)
- FTA 2006 65-5(1)
- FTA 2006 65-5(1)(a)
- Tax Laws Amendment (2009 GST Administration Measures) Act 2010 Sch 1 19

This Addendum, other than to the extent it discusses Division 47 of the *Fuel Tax Act 2006*, applies in relation to acquisitions that are taken into account in:

- activity statements lodged after 7.30 pm Australian Eastern Standard Time on 12 May 2009 or assessments made by the Commissioner under Subdivision 105-A after that time, or
- amendments of an activity statement that was lodged after 7.30 pm Australian Eastern Standard Time on 12 May 2009 or amendments of an assessment that was made by the Commissioner under Subdivision 105-A after that time.

To the extent the Addendum discusses Division 47 of the *Fuel Tax Act 2006*, the Addendum applies in relation to acquisitions that are taken into account in activity statements lodged on or after 1 July 2010 or amendments of such statements.

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**Commissioner of Taxation**

1 June 2011

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ATO references

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