PS LA 2004/11 - The Commissioner's discretions to treat a particular document as a tax invoice or adjustment note

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Please note that we are currently updating this document due to the recent release of Goods and Services Tax Ruling
GSTR 2013/1 *Goods and services tax: tax invoices*.

Refer to end of document for amendment history. Prior versions can be requested by emailing TCNLawPublishingandPolicy@ato.gov.au if required.

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Practice Statement Law Administration

PS LA 2004/11

Refer to end of document for amendment history. Prior versions can be obtained from the Practice Statements mailbox if required.

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This Practice Statement is issued under the authority of the Commissioner and must be read in conjunction with Law Administration Practice Statement PS LA 1998/1. It must be followed by tax officers unless doing so creates unintended consequences or where it is considered incorrect. Where this occurs, officers must follow their business line's escalation process.

Taxpayers can rely on this Practice Statement to provide them with protection from interest and penalties in the way explained below. If a statement turns out to be incorrect and taxpayers under-pay their tax as a result, they will not have to pay a penalty. Nor will they have to pay interest on the under-payment provided they reasonably relied on this Practice Statement in good faith. However, even if they don't have to pay a penalty or interest, taxpayers will have to pay the correct amount of tax provided the time limits under the law allow it.

SUBJECT: **The Commissioner's discretions to treat a particular document as a tax invoice or adjustment note**

PURPOSE: **To guide officers in the exercise of the statutory discretions contained in subsections 29-70(1) and 29-75(1) of the *A New Tax System (Goods and Services Tax) Act 1999***

STATEMENT

1. The Commissioner has a discretion to treat as a tax invoice a particular document that does not meet the requirements for being a tax invoice.[1] A similar discretion exists in relation to adjustment notes.[2] In appropriate cases, these discretions allow for flexibility to the otherwise strict information requirements for tax invoices and adjustment notes.[3] This practice statement provides guidance to Tax Office staff as to how they may exercise these discretions.

[1] *A New Tax System (Goods and Services Tax) Act 1999*, ('the GST Act') – subsection 29-70(1). Legislative references in this Practice Statement are to the GST Act unless otherwise stated.
[2] Subsection 29-75(1).
[3] These discretions have already been considered in various Public Rulings – see paragraphs 25 to 40 of Goods and Services Tax Ruling GSTR 2000/17 and Addendum GSTR 2000/17A (tax invoices) and paragraphs 31, 48, and 52–58 of Goods and Services Tax Ruling GSTR 2000/1 (adjustment notes) where the Commissioner has discussed the exercise of these discretions.

Situations in which it may be unnecessary or inappropriate to consider the discretions

2. In some circumstances it might not be appropriate for officers to consider the exercise of these discretions. This may be the case if:

- the officer has decided that the recipient held a valid tax invoice or adjustment note at the time they claimed the input tax credit or decreasing adjustment in their activity statement, but the document has been subsequently lost or destroyed (this is considered further at paragraph 31)
- there is evidence of fraud by the entity making the request. In such a case, there is little or no prospect of the discretions being exercised. Officers should follow relevant fraud referral guidelines
- there is other relevant GST compliance work being undertaken in relation to the same entity **and** it is appropriate for the discretions to be considered during that other work. In such cases officers should follow any relevant work allocation procedures. If there are no such procedures, the two work areas should negotiate the most appropriate area to consider the decision.

Decisions that should be escalated

3. Some cases involving the discretions should be referred to an appropriate senior officer for a decision in accordance with the guidance set out in Attachment A.[4]

The following decisions should be escalated to an appropriate Senior Executive Service (SES) officer:

- if the exercise of the discretions is being considered at the request of a supplier
- if the exercise of the discretions is being considered for recipient created tax invoices (RCTIs) that an entity has issued
- if a legislative determination under subsections 29-10(3) or 29-20(3) might be more appropriate or has been requested,[5] or
- if the circumstances are not otherwise covered by this practice statement, or if the application of this practice statement to the particular facts produces a result that does not seem sensible, or does not accord with the compliance model or the Taxpayers' Charter.

The following decisions should be escalated to an appropriate Executive Level 2 (EL2) officer:

- If we are requested by a recipient to exercise the discretion before the supply has even occurred and before a document is sought or obtained from the supplier.

[4] The case officer should prepare a submission based on the facts and other information provided by the taxpayer.

[5] Subsection 29-10(3) allows the Commissioner to determine circumstances in which a tax invoice is not required in order to claim input tax credits. Subsection 29-20(3) applies to adjustment notes. These decisions can only be made by an SES officer. Examples of where such legislative determinations have been considered appropriate can be found on ATO*law*.

Situations in which officers are considering whether to exercise the discretions

4. It is not possible to set out all the circumstances in which the discretions may or may not be exercised. Cases that appear similar may have different outcomes based upon their particular facts. Each case has to be considered on its merits and on the basis of all the relevant facts. Officers must take care not to consider irrelevant considerations, and must exercise their own judgment in arriving at an appropriate decision. The decision should be made in good faith and without bias, and must not be made at the direction of another person.

5. There are a number of different broad types of situations that may require the discretions to be considered, most of which are dealt with in this practice statement. The main situations covered by this practice statement involve recipients who are claiming an input tax credit or decreasing adjustment, but do not hold the necessary tax invoice or adjustment note. In these cases, there are various steps officers must take in considering whether the discretions should be exercised. These steps are discussed in detail below in paragraphs 9, 10 and 22 - 28. Any situations not covered by this practice statement must be escalated as explained in paragraph 3.

6. As an important preliminary step, officers should establish that a tax invoice or adjustment note is required in order to claim the input tax credit or decreasing adjustment. This is considered further at paragraph 12.

7. The most common situations will occur during Tax Office verification activities. In such cases, if the officer has found that the recipient did not hold a valid tax invoice or adjustment note at the time of lodging the relevant activity statement, they must consider the use of the discretions before deciding whether to disallow a claim for an input tax credit or decreasing adjustment.

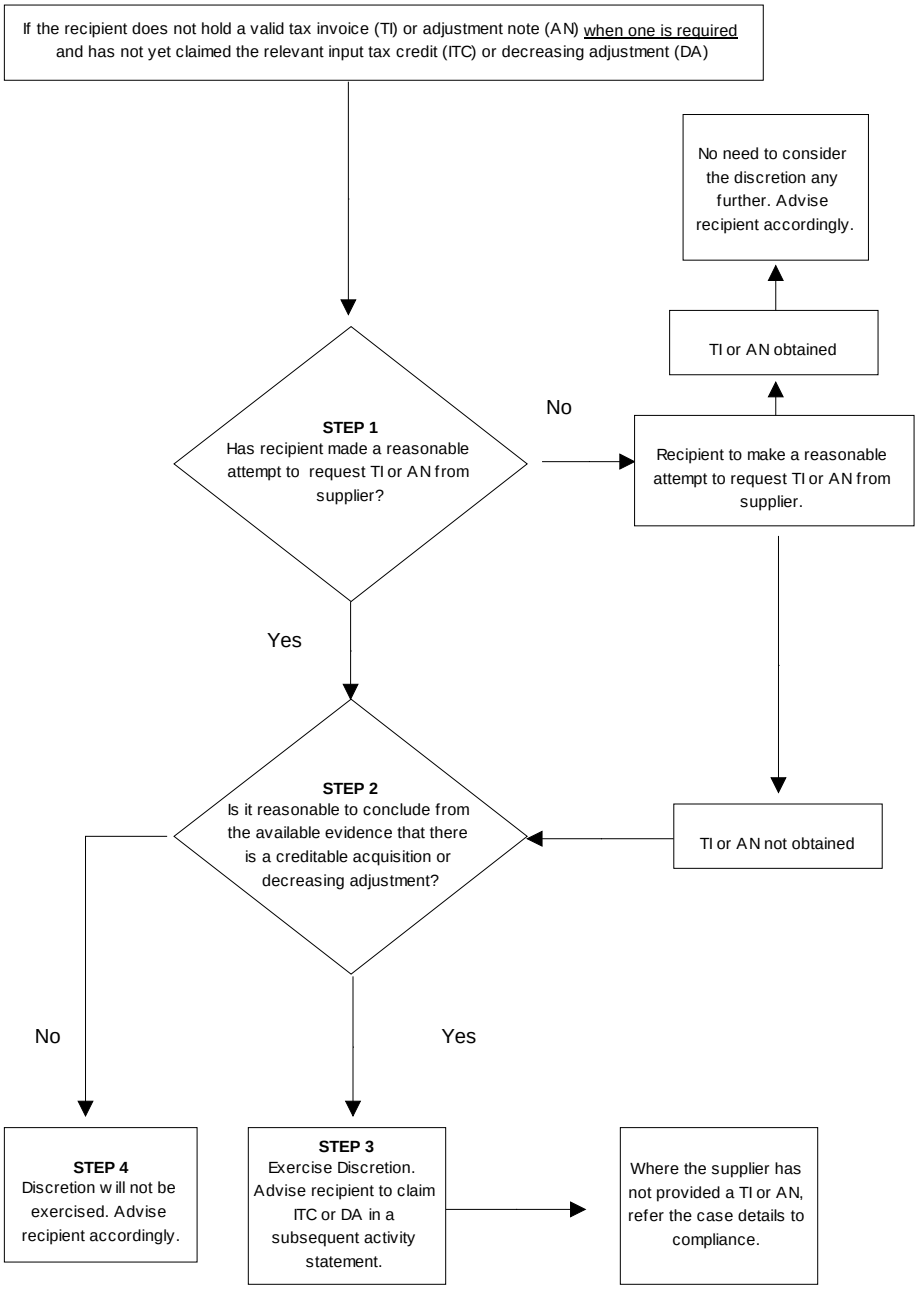
Considering the exercise of the discretions for a recipient who does not hold a valid tax invoice or adjustment note

8. If the input tax credit or decreasing adjustment has not yet been claimed, different considerations apply compared with the situation where a claim has already been made. If a claim has already been made, this could present a greater risk than the situation where a taxpayer approaches the Tax Office for advice in the first instance. To acknowledge the different circumstances, there is a separate approach for each situation. The flowchart in paragraph 9 summarises the approach for cases where the recipient has not claimed the input tax credit or decreasing adjustment. The flowchart in paragraph 10 summarises the approach where the recipient has already claimed the input tax credit or decreasing adjustment. The two approaches are explained in more detail in paragraphs 22-30.

Recipient has not yet claimed input tax credit or decreasing adjustment

9. If the recipient has not yet claimed an input tax credit or decreasing adjustment, the decision making process is outlined in Flowchart 1 and explained further below in paragraphs 22-25.[6] Officers should ensure that a tax invoice or adjustment note is required in order to claim the input tax credit or decreasing adjustment (see paragraph 12). Generally, the discretion will be exercised if the recipient has made a creditable acquisition or has a decreasing adjustment, and has made a reasonable attempt in the circumstances to obtain the tax invoice or adjustment note from the supplier.

Flowchart 1

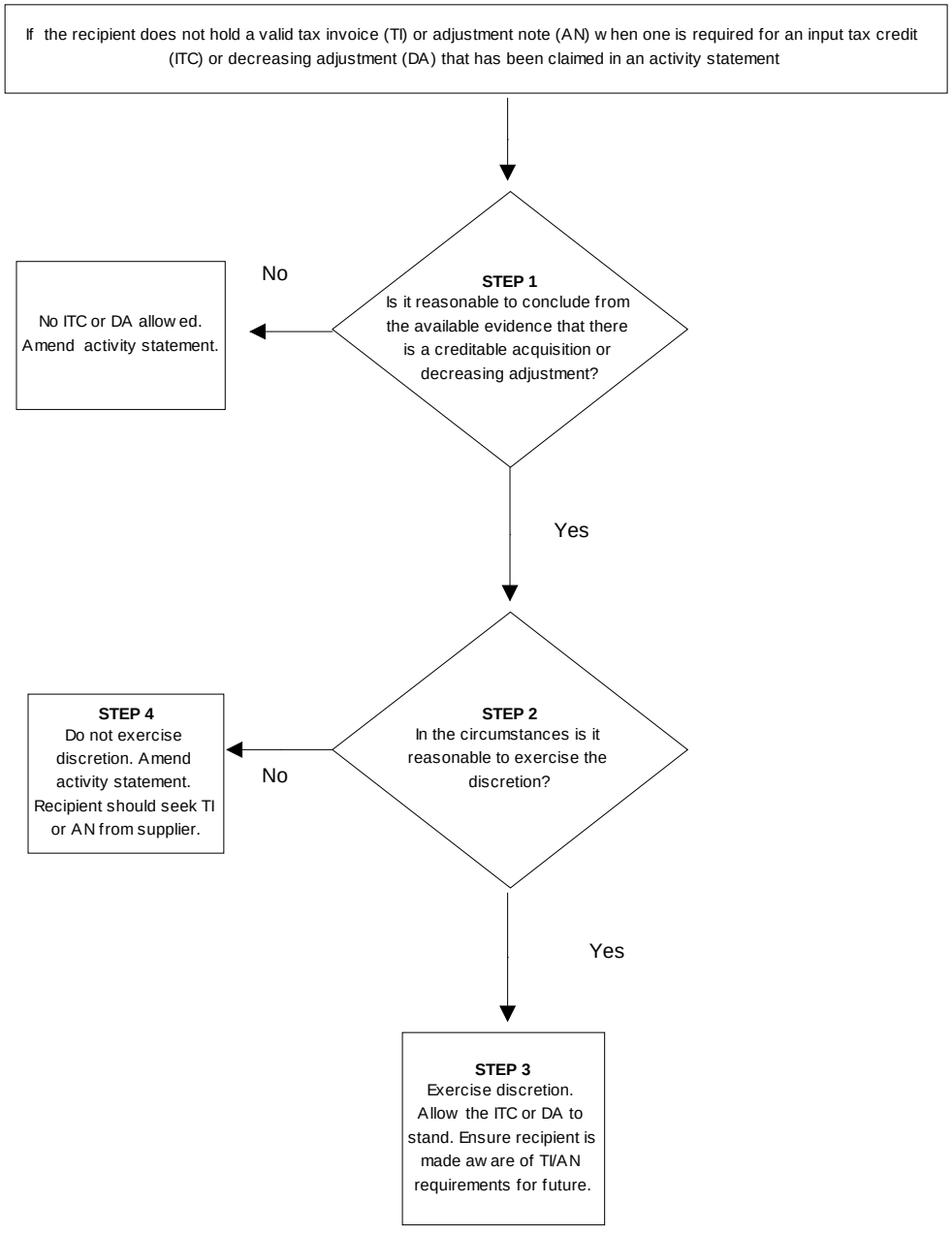


[6] See also examples 6 and 7 in Attachment B for illustrations of this process.

Recipient has claimed input tax credit or decreasing adjustment

10. If the recipient has already claimed an input tax credit or decreasing adjustment, the decision making process is outlined in Flowchart 2 and explained further below in paragraphs 26-30.[7] Officers should ensure that a tax invoice or adjustment note is required in order to claim the input tax credit or decreasing adjustment (see paragraph 12). The discretion should be exercised if the recipient has made a creditable acquisition or decreasing adjustment, and has made a genuine attempt (in their circumstances) to comply.

Flowchart 2



[7] See also examples 1, 2, 3, 4 and 5 in Attachment B for illustrations of this process.

EXPLANATION

The importance of tax invoices and adjustment notes in the GST system

11. Tax invoices and adjustment notes are key integrity measures under the GST system. In a transaction-based tax such as GST, they form an essential part of the audit trail and are important evidence that taxable supplies and adjustment events have occurred.[8] The GST system is partially 'self policing' in the sense that parties to transactions know, or should know, their respective obligations and the information to be included on relevant documents. A recipient of a taxable supply will rely on the tax invoice or adjustment note in fulfilling their own tax obligations, for example, to determine whether there was GST included in the price and how much input tax credit may be claimed. Therefore it is important that those documents contain the required information and are issued in a timely manner.

When a tax invoice or adjustment note is required

12. Recipients who have made a creditable acquisition or have a decreasing adjustment generally must not claim an input tax credit or decreasing adjustment if they do not hold a valid tax invoice or adjustment note. Exceptions to this rule include:

- if the value of the taxable supply is $75 or less or the amount of the decreasing adjustment is $50 or less[9]
- if the Commissioner determines in writing that the requirement does not apply[10]
- if second hand goods have been acquired and a record of the acquisition has been made[11]
- if creditable acquisitions are made of 'reverse charged' supplies made by non-residents or[12]
- if the GST on a taxable supply is payable by the recipient because of section 15C of Division 2 of the *A New Tax System (Goods and Services Tax Transition) Act 1999* (GST Transition Act).[13]

[8] Adjustment notes are only required for adjustments arising from adjustment events.
[9] Section 29-80 and regulation 29-80.01.
[10] Subsection 29-10(3), for example see Goods and Services Tax Ruling GSTR 2000/26 dealing with corporate credit card statements. The relevant provision for adjustment notes is subsection 29-20(3).
[11] Subsection 66-17(1).
[12] Subsection 83-35(3).
[13] Division 2 of Part 3 of the GST Transition Act applies to agreements spanning both 1 July 2000 and 1 July 2005. In the circumstances described in section 15C of that Act, the GST on a taxable supply made under such an agreement is payable by the recipient (to the extent the supply is made on or after a certain date occurring on or after 1 July 2005). Section 15H of that Act provides that subsections 29-10(3) and 29-20(3) of the GST Act do not apply, so that, respectively, an input tax credit may be claimed without holding a tax invoice or a decreasing adjustment made without holding an adjustment note.

Suppliers' obligations to provide tax invoices or adjustment notes

13. Suppliers of taxable supplies are obliged to issue tax invoices and adjustment notes to recipients within 28 days after the recipient requests them.[14] Suppliers who fail to issue a tax invoice or adjustment note as required are liable to an administrative penalty under section 288-45 of Schedule 1 to the TAA. If a tax invoice or adjustment note is not provided by the supplier as a normal incident of the transaction, the recipient should make a reasonable attempt to request one.[15] If a tax invoice or adjustment note is not received within 28 days after the request, the recipient should contact the Tax Office for assistance, providing details of the transaction and any attempt(s) to request the document. Our approach in these cases is explained in paragraphs 22-25.

14. Suppliers do not need to issue tax invoices or adjustment notes if:

- the value of the taxable supply is $75 or less or the amount of the decreasing adjustment is $50 or less,[16] or
- the GST on a taxable supply is payable by the recipient because of section 15C of Division 2 of the GST Transition Act.

The Commissioner's discretions to treat a particular document as a tax invoice or adjustment note

15. If a particular document does not meet the requirements of a tax invoice or adjustment note, subsections 29-70(1) and 29-75(1) of the A New Tax System (Goods and Services Tax) Act 1999 (GST Act) give the Commissioner a discretion to treat the document as a tax invoice or adjustment note.

16. The discretions in subsections 29-70(1) and 29-75(1) are administrative discretions. Decisions about and notification of the exercise of the discretion fall outside the Provision of Written Advice guidelines. Officers must ensure they are authorised to make the decision (check the Taxation Authorisations Guidelines here – link available to Tax Office staff only), and must follow their area's work practices when recording their decision and communicating with the recipient. The decision should be documented with sufficient information to allow a later review, if necessary.

17. The discretions must be exercised in a balanced way that is consistent with the Taxpayers' Charter and the Compliance Model, and that gives due weight to the importance of tax invoices and adjustment notes as key integrity measures. The discretions are not intended to allow taxpayers to repeatedly avoid complying with the clear legislative requirements, if they have already been made aware of those requirements. The Tax Office's aim is to have suppliers and recipients aware of, and complying with, the requirements under the law.

18. Officers may use the discretions in a number of situations, the majority of which involve recipients' claims for input tax credits or decreasing adjustments. The process for making these decisions will depend on whether or not the recipient has already claimed the input tax credit or decreasing adjustment.

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[14] See subsections 29-70(2) and 29-75(2). A supplier must also issue an adjustment note if they issued a tax invoice in relation to the supply and they become aware of the adjustment before an adjustment note is requested.
[15] What constitutes a 'reasonable attempt' to request a tax invoice is discussed in paragraph 25.
[16] Subsection 29-80(1) and regulation 29-80.01.

19. In either case, an important step in deciding whether to exercise the discretions is being satisfied that there is sufficient evidence of the recipient making a creditable acquisition (under Division 11 of the GST Act) or having a decreasing adjustment (under Division 19 of the GST Act). To substantiate the correct input tax credit entitlement, officers should verify the price of the relevant goods or services, the amount of GST included in the price, and the names, addresses and Australian business numbers (ABNs) of each party to the transaction. In the case of a decreasing adjustment, officers should also determine the amount of the adjustment event and calculate the amount of the adjustment (that is, the change to GST as a result of the adjustment event).

20. If the recipient has not yet claimed an input tax credit or decreasing adjustment, the decision making process is outlined in Flowchart 1 (paragraph 9) and explained further below in paragraphs 22-25.

21. If the recipient has already claimed an input tax credit or decreasing adjustment, the decision making process is outlined in Flowchart 2 (paragraph 10) and explained further below in paragraphs 26-30.

If the recipient does not hold a tax invoice or adjustment note, and has not yet claimed the relevant input tax credit or decreasing adjustment

22. The recipient of a taxable supply may call or write to the Tax Office requesting advice because they have made a creditable acquisition or have a decreasing adjustment but they have not been able to obtain a valid tax invoice or adjustment note from the supplier. The situation could also arise during Tax Office verification activities, such as a field visit.

23. Officers should ensure that a tax invoice or adjustment note is needed for the recipient to claim the input tax credit or decreasing adjustment. Refer to paragraph 12 for a discussion of when a tax invoice or adjustment note is required.

24. Officers should follow the steps below in deciding whether to exercise the discretion.[17]

    STEP 1 – Has the recipient made a reasonable attempt to request the tax invoice or adjustment note from the supplier?

    If YES, go to step 2.

    If NO, advise the recipient to make a reasonable attempt to request a valid document from the supplier (see paragraph 25 for a discussion of what constitutes a 'reasonable attempt').

    - If the recipient obtains a tax invoice or adjustment note, they can claim the input tax credit or decreasing adjustment in the next or a subsequent activity statement.
    - If the supplier has failed or refused to provide the requested document, or the recipient was unable to locate or contact the supplier, go to step 2.

[17] These steps are diagrammatically represented in paragraph 9 of this Practice Statement. Also see Examples 6 and 7 in Attachment B for an application of this decision process.

STEP 2 – Is it reasonable to conclude from the available evidence that the recipient has made a creditable acquisition or has an adjustment from an adjustment event (see paragraph 19)?

If YES, exercise the discretion – go to step 3.

If NO, the discretion will not be exercised – go to step 4.

STEP 3 – Exercise the discretion to treat a particular document as a tax invoice or adjustment note. If there is sufficient evidence to establish a creditable acquisition or decreasing adjustment, there will be some document on which the discretion can operate. Advise the recipient to claim the input tax credit or decreasing adjustment in the next or a subsequent activity statement, provided the other requirements for attribution have been met.[18] Officers should refer details of the case to the relevant compliance area for possible action in respect of the supplier's behaviour.

STEP 4 – If the answer at step 2 was 'no', do not exercise the discretion and advise the recipient of the decision and the reasons for the decision.

What is meant by 'a reasonable attempt to request a tax invoice or adjustment note'?

25. Officers must use their judgment in deciding what is reasonable after considering all the circumstances of the case. The Tax Office expects the recipient to make a genuine attempt to contact the supplier and request the tax invoice or adjustment note. However, the recipient is not expected to go to extraordinary lengths or great expense to pursue the supplier for the document. The Tax Office will not necessarily require a written request to be made to the supplier. However, such a document would provide clear evidence of the attempt and would provide more reliable proof than recollections of verbal requests, if action was later taken against the supplier. Officers should obtain details of the recipient's efforts, including copies of any letters sent to the supplier, and refer this information to compliance.

If the recipient does not hold a tax invoice or adjustment note and an input tax credit or decreasing adjustment has been claimed in an activity statement

26. This situation will usually arise during Tax Office verification activities, but may arise on other occasions, for example when the recipient has discovered the error and brings this to the attention of the Tax Office. In considering the exercise of the discretion, officers must adopt a case by case approach, based on the compliance model. The Tax Office wishes to encourage future compliance as well as uphold the importance of tax invoices and adjustment notes. If there is a creditable acquisition or decreasing adjustment, and the recipient has made a genuine attempt (in their circumstances) to comply, the discretion should be exercised.

27. Officers should ensure that a tax invoice or adjustment note is needed for the recipient to claim the input tax credit or decreasing adjustment. Refer to paragraph 12 for a discussion of when a tax invoice or adjustment note is required.

[18] See sections 29-5, 29-10 and 29-20. While the input tax credit or decreasing adjustment could be attributable to the first period the particular document was held, the most convenient and practical solution in these cases is for the recipient to make the claim in the next activity statement lodged. This would avoid the need to revise the earlier activity statement.

28. Officers should follow the steps below in deciding whether to exercise the discretion[19]

STEP 1 – Is it reasonable to conclude from the available evidence that the recipient has made a creditable acquisition or has an adjustment from an adjustment event (see paragraph 19)?

If YES, go to step 2.

If NO, the discretion will not be exercised and the recipient must be advised accordingly. Amend the activity statement to disallow the input tax credit or decreasing adjustment.

STEP 2 – In the circumstances is it reasonable to exercise the discretion? The key focus here is whether the recipient, through its actions, has made a genuine attempt to meet the requirements to hold a tax invoice or adjustment note. The answer to this question will depend on your judgment. Officers should consider all relevant circumstances, and not irrelevant circumstances when reaching a decision. Some factors which may be relevant are set out in paragraphs 29-30.

If YES, exercise the discretion – go to Step 3.

If NO, do not exercise the discretion – Go to Step 4.

STEP 3 – If the answer at step 2 was Yes, exercise the discretion to treat a particular document, that was held at the time the relevant activity statement was lodged, as a tax invoice or adjustment note.

- If there is sufficient evidence to establish a creditable acquisition or decreasing adjustment, there will be some document on which the discretion can operate (for example, invalid tax invoice, normal invoice, contract, etc).
- The recipient will be taken to have held a tax invoice or adjustment note at the time of giving the GST return in which the credit or decreasing adjustment was claimed. If the other requirements for attribution have been met,[20] the recipient will have made a valid input tax credit claim or decreasing adjustment and there is no need to take any further action in respect of this claim.
- The recipient must be given clear advice about the requirements to hold a tax invoice or adjustment note and advised to take steps to avoid similar problems in future. If the tax invoice or adjustment note problems are caused by the supplier, and the supplier does not comply in the future, we would expect the recipient to approach the Tax Office in the first instance, before claiming an input tax credit or decreasing adjustment.
- If the supplier has not issued a valid tax invoice, consider whether to refer details to compliance for possible follow-up action. For example, was the problem a significant one likely to be repeated and cause problems for other recipients?

[19] These steps are diagrammatically represented in paragraph 10 of this Practice Statement. Also see Examples 1 to 5 in Attachment B for an application of this decision process.
[20] See sections 29-5, 29-10 and 29-20.

STEP 4 – If the answer at step 2 was No, do not exercise the discretion. Officers must:

- amend the activity statement to disallow the input tax credit or decreasing adjustment.
- advise the recipient to keep and retain adequate records of their GST transactions and indicate that failure to do so could lead to an administrative penalty.
- advise the recipient to make a reasonable attempt to obtain a tax invoice or adjustment note from the supplier. What constitutes making a reasonable attempt to request the document is explained at paragraph 25.
- advise that, if a tax invoice or adjustment note is subsequently obtained, the input tax credit or decreasing adjustment can be claimed in a later activity statement.
- advise that if the recipient makes a reasonable attempt to request a tax invoice or adjustment note, but is not able to obtain one, they may make a new request for the exercise of the discretion. The recipient's new request should be considered as if the input tax credit or decreasing adjustment had not been claimed before – that is, in accordance with the first flowchart in paragraph 9 and the discussion in paragraph 22-25.
- consider whether to refer details of the supplier's actions to compliance for possible follow-up action. For example, was the problem a significant one likely to be repeated and cause problems for other recipients?

In what circumstances would it be reasonable to exercise the discretion for the recipient?

29. If there is a creditable acquisition or decreasing adjustment, and the recipient has made a genuine attempt (in their circumstances) to comply, the discretion should be exercised. The key focus here is whether the recipient, through its actions in the circumstances, has made a genuine attempt to meet the requirements to hold a tax invoice or adjustment note. If not, it may be reasonable to refuse to exercise the discretion. Officers should consider the recipient's circumstances, including the practical and commercial realities of record keeping.

30. Officers should consider all relevant circumstances, and not irrelevant circumstances when reaching a decision. Some factors that may be relevant are set out below. This list is not exhaustive, and there may be other circumstances that will be relevant in a particular case. The decision will usually involve a consideration of a number of factors together rather than just one factor alone. However, it is not necessary to consider all of the following factors.

Factors relating to the document held by the recipient:

- Was the defect in an otherwise valid tax invoice or adjustment note relatively minor such that a reasonable person in the taxpayer's circumstances would consider that it was valid? If the defect is minor it will usually be appropriate to exercise the discretion.

  Whether a defect is 'minor' will depend on the extent of uncertainty caused by the defect and is a matter for the officer's judgment. If some required information is present but incorrect, this is more likely to be 'minor' than if the information is missing altogether. A 'minor' defect would include obvious transposition errors in ABN, business name or address. Another example might be the use of the words 'GST invoice' instead of 'tax invoice'.

  If the defect is of a type that is likely to be repeated, officers should consider referring the matter to compliance in accordance with relevant guidelines, to ensure the supplier rectifies the problem.

- Did the recipient hold a document that, on its face, was clearly intended by the supplier to be a tax invoice or adjustment note and convey the relevant GST information? If so, depending on the other circumstances, it might have been reasonable for the recipient to rely on the document as having met the requirements.

- If there is a defect in the document held, is the recipient able to remedy that defect by reference to some other document that was also held at the time the relevant activity statement was lodged? For example, if a tax invoice omits the supplier's ABN, but that ABN is on the associated supply contract or on other recent tax invoices held.

Factors relating to the recipient's circumstances:

- What is the recipient's compliance record and position within the compliance model? For example, is a defective document a relatively isolated instance in an otherwise good compliance record? Do the recipient's knowledge and actions point to future compliance?

- Does the recipient have adequate record keeping systems? For example, can the recipient show that its record keeping systems and procedures are reasonably designed to ensure correct documentation is held? What is reasonable here will depend, among other things, on the nature and size of the business. It could include, for example, frequency of internal audits, sample checks of claims made, adequate training of accounting staff and instruction manuals for staff. What is 'adequate' will vary as smaller enterprises will often have different controls or checks from larger enterprises.

- Considering the recipient's knowledge, skills and experience, was it reasonable for them to believe that a valid tax invoice or adjustment note was held or to believe that a particular document complied with the requirements? For example, is the recipient a new business entrant?

- Has the recipient been made aware of this or similar problems in the past? If so, can they otherwise demonstrate that they were making a genuine attempt to comply in the circumstances?

- Did the recipient know that a valid tax invoice or adjustment note was not held at the time the input tax credit or decreasing adjustment was claimed? If so, can the recipient otherwise demonstrate that they were making a genuine attempt to comply in the circumstances?

Other factors:

- Would the costs of obtaining a valid tax invoice or adjustment note be out of proportion to the compliance benefits of insisting on a valid tax invoice or adjustment note?
- What is the size of this claim relative to total credits?
- Was the 'newness' of the New Tax System a cause of this non-compliance? During the 'transitional period' our approach to compliance was not to disadvantage recipients who genuinely attempted to comply with their obligations. While this is a matter for the officer's judgment, this factor should be given decreasing weight over time. This factor would not be considered relevant to claims made after the publication of this practice statement.
- Has the Tax Office caused or contributed to the problem? If it can be clearly demonstrated that some action by the Tax Office was a major contributing factor, this should be given appropriate weight when making the decision.

Lost or destroyed tax invoices and adjustment notes

31. During a field visit or other verification activity, officers may decide that a valid tax invoice or adjustment note was held at the time of lodging the activity statement but has been subsequently lost or destroyed. Officers must consider all the facts of the case in making a decision on this issue. If the officer accepts that a valid tax invoice or adjustment note was held at the time of lodging the activity statement, then the input tax credit or decreasing adjustment is attributable to that tax period, provided the other requirements for attribution have been met.[21] There is no need to consider the discretions. In making this decision, officers must also consider whether the recipient has kept adequate records under section 382-5 of Schedule 1 to the TAA.

Third party enquiries

32. Officers may need to make enquiries of the supplier or other parties in order to obtain the necessary information about a transaction. There may be a reason for the supplier's behaviour that the recipient does not know, for example, if the supplier is not registered or required to be registered; or if the margin scheme has been applied (in which case there is no obligation to provide a tax invoice). In such cases, officers must follow their work area procedures for obtaining information from other parties (for example, the Access Manual).

[21] See sections 29-5, 29-10 and 29-20.

Parties in dispute over some aspect of the transaction

33. If the parties to a transaction are in dispute (for example over the terms of the contract, performance or payment) officers must take care not to become involved in the dispute itself (for example by appearing to 'take sides'). However, it may be necessary to ascertain various facts in order to determine whether to exercise the Commissioner's discretions. For example, it may be necessary to determine whether a taxable supply has been made or the price of that supply. In these circumstances there will be a need to gather sufficient information or evidence to make a decision. This may include needing to interpret a term of a contract or make contact with the supplier. If legal action or arbitration between the parties has commenced, officers must discuss the issue with their manager who may need to consult with the Review and Litigation area.

What are the consequences if the Commissioner does not exercise the discretion to treat a particular document as a tax invoice or adjustment note, even though we are satisfied that there has been a creditable acquisition?[22]

34. The Tax Office may accept that a creditable acquisition or decreasing adjustment may have been made but the circumstances make it reasonable to not exercise the discretion to treat a particular document as a tax invoice or adjustment note. In that event, the recipient is not able to attribute the input tax credit or decreasing adjustment until it is able to obtain a tax invoice or adjustment note from the supplier. While this may delay the time when the recipient can obtain the benefit of its entitlement to an input tax credit or decreasing adjustment, the recipient must be encouraged to improve its practices in relation to tax invoices and adjustment notes.

35. Once the recipient holds a tax invoice or adjustment note, the input tax credit or decreasing adjustment is attributable to the first tax period in which the tax invoice or adjustment note is held and for which an activity statement is lodged[23] or to a later tax period.[24] If the recipient has made a reasonable attempt to request a tax invoice or adjustment note, but the supplier has failed or refused to provide one, the recipient may then approach the Tax Office and request that the discretion be exercised in respect of some other document. This is discussed in paragraph 28, Step 4.

Shortfall Penalty

36. If the Commissioner does not exercise the discretion, the net amount for that tax period will be assessed without allowance for the input tax credit or decreasing adjustment and this may result in a shortfall for the purposes of determining shortfall penalty.

37. As there has been a creditable acquisition, the recipient has an entitlement to the input tax credit or decreasing adjustment but has attributed its entitlement to the incorrect tax period. Paragraph 47 of Law Administration Practice Statement PS LA 2004/5 states the Commissioner's policy on shortfall penalties relating to timing adjustments.

[22] The following paragraphs also apply in cases involving recipient created tax invoices and recipient created adjustment notes.
[23] Subsection 29-10(3).
[24] Subsection 29-10(4).

38. In accordance with this policy, any shortfall penalty otherwise payable will generally be remitted in full unless it is clear that the recipient:

- was aware of the requirements in relation to holding a valid tax invoice or adjustment note before it could attribute its claim, and
- deliberately sought to gain an advantage by making the claim without holding a tax invoice or adjustment note.

As a general rule it is considered that a timing benefit is not the sort of advantage referred to in paragraph 47 of PS LA 2004/5. Consequently, shortfall penalty otherwise payable will usually be remitted in full where a creditable acquisition or decreasing adjustment has been made. Any decision not to remit the shortfall penalty in full must be approved by an EL 2 officer.

39. Where the Commissioner does not exercise the discretion because a creditable acquisition or decreasing adjustment has not been made, the remission of shortfall penalty otherwise payable will be governed by Law Administration Practice Statement PS LA 2004/5.

General interest charge

40. If the Commissioner does not exercise the discretion, the resultant shortfall may also lead to the imposition of general interest charge.

41. Any such general interest charge attributable to the shortfall may generally be remitted in full **provided**:

- it is reasonable to conclude from the available evidence that there has been a creditable acquisition or decreasing adjustment for the value claimed, and
- the recipient would have been entitled to the claimed input tax credit or decreasing adjustment within the same period if the Commissioner had agreed to exercise the discretion.

42. If a recipient is unable to satisfy these conditions, they may still request remission of general interest charge. Any such request must be considered in accordance with the remission guidelines set out in Chapter 93 of the *ATO Receivables Policy.* Where a shortfall penalty is imposed, any general interest charge that accrues on the shortfall penalty will only be considered for remission in accordance with those guidelines, and not with this Practice Statement.

43. However, if there was any structuring, collusion or loss of revenue to enable a taxpayer to avail themselves of this policy, a full or partial remission of penalties and interest may not be available.

44. Any decision not to remit the general interest charge in full must be approved by a senior officer in the Operations business line.

Record keeping penalty

45. If the recipient fails to retain relevant tax invoices or adjustment notes, it may be liable to a penalty for failing to keep records. The Commissioner's policy in relation to record keeping penalty is detailed in Law Administration Practice Statement PS LA 2005/2 Penalty for failure to keep or retain records.

46. If the Tax Office detects record keeping deficiencies, its general approach will be to inform recipients of their record keeping obligations as a first step. That is, the Tax Office will inform the entity of their tax invoice and adjustment note obligations. If the Tax Office later finds that the entity has not taken steps to improve its compliance with those obligations, a record keeping penalty may be imposed.

47. In these cases, any decision not to remit the record keeping penalty in full must be approved by an EL2 officer.

Review Rights

48. If a recipient is not satisfied with a decision on the exercise of the discretion made by an officer, they can request an informal review of that decision under the Taxpayers' Charter. They may also seek a review of the decision under the *Administrative Decisions (Judicial Review) Act 1977*.

49. Alternatively, if the decision results in an assessment of their net amount, they can object under the provisions of Part IVC of the TAA. For example, the recipient may wish to dispute the tax officer's decision that a creditable acquisition has not been made.

50. A decision made under either subsections 29-70(1) or 29-75(1) of the GST Act is not a reviewable GST decision under subsection 110-50(2) of Schedule 1 to the TAA.

Subject references	adjustment notes Commissioner's discretion determinations general interest charge record keeping penalty recipient created tax invoices recipient created adjustment notes shortfall penalty tax invoices
Legislative references	ANTS(GST)A 1999 Div 11 ANTS(GST)A 1999 Div 19 ANTS(GST)A 1999 29-5 ANTS(GST)A 1999 29-10 ANTS(GST)A 1999 29-10(3) ANTS(GST)A 1999 29-10(4) ANTS(GST)A 1999 29-20 ANTS(GST)A 1999 29-20(3) ANTS(GST)A 1999 29-70(1) ANTS(GST)A 1999 29-70(2) ANTS(GST)A 1999 29-70(3) ANTS(GST)A 1999 29-75(1) ANTS(GST)A 1999 29-75(2) ANTS(GST)A 1999 29-80 ANTS(GST)A 1999 66-17(1) ANTS(GST)A 1999 83-35(3) ANTS(GSTT)A 1999 15C ANTS(GSTT)A 1999 15H ANTS(GST)R 1999 29-70.01 ANTS(GST)R 1999 29-70.02 ANTS(GST)R 1999 29-80.01 TAA 1953 Sch 1 105-60 TAA 1953 Sch 1 110-50(2) TAA 1953 Sch 1 288-45 TAA 1953 Sch 1 382-5 TAA 1953 Pt IVC AD(JR)A 1977
Related public rulings	Goods and Services Tax Ruling GSTR 1999/1 Goods and Services Tax Ruling GSTR 2000/1 Goods and Services Tax Ruling GSTR 2000/17 Goods and Services Tax Ruling GSTR 2000/26
Related practice statements	Law Administration Practice Statement PS LA 2004/5
Case references	

Other references	Guide to Authorisations Taxpayers' Charter Access Manual ATO Receivables Policy
File references	

Date issued:	**5 November 2004**
Date of effect:	**1 July 2000**
Other Business Lines consulted	**Operations, Tax Counsel Network, OCTC, LB&I, SB, PTax, Superannuation, Excise**
Amendment history:	1 March 2006: Amendments to the GST Transition Act in February 2005 to do with long-term non-reviewable contracts, created a further class of transactions that do not require tax invoices or adjustment notes **1 July 2006:** Update references to section 70 of the TAA to section 382-5 of Schedule 1 of the TAA Update references to subsection 62(2) of the TAA to subsection 110-50(2) of Schedule 1 of the TAA Update reference to section 37 of the TAA to section 105-60 of Schedule 1 of the TAA **16 October 2007:** Paragraphs 12 and 14 Change value of taxable supply to $75 Footnotes 9 and 16 Add reference to regulation 29-80.01 **15 September 2009** Update contact officer details

ATTACHMENT A

Decisions escalated to an SES or EL2 Officer

1. Paragraph 3 outlined occasions where the decision regarding the discretions should be referred to either an SES or EL2 officer.

   The following decisions should be escalated to an appropriate Senior Executive Service (SES) officer:

   - if the discretion is being considered for a supplier
   - if the exercise of the discretions is being considered for an entity that issues recipient created tax invoices (RCTIs)
   - if a determination under subsections 29-10(3) or 29-20(3) might be more appropriate or has been requested, or
   - if the circumstances are not otherwise covered by this practice statement, or if the application of this practice statement produces a result that does not seem sensible, or does not accord with the compliance model or the Taxpayers' Charter.

   The following decisions should be escalated to an appropriate Executive Level 2 (EL2) officer:

   - If we are requested by a recipient to exercise the discretion before the supply has even occurred and before a document is sought or obtained from the supplier.

   These decisions involve a higher risk either in terms of the potential revenue or the wider GST system compliance issues involved.

2. Often a request is made by a particular entity in respect of their individual circumstances. However, a decision may be capable of applying to a wider group of clients, for example to a specific industry. Consideration should be given to whether the issue should be escalated (for example, as a potential priority technical issue) and whether it might best be contained in a public ruling (see GSTR 2000/17 paragraphs 25–39). Decisions that could apply widely but are made for a particular entity only, could diminish community confidence in the way the Tax Office administers the tax laws unless the reasons for confining the decision are capable of transparent explanation to other stakeholders.

Considering the discretions for a supplier[25]

3. The Tax Office may be asked to exercise the discretions in respect of a supplier, but after the documents have been issued. For example, when a supplier discovers that the documents that they have been issuing in good faith are not valid. While technically the documents are not valid tax invoices or adjustment notes, and replacement documents could be issued, consideration should be given to whether the compliance benefits of such action outweigh the costs. In the circumstances a practical outcome may be to exercise the discretion in respect of previously issued documents. Such a decision may be appropriate if the documents that have been issued are substantially correct, the revenue is not at risk, and the supplier has corrected the problem and advised its customers.

[25] See Example 8 in Attachment B for an illustration.

4. The exercise of the discretions may also be sought by the supplier, but in respect of documents that are yet to issue. For example, if the supplier discovers the defect and is attempting to change its computer systems to correct the error. In the latter case, it may be appropriate to exercise the discretion in order to allow the supplier a reasonable opportunity to advise its customers and make the necessary system changes to ensure it can issue valid documents.

5. As a general rule, the exercise of the discretions for a particular supplier for an indefinite period would be rare and exceptional. Such cases may best be confined to a public ruling applying to all entities in the same situation, for example, as explained in GSTR 2000/17 paragraphs 25–39.

Considering the discretions for an entity that issues Recipient Created Tax Invoices (RCTIs) or Recipient Created Adjustment Notes (RCANs)[26]

6. An RCTI is a tax invoice belonging to a class of tax invoices that the Commissioner has determined in writing may be issued by the recipient of a taxable supply.[27] A recipient can issue an adjustment note if they also issued the tax invoice. The information that must be contained in an RCTI is set out in GST Regulation 29-70.02, while the information required in an RCAN is contained in a Legislative Determination.[28] The fact that RCTIs are subject to the control of the Commissioner reflects the risks inherent in claims based on recipient created documents. The Commissioner has made a number of RCTI determinations, including separate determinations for a number of industries, and these are available on ATO*law*.

7. The discretions relating to tax invoices and adjustment notes can be used to treat a defective RCTI as a tax invoice, and a defective RCAN as an adjustment note. If the discretion is being exercised in respect of an RCTI or RCAN, the decision maker must take account of the particular considerations relating to the additional requirements of and risks inherent in these documents. For example, the need for RCTI agreements between recipient and supplier, and the particular terms of those agreements.

8. The decision on the discretions may need to be considered either before a document has issued or after as explained for suppliers at paragraphs 2 and 3 above in this Attachment.

   - If the recipient has already claimed the input tax credits, the decision-maker should also consider the decision process as outlined in the second flowchart in paragraph 10 and the discussion in paragraphs 26-30. For example, there must be sufficient evidence of the recipient making a creditable acquisition or having a decreasing adjustment.
   - If the recipient has a document that purports to be an RCTI and the defect in the document is relatively minor it might be reasonable to overlook the defect and exercise the discretion.
   - If the recipient knew that there was a problem with documents it was issuing (for example if RCTI agreements were not in place with suppliers) it ought not to have claimed the input tax credits.

[26] See example 9 in Attachment B for an illustration.
[27] Subsection 29-70(3).
[28] *A New Tax System (Goods and Services Tax) Adjustment Note Information Requirements Determination (No. 1) 2000* – contained in an addendum to GSTR 2000/1.

9. The exercise of the discretions may also be sought by the recipient, but in respect of documents that are yet to issue. For example, if it discovers the defect and is attempting to change its computer systems to correct the error. Depending on the circumstances, it may be appropriate to exercise the discretions in order to allow the recipient a reasonable opportunity to advise its customers and make the necessary system changes to ensure it can issue valid RCTIs and RCANs.

10. As a general rule, the exercise of the discretions for a particular recipient for an indefinite period would be rare and exceptional. Such cases may best be confined to a public ruling applying to all entities in the same situation, for example, as in GSTR 2000/17 paragraphs 25–39.

If a determination under subsections 29-10(3) or 29-20(3) might be more appropriate or has been requested

11. Subsection 29-10(3) allows the Commissioner to determine circumstances in which a tax invoice is not required in order to claim input tax credits. Subsection 29-20(3) applies to adjustment notes. These determinations are not usually made for the benefit of individual clients, but rather for all the clients in an industry or sector. For example, see GSTR 2000/26 Goods and services tax: corporate card statements – entitlement to an input tax credit without a tax invoice. These determinations can only be made by an SES officer. Examples of where such legislative determinations have been considered appropriate can be found on ATOlaw.

If we are requested by a recipient to exercise the discretion before the supply has even occurred and before a document is sought or obtained from the supplier

12. Occasionally we may be asked by a recipient to exercise the discretion before the supply has even occurred and before a document is sought or obtained from the supplier. This could occur when the recipient knows that it is likely that the tax invoice it is going to receive will be defective. The usual cause is a corporate re-structure or name change, in circumstances where there will be a slight delay in suppliers making necessary changes to their invoicing systems. In such cases it may be appropriate to exercise the discretion for a limited period (for example 3 months) to allow the suppliers a reasonable opportunity to make the necessary changes. Recipients would be expected to take reasonable steps to inform suppliers of the change as soon as possible.

13. As a general rule, the exercise of the discretions for a particular recipient for an indefinite period would be rare and exceptional. Such cases may best be confined to a public ruling applying to all entities in the same situation, for example, as in GSTR 2000/17 paragraphs 25 to 39.

What other factors may be relevant to the exercise of the discretions by the SES or EL2 officer?

14. The following factors may also be relevant.

- Did the entity promptly take steps to comply once the problem was identified?
- Has the entity taken steps to advise recipients (or in the case of RCTIs, the supplier) of the defective documents?

- Will the exercise of the discretions allow recipients of those otherwise invalid documents to be able to readily comply with their GST obligations? (For example do the defective documents contain sufficient information?)
- If the discretions are exercised, will this lead to GST system integrity issues? For example, would this lead to other compliance problems, such as compromising the importance of proper documentation under the GST system?
- Are there any revenue implications if the discretions are exercised? Has it been ascertained that the exercise of the discretions will not place revenue at risk? If a request involves RCTIs, the discretions must only be exercised in respect of supplies from registered suppliers.
- Would it be unreasonable not to exercise the discretions in view of the nature and costs associated with correction?
- In respect of documents that are yet to be issued, does the supplier (or in the case of RCTIs, the recipient) have a reasonable plan to remedy the problem (if this is possible) including informing its customers?
- What decision will encourage long term compliance by all the entities affected?

ATTACHMENT B

Examples

These examples are provided as a general guide to how the exercise of the discretions might be approached in various situations. Actual decisions will depend on all the facts of each particular case. These examples are illustrative only and are not a substitute for the exercise of judgment in light of all the facts.

Example 1: Small business – defective tax invoices and missing tax invoices

1. Bill and Betty operate the Seaside Motel and are registered for GST as Seaside Motel Pty Ltd. They have a turnover of approximately $500,000 and account on a cash basis, lodging quarterly using the derived from accounts method. Betty has some bookkeeping experience, but no specific GST training. However, she has made a reasonable effort to understand the key requirements of the New Tax System and she normally does a check to ensure tax invoices are held when completing the quarterly activity statement. She maintains the business records, and prepares a cashbook from the receipts, invoices, cheque butts and account statements. These are given to their accountant to prepare their annual income tax returns.

2. During a verification visit, the auditor examines a sample of tax invoices in respect of a number of input tax credit claims for the March 2003 activity statement. Three documents were found that did not meet the requirements.

3. The first document relates to some repairs to the building carried out by a local builder, Bob. The repairs cost $11,000. The document has all the requirements of a valid tax invoice, including the correct ABN for the motel business, but has the recipient's name as the 'Surfside Motel' instead of 'Seaside Motel'. The associated building contract contained the correct information. The auditor considers that the company made a creditable acquisition of the building work. Since the correct ABN was on the document, the auditor considers the defect in the tax invoice to be relatively minor in the circumstances, and that it was reasonable for Betty to consider the document valid. The discretion is exercised to treat the document as a valid tax invoice.

4. The second document relates to a new mower costing $1,120. Bill did get a tax invoice but it only shows Bill's name and does not contain the address or ABN of Seaside Motel Pty Ltd (as required by the regulations (GST Regulation 1999 29-70.01) for supplies costing $1,000 or more). At the time Bill thought that the document was a valid tax invoice for GST purposes.

5. The auditor determines that Seaside Motel Pty Ltd did in fact make a creditable acquisition of the mower. In deciding to exercise the discretion in this instance, the following factors were taken into account:

    - The position of the entity within the compliance model. They have a good compliance history, good business records and ordinarily Betty would notice that this document was not a tax invoice. Bill is now aware of the tax invoice requirements and the auditor considers that Bill and Betty have the knowledge and attitude to comply in future.
    - The amount of input tax credit relating to this acquisition was relatively small compared to their total claim for the quarter.
    - They have record keeping systems that are reasonable for an enterprise of this nature.

- This was a genuine mistake and a reasonably isolated instance in otherwise good record keeping.
- The care taken was commensurate with their knowledge, skills and experience.

6. The third document relates to some gardening services, costing $500, provided by a local contractor. The tax invoice appears to contain the required information apart from the GST amount or a statement that the price includes GST. The auditor finds that the supplier is not registered for GST, despite having a valid ABN. The auditor makes some further enquiries, and finds that the supplier is not required to be registered. As the supply to Bill and Betty is not a taxable supply, it cannot be a creditable acquisition. The auditor adjusts the March 2003 activity statement accordingly.

7. Each week Bill and Betty receive a supply of groceries including 'mini-bar' items and toiletries to stock each motel unit, and cleaning supplies. Their regular supplier provides a delivery docket, a monthly tax invoice and a six-monthly statement of account. Betty pays the amount of the monthly invoice by cheque and records the details on the cheque butt and in the cash book. The tax invoice and delivery docket for February 2003 are missing and there is no particular evidence to indicate that the document was held when the March activity statement was lodged. The price of this supply was $1,750. The auditor examines the cheque butt, Bill and Betty's monthly bank statement and the supplier's statement of account for June 2003 and determines that a creditable acquisition was made. Considering the same factors mentioned in regard to the second document above, the auditor decides to exercise the discretion to treat the cheque butt together with the bank statement as the tax invoice in this instance.

Example 2: Small business – defective tax invoices and missing tax invoices

8. Max operates a small business as a builder/handyman. He has only been operating his own business for six months (starting October 2003), despite having been in the building industry for 15 years. He is registered for GST and accounts quarterly on a cash basis. When he commenced in business, his accountant instructed him on his GST obligations including the tax invoices requirements. Prior to this, Max had no real idea of how GST impacted on business. Max's lodgments and payments are up to date and he has made a genuine effort to retain good records in his business. He has found it a difficult transition from being an employee to self-employed, and he admits that occasionally he might misplace a document, or not scrutinise it as closely as he should.

9. Max's March 2004 activity statement is selected for a verification review. The auditor finds the following irregularities with Max's input tax credit claims.

10. A number of claims for input tax credits are not supported by a tax invoice. Diary entries and some basic receipts provide some information as to the details of most of Max's smaller expenses (less than $55). However, for several claims in excess of $55, Max can not provide any other evidence to show that a creditable acquisition was made. The auditor adjusts these claims and advises Max that if he obtains a tax invoice for these expenses, he can claim the input tax credits in a subsequent activity statement.

11. For relatively large expenses, Max normally pays by cheque or credit card, and usually obtains a tax invoice. For several purchases of building materials from his regular supplier, each in excess of $1,000, the tax invoice contains all the required information except for Max's ABN or address. Max can produce a number of other tax invoices from the same supplier that are complete and correct. The auditor decides that Max has made a creditable acquisition and that in the circumstances Max has made a genuine attempt to comply. The auditor took into account the fact that the missing information was present on other recent documents from the same supplier. The auditor exercises the discretion and advises Max to request that his suppliers provide complete tax invoices in future.

12. For an acquisition of $750 worth of timber from his regular supplier, Max does not have a tax invoice at all, and there is no evidence that one was ever held. He thinks that he would have received the document, but that it was probably lost. The only evidence of the purchase Max has is his cheque butt and bank statement. After contacting the supplier to verify that the supply was in fact made, the auditor concludes that Max did make a creditable acquisition. The auditor decides that it is reasonable to exercise the discretion and treat the cheque butt together with the bank statement as the tax invoice in this instance. The auditor took into account the fact that Max is a new business entrant who is making a genuine effort to fulfil his tax obligations and the relatively small amount involved. However, the auditor takes the opportunity to remind Max of his obligations under the law to keep adequate records of his GST transactions.

Example 3: Small business with poor compliance record – defective tax invoices and missing tax invoices

13. In July 2002, Neil opened a new café in suburban Brisbane. He has operated a number of cafés, restaurants and catering businesses over the past 20 years. During this time he has had a relatively poor tax compliance record. His lodgments and payments have rarely been on time, and during a Tax Office audit in 1995, he was found to have substantially understated his income. He applied for an ABN in July 2000 after his business suppliers began to withhold tax from amounts paid to him. From 1 July to December 2000, Neil was not registered for GST, and failed to lodge activity statements for the business he operated at the time, despite being required to be registered. When approached by the Tax Office for lodgment of these activity statements, Neil went to an accountant who advised him of his GST obligations, including the need to issue and hold tax invoices.

14. Neil prepares his own quarterly activity statement from cheque butts, bank statements, tax invoices and other source documents. He calculates his creditable purchases by totalling 100% of his business expenses. However, due to poor record keeping habits, supporting documents are often mislaid and Neil makes an estimate of those expenses.

15. Neil's activity statement for December 2003 is selected for a GST verification review. The auditor finds that Neil's business records are poorly kept and that his compliance attitude appears to be, at best, one of reluctance. A large number of relatively small cash sales have not been brought to account in the activity statement and many purchases are not supported by valid tax invoices. Neil does hold valid tax invoices for claims for large input tax credits such as rent, electricity, phone, etc. The review found the following.

16. For several claims the auditor disregards some minor deficiencies in the tax invoices and treats the documents as valid. No adjustment to the activity statement is necessary.

17. For 20 claims Neil cannot establish that a creditable acquisition was actually made and the auditor adjusts these on the activity statement. Typical of these claims are small cash expenses (>$55 in price) which either have no supporting documents or are evidenced merely by a bare cash receipt and Neil is unable or unwilling to identify the supplier. Other claims were made in respect of the cost of purchases that were GST-free to Neil.

18. There are a further 12 claims where the 'tax invoice' omits the supplier's ABN and a description of the goods acquired and contain no reference to GST. The auditor eventually is able to determine that the supplies were taxable and used for a creditable purpose. However, in the circumstances, the auditor decides that the discretion will not be exercised to treat these documents as valid tax invoices. The activity statement is adjusted accordingly. The auditor took into account Neil's chronic compliance history, and considers that Neil has not made a genuine attempt to comply. Neil is advised that if he subsequently obtains valid tax invoices from his suppliers, he can claim the input tax credits in a later activity statement. The auditor also advises Neil about the records that he needs to maintain and warns that a record keeping penalty is likely to be imposed if a future review reveals similar deficiencies.

Example 4: Large entity – defective tax invoices and missing tax invoices

19. XYZ Pty Ltd, a retailer of widgets, is registered for GST and operates under the business name 'World of Widgets'. XYZ Pty Ltd has an approximate turnover of $80 million per year, with input tax credit claims of over $400,000 per month. The accounts payable staff of XYZ Pty Ltd have been instructed not to pay accounts unless a valid tax invoice is obtained from suppliers. Adequate training has been provided for them to carry out this instruction and regular checks are conducted by the internal accountants. XYZ Pty Ltd has a good compliance record.

20. During a Tax Office audit of XYZ Pty Ltd, irregularities are discovered among the tax invoices for some input tax credit claims for the February 2003 activity statement:

21. In respect of an acquisition of packaging costing $2,000, the tax invoice does not show the recipient's details. The auditor decides that the acquisition was creditable. The following factors were taken into account in deciding to exercise the discretion to treat this document as a tax invoice:

- The auditor has assessed this entity as being willing to do the right thing.
- The input tax credit for this claim was small compared to the total claims for the period.
- XYZ has excellent record keeping systems in place, conducts regular checks of documents received from suppliers and the accounts payable staff are adequately trained in the requirement of tax invoices.
- This was a genuine mistake and a reasonably isolated instance in otherwise very good record keeping.

22. The tax invoice for the acquisition of $5,000 worth of computer equipment shows the recipient's name as 'Widget World'. The auditor determines that XYZ Pty Ltd did in fact make a creditable acquisition and that this is a minor defect. The discretion is exercised.

23. In respect of a supply of cleaning services the document supporting the input tax credit is headed 'GST invoice', but otherwise meets the tax invoice requirements. The auditor determines that a creditable acquisition was made and that this is a minor defect. The discretion is exercised.

24. In respect of the acquisition in February 2003 of $300,000 worth of widgets from a regular supplier, there is no tax invoice held at all. The details of the supply correspond to those in the delivery document from the supplier, and the auditor concludes that a creditable acquisition was made. The auditor examines the tax invoices from this supplier over a six month period and finds that this is the only one missing. The chief accountant explains that in April 2003 the accounts payable area was relocated and some records were misplaced. This is confirmed by other staff. A copy of the missing invoice is emailed from the supplier. The auditor considers that in light of the facts and the good record keeping practices of XYZ that the tax invoice was held at the time of lodging the relevant activity statement. There is no need to consider the discretion, as the recipient had correctly claimed the input tax credit in the February 2003 activity statement.

25. Therefore, the auditor does not make any adjustments to XYZ's February 2003 activity statement.

Example 5: Entity in GST group – defective tax invoices and reimbursement

26. The ABC Corporate Group operates a property development business with a combined annual turnover of $50 million and input tax credit claims in excess of $250,000 per month. The group is also a GST group and consists of ABC Holdings Pty Ltd (the representative member), ABC Development Pty Ltd, ABC Construction Pty Ltd, ABC Marketing Pty Ltd and ABC Finance Pty Ltd. The companies share the same directors who are Mr A, Mr B and Mr C. The group has a central accounting division that prepares the GST returns for all entities and consists of experienced accounting staff. The group has good accounting practices and records.

27. During a verification visit, the auditor finds several irregularities in the tax invoices held by the group.

28. A tax invoice for a supply made by a regularly used subcontracting company shows most of the necessary information, including the price ($50,000) but does not include the supplier's ABN. The tax invoice shows the recipient's address (shared by all the entities in the group), but shows the name of the recipient as 'ABC Pty Ltd'. The name should have been ABC Construction Pty Ltd, as shown on the contract documentation. The auditor considers that ABC Construction Pty Ltd in fact made the acquisition and that it was a creditable acquisition. The auditor decides to exercise the discretion after considering the following factors:

    - The contract document held showed the supplier's ABN and was able to clarify the recipient of the supply.
    - The input tax credit was claimed correctly by ABC Holdings Pty Ltd on behalf of the group.
    - The group has good accounting practices, and this was a relatively isolated case in an otherwise good compliance record.
    - The Chief Accountant for the group has undertaken to contact the subcontracting company and inform them of the problem so that future tax invoices will be correct.

29. A tax invoice for $3,000 worth of advertising services is in the name of ABC Finance Pty Ltd and not ABC Marketing Pty Ltd that made the acquisition. The tax invoice otherwise complies with the requirements of subsection 29-70(1). The account was paid using a corporate credit card (which is in the name of ABC Finance Pty Ltd). The auditor considers that ABC Marketing Pty Ltd in fact made the acquisition, and that it is a creditable acquisition. The auditor decides to exercise the discretion after considering the following factors:

- The amount involved was small relative to total input tax credits claimed.
- Other tax invoices for supplies made by this supplier have been in the correct name, and this was an isolated case of supplier error.
- The input tax credit was claimed correctly by ABC Holdings Pty Ltd on behalf of the group.
- The group has good accounting practices, and this was a relatively isolated case in an otherwise good compliance record.

30. A tax invoice for a one-off acquisition for $7,500 of building equipment from an auction is in the name of Mr A, and not in the name of ABC Construction Pty Ltd that made the acquisition. On further investigation, it is discovered that ABC Constructions Pty Ltd reimbursed Mr A for this acquisition that was made as agent for the company. The auditor decides that the provisions of Division 111 (which deals with reimbursements) have been satisfied and the tax invoice is valid.

Example 6: No tax invoice provided – possible margin scheme case

31. RCo Pty Ltd, a GST registered entity, purchases some real property from SCo Pty Ltd, a registered supplier. The sale contract is signed by both parties and the price is stated to be 'GST inclusive'. The contract details all the information that would be included in a tax invoice apart from the words 'tax invoice'. However, it does not specify whether the supplier is applying the margin scheme.

32. RCo has not been able to obtain a tax invoice despite making a written request. More than 28 days has passed since the request was made.

33. RCo Pty Ltd writes to the Tax Office for advice and has provided the purchase contract, copies of the letter sent by themselves to the supplier requesting a tax invoice, and proof that the contract settled and the property transferred. The tax officer contacts the supplier and ascertains that the margin scheme was not applied. No explanation is offered for failing to provide a tax invoice. The tax officer determines that the recipient has made a creditable acquisition and exercises the Commissioner's discretion to treat the purchase contract as a tax invoice. The recipient can make the claim in the current period. The supplier's details are passed on to Compliance for possible action relating for the failure to provide a tax invoice and to ensure that GST has been correctly paid.

Example 7: No tax invoice provided – possible sale of a going concern

34. P entered into a contract to purchase an enterprise from V. The contract is completed and consideration provided. P and V are registered for GST.

35. P considers the supply is taxable and asks V on several occasions, including in a solicitor's letter, for a tax invoice. V refuses, arguing the supply was of a GST-free going concern.

36. P writes to the Tax Office for advice.

37. The case officer considers the evidence, including conversations with V, and concludes the supply was taxable. The case officer found that all of the requirements of section 38-325 of the GST Act were satisfied except that P and V had not agreed in writing that the supply was of a going concern.

38. The case officer considers P has made a reasonable attempt to obtain a tax invoice and advises P that the sale contract can be treated as a 'tax invoice'. P has made a creditable acquisition and can claim the relevant input tax credit in the next activity statement. V is required to account for GST on the supply of the enterprise.

Example 8: Supplier request

39. Two large public utilities are planning to merge into one new entity on 1 February 2004. The two utilities will continue to provide services to customers up until 31 January 2004, but after that date the services will be made by the new entity. In this industry, customers are billed quarterly at the end of March, June, September and December.

40. From the merger date, tax invoices will be issued by and in the name of the new entity, but most of their customers will receive bills that span the merger date. A letter will be sent with the March account explaining the merger. Considerable cost savings relating to accounting systems can be made if the new entity can issue tax invoices in respect of the entire period from 1 January to 31 March 2004.

41. As subsection 29-70(1) requires the tax invoice to be issued by the supplier, a document issued by the new entity would only be valid in regard to the supplies that it made from 1 February 2004. The two entities apply to the Tax Office for the exercise of the Commissioner's discretion under subsection 29-70(1) to treat the 31 March tax invoices as a valid tax invoice.

42. The case is referred to the relevant SES officer for this industry who, in light of all the circumstances, agrees to the request. However, the entities are requested to include in the letter to customers a statement to the effect that the March account will be treated as a valid tax invoice in respect of supplies made from 1 January 2004.

Example 9: Recipient that issues RCTIs

43. Since 1 July 2000, Bigcorp Ltd, a large retailer with an annual turnover of $500 million has been issuing RCTIs. Over this time many thousands of RCTIs have been issued, in respect of many millions of dollars of input tax credit claims. At the commencement of the GST system RCTI agreements were put in place between Bigcorp and its suppliers, and Bigcorp is unaware of any problems with the documents issued.

44. During a verification visit by tax officers some irregularities are found in the RCTIs that have been issued. Occasionally the RCTI does not contain the ABN of the supplier, and the words 'Recipient Created' are sometimes missing from the document (which should state 'Recipient Created Tax Invoice'). Also, the date is sometimes omitted from the RCTI. The cause of the problem is traced to a random computer systems glitch, which Bigcorp is taking steps to rectify. This process is expected to be completed within one month.

45. The auditors examine a sample of Bigcorp's RCTI agreements and finds that several recent agreements with new suppliers do not specify the supplies covered by the agreements as is required by the relevant RCTI determination. Both Bigcorp and these suppliers understood the agreements to cover all supplies and have been acting accordingly. Bigcorp has agreed to ensure the RCTI agreements are rectified. The auditors advise Bigcorp that the RCTIs issued under the defective agreements are not valid RCTIs, but that nevertheless may be treated as valid tax invoices.

46. Bigcorp has a good compliance history, sophisticated accounting systems and internal controls, and provides extensive GST training for accounts payable staff. It appears that the affected documents are few in number relative to the large volume of documents processed. The auditors review a sample of documents to verify that the claims relate to creditable acquisitions. The decision in relation to the defective RCTIs is referred to the SES officer for this sector. In all the circumstances, it is considered that it is reasonable to exercise the discretion to treat the documents already issued as valid tax invoices. Given that Bigcorp is taking all reasonable steps to remedy the problem, the discretion is also exercised for the period that this is expected to take. Bigcorp is requested to inform their suppliers of the situation.
