PS LA 2004/11 - Treating a document as a tax invoice or adjustment note

This cover sheet is provided for information only. It does not form part of *PS LA 2004/11 - Treating a document as a tax invoice or adjustment note*

This Practice statement contains references to provisions of the *A New Tax System (Goods and Services Tax) Regulations 1999*, which have been replaced by the *A New Tax System (Goods and Services Tax) Regulations 2019*. This LAPS continues to apply in relation to the remade Regulations.

A comparison table which provides the replacement provisions in the *A New Tax System (Goods and Services Tax) Regulations 2019* for regulations which are referenced in this LAPS is available.

This document has changed over time. This version was published on *5 August 2015*

This practice statement was originally published on 5 November 2004. Versions published from 31 October 2013 are available electronically - refer to the online version of the practice statement. Versions published prior to this date are not available electronically. If needed, these can be obtained from Advice and Guidance in Tax Counsel Network.

PS LA 2004/11

Treating a document as a tax invoice or adjustment note

This Practice statement contains references to provisions of the *A New Tax System (Goods and Services Tax) Regulations 1999*, which have been replaced by the *A New Tax System (Goods and Services Tax) Regulations 2019*. This LAPS continues to apply in relation to the remade Regulations.

A comparison table which provides the replacement provisions in the *A New Tax System (Goods and Services Tax) Regulations 2019* for regulations which are referenced in this LAPS is available.

This Law Administration Practice Statement provides guidance about exercising the discretion to allow a document to be treated as a tax invoice or adjustment note.

This practice statement is an internal ATO document, and is an instruction to ATO staff.

Taxpayers can rely on this practice statement to provide them with protection from interest and penalties in the following way. If a statement turns out to be incorrect and taxpayers underpay their tax as a result, they will not have to pay a penalty. Nor will they have to pay interest on the underpayment 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.

1. What this practice statement is about

Under certain circumstances, we have the discretion under subsection 29-70(1B) of the *A New Tax System (Goods and Services Tax) Act 1999*[1] to treat a document as a tax invoice even if it does not meet the specific requirements under the law. A similar discretion exists under subsection 29-75(1) in relation to adjustment notes. [2]

Requests to exercise these discretions commonly arise in verification activities of a recipients entitlements to claim input tax credits (ITCs), however they might also originate from suppliers.

This practice statement provides guidance on when and how you should exercise the discretions and the matters you should consider in making your decision. Attachment A also sets out a summary of the decision making process as a flowchart.

Note: this practice statement does not apply to the discretion under subsection 134-20(1), which relates to third party adjustment notes.

2. When an exercise of the discretion is not required

An ITC can be claimed without a valid tax invoice if:

- the value of the taxable supply is $75 or less or the amount of the decreasing adjustment is $75 or less[3]
- the Commissioner determines in writing that the requirement does not apply[4]
- second hand goods have been acquired and a record of the acquisition has been made[5]
- creditable acquisitions are made of 'reverse charged' supplies made by non-residents[6]
- 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)[7]
- there was a valid tax invoice at the time the ITCs were claimed in the activity statement but it was subsequently lost or destroyed
- the recipient has asked the supplier to provide a valid tax invoice but 28 days has not expired since the request was made
- the invoice doesn't contain enough information for the recipient to be identified but it does

[1] All legislative references in this practice statement are to the *A New Tax System (Goods and Services Tax) Act 1999,* unless otherwise specified.
[2] When discussing 'the discretion' this practice statement applies equally to tax invoices (including recipient created tax invoices) and adjustment notes.
[3] See subsections 29-80(1), 29-80(2) and Regulation 29-80.01 of *A New Tax System (Goods and Services Tax) Regulations 1999.* Also see paragraph 58 of GSTR 2013/1.
[4] Subsections 29-10(3) and 29-20(3). See also Appendix 2 of GSTR 2013/1.
[5] Subsection 66-17(1).
[6] Subsection 83-35(3).
[7] Under section 15C of that Act, the GST on a taxable supply made under certain agreements is payable by the recipient. Section 15H of that Act provides that subsections 29-10(3) and 29-20(3) do not apply.

contain enough information to identify the GST group or a member of it, or

- the recipient is no longer entitled to ITCs.

Also, sometimes a recipient will be able to treat a document that does not meet the requirements of a tax invoice as a tax invoice under subsection 29-70(1A), because the missing details can be ascertained from other documents. If this is the case, there is no need to exercise the discretion, however, even after knowing this, the recipient may still ask us to do so. If so, you should make a decision on the exercise of the discretion.

3. Exercising the discretion – general principles

There are limits in regard to the documents that different levels of ATO officers can determine to be a tax invoice. Refer to the Taxation Authorisation Guidelines to ensure you are properly authorised, before making your decision.

Any decision you make about whether or not to exercise the discretion must be made on a case by case basis, having regard to the particular facts and circumstances of each case. You must also make sure your decision is made in good faith, and without bias.

4. Situations where the discretion should be considered

You should consider exercising the discretion to treat a document as if it were a tax invoice where:

- it's clear there was a creditable acquisition[8]
- a tax invoice is required in order to claim input tax credits, but the document doesn't meet the requirements
- the request is made within four years[9], and
- the facts and circumstances indicate it is reasonable to do so.

5. Factors to consider in the exercise of the discretion

Some of the factors you should consider in making your decision are provided below. Usually, a number of these factors will need to be considered together.

Note: this is not an exhaustive list.

- Did the recipient make a reasonable and genuine attempt to obtain a valid tax invoice from the supplier? We would expect that they would do this before making a request to the Commissioner to exercise the discretion. However, the recipient is not expected to go to extraordinary lengths or great expense.
- Does the recipient have evidence that demonstrates an entitlement to claim an ITC despite not having a valid tax invoice? This can be any type of evidence that demonstrates that a creditable acquisition was made and that the recipient was entitled to the ITC.
- Does the recipient have a good compliance history? Was the recipient aware that a valid tax invoice was not held at the time the ITC was claimed? If so, can the recipient otherwise demonstrate that it was making a genuine attempt to comply in the circumstances? Do the recipient's prior compliance behaviour, knowledge of the requirements and actions point to future compliance? Does the recipient have adequate record keeping systems? What is 'adequate' will vary as smaller enterprises will often have different controls or checks from larger enterprises. It could include, for example, frequency of internal audits, sample checks of claims made, training of accounting staff and instruction manuals for staff. Adequate systems will usually result in adequate records being kept and fewer missing or misplaced tax invoices, and the absence of a tax invoice would be a one off rather than common occurrence. In contrast, a recipient with a poor record keeping system is more likely to have more tax invoices that would be misplaced or missing. Exercise of the Commissioner's discretion is not intended to cover situations where recipients are unable to keep adequate records.
- Considering the recipient's knowledge, skills and experience, was it reasonable for the recipient to assume that a valid tax invoice was held or to believe that a particular document complied with the tax invoice requirements? For example, if the recipient is a new business entrant it is likely that the recipient's knowledge, skills and experience would be less than that of a recipient that has an established business that has been operating for a longer period of time.

6. When *not* to exercise the discretion

It would not be appropriate to exercise the discretion if:

- there is evidence of fraud or evasion, or
- other GST compliance work is underway and it is more appropriate for the discretion to be considered during that work.

[8] Defined in section 11–5.
[9] See section 93.

7. When to escalate a request

Certain requests to exercise the discretion should be escalated to an EL2, being where:

- the supplier made the request
- a recipient issuing a recipient created tax invoice makes the request
- a determination under subsection 29-10(3) has been requested or would be more appropriate
- the request is made before the supply has taken place or before a valid document has been sought from the supplier, or
- applying the principles in this practice statement would produce a result that isn't sensible or practical.

Requests often come from individual entities in relation to their specific circumstances, but you should consider the risks involved where granting or declining a request will affect a broader issue or group of entities across an industry. In such cases, consider whether the issue might be best addressed in another way, such as through a public ruling.

8. Other things to consider

Third party enquiries

You may need to ask the supplier or other parties if there is a reason why the supplier didn't issue a valid tax invoice. For example, if the supplier isn't registered they aren't obliged to provide a tax invoice. In such cases, you should refer to your work area procedures (*Our approach to information gathering* and other sources) to find out how to acquire information from third parties. You may also need to refer a supplier's details to Compliance for follow-up action.

Disputes

If you need to gather information relevant to the case but the parties are in dispute over some aspect of the transaction you must not become involved in the dispute itself. If legal action has begun, you may need to discuss the issue with your manager.

Penalties and charges if the discretion is not exercised

If the discretion is not exercised, then shortfall penalties and general interest charge may apply. The recipient may also be liable to a penalty for failing to keep records. You should have reference to the relevant policies in regard to these – see under More Information.

9. Right of review

In some cases our decisions are not formally reviewable, but if someone is not satisfied they can still ask us to review our decision. If they are dissatisfied with the outcome of their request, they may also apply to the Administrative Appeals Tribunal for a further review.

10. More information

For more information, see:

- Issuing tax invoices - on the requirements for tax invoices
- Taxation Authorisation Guidelines (available internally only)
- Our approach to information gathering
- PS LA 2005/2 *Penalty for failure to keep or retain records*
- PS LA 2008/6 *Fraud or evasion*
- PS LA 2011/12 *Administration of general interest charge (GIC) imposed for late payment or under estimation of liability*
- PS LA 2012/5 *Administration of penalties for making false or misleading statements that result in shortfall amounts*

Date issued: 7 November 2004

Date of effect: 1 July 2000

Attachment

The following decision tree diagrammatically provides guidance on the steps involved in the decision making process on whether to, and how to, exercise the discretion.

