Australian Government
Australian Taxation Office

Australian Taxation Office Legislative Instrument
Instrument ID: 2013/ITX/0007

A New Tax System (Goods and Services Tax) Waiver of Tax Invoice Requirement (Acquisitions from or Acquisitions by a Partnership) Legislative Instrument 2013

Explanatory Statement

General outline of this instrument

1. This legislative instrument is made under subsection 29-10(3) of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).

2. This instrument waives the requirement for a recipient or a partnership making a creditable acquisition to hold a tax invoice for an input tax credit to be attributable to a tax period when they hold a document that meets the requirements prescribed in this instrument.

3. This instrument is a legislative instrument under the *Legislative Instruments Act 2003*.

4. All legislative references in this explanatory statement are to provisions in the GST Act unless otherwise specified.

Commencement and application of this instrument

5. This instrument commences on 1 July 2010 and applies to net amounts for tax periods commencing on or after that date.

6. The retrospective application of this instrument does not have an adverse effect on the rights or liabilities of any person other than the Commonwealth.[1] The effect of this instrument is to the advantage of affected parties. It waives the requirement for a recipient or a partnership making a creditable acquisition to hold a tax invoice before an input tax credit is attributable to a tax period when the recipient or partnership holds a document that meets the requirements prescribed in this instrument.

7. These prescribed requirements are not substantively different to the requirements under which documents that contained the details of a partner of a partnership as a supplier or recipient rather than the partnership's details were treated as tax invoices in *Goods and Services Tax Ruling GSTR 2003/13 – Goods and services tax: general law partnerships*. This means that suppliers or their agents do not have to change their

[1] Subsection 12(2) of the *Legislative Instruments Act 2003* provides that a retrospective legislative instrument (or provision of that instrument) will be of no effect if it applies to adversely affect the rights or liabilities of any person other than the Commonwealth or an authority of the Commonwealth.

software or accounting systems to issue a document that would comply with this instrument.

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

What is this instrument about?

9. The effect of this instrument is that an input tax credit for a creditable acquisition is attributable to a tax period for acquisitions by, or a supply made through, a partner acting in their capacity as a partner of the partnership when the recipient or partnership holds a document other than a tax invoice. This instrument also sets out the particular information that must be included in this document for the input tax credit to be attributed to that tax period.

What is the effect of this instrument?

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

11. This instrument intends to give effect to the same general treatment as when the Commissioner exercised the discretion in GSTR 2003/13 to treat documents that contain the details of a partner of a partnership as a tax invoice.

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

Background

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

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

15. GSTR 2003/13 outlined circumstances under which documents containing details of a partner of a partnership as a supplier or a recipient instead of the partnership's details were treated as tax invoices because the Commissioner exercised the discretion under former subsection 29-70(1).

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

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

Explanation

Supplies by a partnership

17. A supply made by a partner in their capacity as a partner of a partnership is treated as a supply by the partnership under subsection 184-5(1).[3] Accordingly, where a partner makes a supply or supplies in their capacity as a partner in a partnership, subparagraph 29-70(1)(c)(i) requires that the tax invoice issued by the partnership contain enough information to enable the partnership's identity and Australian business number (ABN) to be clearly ascertained from the document.

18. A document that contains the identity and ABN of a partner as the supplier in such circumstances will therefore not satisfy the information requirements for a tax invoice.

19. However, where the recipient holds an invoice containing the identity of the partner and ABN of the partnership, and that otherwise satisfies the requirements of paragraphs 29-70(1)(a) and 29-70(1)(c), this legislative instrument has the effect of allowing an input tax credit for a creditable acquisition to be attributed at the time the recipient gives their GST return for the tax period to the Commissioner.

Acquisitions by a partnership

20. In most cases, where a partner makes a creditable acquisition in their capacity as a partner of a partnership, the partnership must hold a tax invoice before attributing an input tax credit to a tax period. Where the total price is at least $1,000 (or such higher amount as the regulations made under section 29-70 may specify), subparagraph 29-70(1)(c)(ii) requires that the tax invoice contain the identity or ABN of the recipient. Where the recipient is a partnership, the details required to be clearly ascertained from the document will be the identity or ABN of the partnership.

21. Where a document issued to the partnership contains only the identity or ABN of a partner, the document will not satisfy the information requirements of a tax invoice under subsection 29-70(1).

22. However, where the partnership holds a document containing the identity of a partner as the recipient or the ABN of the partnership, and that otherwise satisfies the requirements of paragraphs 29-70(1)(a) and 29-70(1)(c), this legislative instrument allows the input tax credit for a creditable acquisition to be attributed at the time the recipient gives its GST return for the tax period to the Commissioner.

23. Where the tax invoice is for a supply or supplies where the total price is less than $1,000, the fact that it contains the identity of a partner and not the identity of the partnership is not relevant. The GST Act does not require that information to be clearly ascertainable from a tax invoice for a supply or supplies at such a price. However, the partnership would have to maintain records to evidence that the acquisition was made by a partner in their capacity as a partner of the partnership.

24. This instrument does not apply to documents held by a partner for an acquisition that the partnership reimburses to which Division 111 applies.

Consultation

25. Section 18 of the *Legislative Instruments Act 2003* specifically provides for circumstances where consultation may not be necessary or appropriate. One of those

[3] Similarly, an acquisition by a partner in their capacity as a partner of a partnership is treated as an acquisition by the partnership under subsection 184-5(1).

circumstances is where the instrument is considered minor or machinery in nature, and does not substantially change the law.

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

James O'Halloran

Deputy Commissioner of Taxation

19 March 2013

Related Rulings / Determinations

GSTR 2003/13

Legislative references

A New Tax System (Goods and Services Tax) Act 1999
29-10(3)
29-70(1)
29-70(1)(a)
29-70(1)(c)
29-70(1)(c)(i)
29-70(1)(c)(ii)
29-70(1B)
Div 111
184-5(1)

Legislative Instruments Act 2003
12(2)
18

Human Rights (Parliamentary Scrutiny) Act 2011
Part 3
3

A New Tax System (Goods and Services Tax) Regulations 1999
29-70.01
29-70.02

Subject references

Goods and services tax
Attribution rules
Creditable acquisition
GST input tax credits & creditable acquisitions
Taxable supply
Tax invoices

Tax Office references

NO:
ISSN:

Statement of Compatibility with Human Rights

This Statement is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

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This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011.*

Overview

This instrument waives the requirement for a recipient or a partnership making a creditable acquisition to hold a tax invoice for an input tax credit to be attributable to a tax period when they hold a document that contains the details of a partner of the partnership.

Human Rights implications

On an assessment of the compatibility of this instrument with the seven core international human rights treaties to which Australia is a party, it has been determined that this instrument does not engage any of the applicable rights or freedoms because the instrument is minor or machinery in nature.

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.

James O'Halloran
Deputy Commissioner of Taxation