

16 December 2022

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ATO
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Dear Ms Gayler

ATO LI 2022/D15

The Property Council welcomes the opportunity to provide comments to the ATO regarding the draft legislative instrument LI 2022/D15, titled *A New Tax System (Goods and Services Tax): Recipient Created Tax Invoice Determination 2023* (the draft instrument).

Our response highlights two key issues that we have identified with the draft instrument:

1. The need to include an additional category of qualifying recipient that is an intermediary (or agent) making a corresponding creditable acquisition from a principal
2. Clause 7(3)(b) – confirming that the supplier is registered for GST at the time the RCTI is issued.

Additional category for intermediaries as qualifying recipients

We support the intention of simplifying the existing list of instruments to enable taxpayers to more easily self-assess their eligibility to issue recipient created tax invoices (RCTIs). We believe that the draft instrument could be enhanced by creating an additional category of recipient that should qualify: a "business entity" which is an intermediary taken to make a corresponding creditable acquisition from the principal under s153-55(2) in the *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act).

This is relevant where an entity makes or facilitates a supply on behalf of a principal and is liable for the GST on the supply under the provisions in Subdivision 153-B of the GST Act. The use of "Subdivision 153-B agreements" is reasonably common in the property industry (and other industries) and may arise in a wide variety of circumstances. The following example is provided to illustrate this point.

We assume that a leasing management entity ('Management Co') will facilitate leasing supplies to a third party tenant for a landowning entity ('Land Co'). The supplies are taxable. Management Co will issue invoices and collect the rent on Land Co's behalf. Land Co and Management Co are parties to a 153-B agreement which covers the leasing supplies.

Suppose that there is a lease supply for \$110 (including GST), where the following will occur:

- Management Co will issue a tax invoice, in its own name, to the tenant for \$110.
- Management Co will be deemed to make a taxable supply to the tenant and is liable for \$10 GST on the lease supply. It will report this in its next GST return.
- Land Co will be deemed to make the same taxable lease supply to Management Co.
- Management Co is required to pay the \$110 to Land Co as principal. The value of Land Co's deemed supply to Management Co is \$100, so Land Co is liable for GST of \$10.
- Management Co is deemed to have made a creditable acquisition of the lease supply from Land Co. Subject to receiving a tax invoice from Land Co, Management Co can claim the \$10 as a credit

in its next GST return, which offsets the GST liability on the deemed taxable supply Management Co made to the tenant in the same GST return.

In these circumstances, Management Co may want to self-generate a RCTI for the deemed supply from Land Co. This will ensure that it can claim the \$10 credit in the correct tax period without being reliant on Land Co to issue a tax invoice. In our view, it should be entitled to do so if this is agreed with Land Co.

However, if Management Co is a "business entity" below the \$20 million GST turnover threshold, there may be a risk that it cannot issue a RCTI in this scenario on the basis that it has not "determined the value of the taxable supply acquired from the supplier" (as required in the draft instrument). This is particularly an issue if it is Land Co which selects the tenants and sets the rents, and Management Co's role is limited to invoicing and collection of rent only.

Therefore, we believe that the draft instrument should include an additional category of qualifying recipient that is an intermediary (or agent) making a corresponding creditable acquisition from a principal.

Clause 7(3)(b) – confirming that the supplier is registered for GST at the time the RCTI is issued

We have a number of concerns regarding the practical implications of the requirement in Clause 7(3)(b) that the recipient of a taxable supply must confirm that the supplier is registered for GST at the time the RCTI is issued. In general, it would be impractical for the recipient to have that confirmation each and every time that an RCTI is issued and we suggest that that clause be removed from the draft instrument.

Other concerns regarding this issue include:

- Where a taxpayer issues numerous RCTI in any particular tax period, the task of reviewing that each supplier is registered at the time the RCTI is issued, especially if a taxpayer does not have an automated system or a system that does not regularly review the Australian Business Register, could be time-consuming and costly.
- Taxpayers may enter into RCTI agreements prior to the RCTI being issued. These agreements often require a party to notify the other in the event that one party is no longer registered for GST. This raises the question of interaction between Clause 7(3)(b) and Clause 9. For example, is the recipient of the supply deemed to have confirmed that the supplier is registered for GST due solely to an RCTI providing a supplier acknowledgement (even though the supplier hasn't issued the document)?
- Further guidance on supporting documentation to confirm that a supplier is registered for GST, including in the case of Justified Trust reviews (e.g. a copy of the ABR register at a particular day as evidence of the supplier having been reviewed, noting that GST registrations can change on a backdated basis), and consideration of a safe harbour or more practical approach for recipients who issue a significant amount of RCTIs.

If you would like to discuss any aspect of this submission further, please contact Kosta Sinelnikov on 0422 168 720 and ksinelnikov@propertycouncil.com.au or myself on 0400 356 140 and bngo@propertycouncil.com.au.

Yours sincerely



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