



National Growers Register P/L  
Attention: David Kuhne  
KPMG Tax  
GPO Box 2499  
ADELAIDE SA 5001

**Our reference:** GST/CHM/4449279  
**Contact officer:** Kim Anderson  
**Telephone:** 13 28 66  
**Facsimile:** 1300 139 031  
**Your reference:**  
**E-Mail:** GSTmail@ato.gov.au

22 April 2005

Dear Sir

**RE: GST and recipient created tax invoice agreements**

You wrote to us on 9 February 2005 asking:

1. Does the recipient created tax invoice (RCTI) arrangement described in this ruling request result in an actual written RCTI agreement between the buyers and growers such that an RCTI issued by a buyer named in the RCTI agreement will, prima facie, be accepted as valid under the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act)?
2. If the answer to question 1 is "yes", will the Tax Office accept that the buyer has acted with reasonable care if a shortfall has arisen but the buyer has relied upon the National Growers Register (NGR) information in good faith?
3. If the answer to the above questions is "yes", will a full remission of the general interest charge (GIC) be made available where the buyer has relied upon the NGR information in good faith and minor shortfalls have arisen?

You advised us of the following information:

The National Growers Register (NGR) had a previous ruling dated 24 October 2004 which addressed one of the issues in the current ruling request.

NGR have a central register of grower contact and payment details for use by grain buyers.

NGR are owned by the Australian Barley Board (ABB) and Graincorp Operations Ltd.

NGR have 58 grain buyers and 51,000 growers across Australia currently registered with them. Of these growers, 4000 are not registered for GST.

The NGR system issues a unique grower number to each grower entity which details the ABN, GST status, name, address and payment details.

Grain buyers enter into a Registered Party Deed (RPD) with NGR. Clause 6.10(g) of the RPD states that the NGR is the buyer's agent for the purposes of entering into RCTI agreements with grain growers. The buyers are then able to access the database for grower details after they have paid a usage fee. The terms and conditions section of the NGR registration form sets out the RCTI agreement that NGR enters into, on behalf of the buyers with the growers.

The grower's details are submitted in an application form and can be accessed by a registered NGR buyer upon request for an agreed fee.

Growers are issued with an NGR delivery card which is used by growers when they deliver grain to a silo.

In July each year (prior to the growing season) NGR will send out verification letters to all registered growers asking them to confirm the accuracy of their details on file. In exceptional circumstances it is possible that NGR might issue a special letter to a specific group of growers dealing with a new buyer.

Each grower will have one RCTI agreement (which is part of the registration form) which will cover all of the buyers named in a list which will be incorporated in the registration form.

The registration form will incorporate a list of buyers registered with NGR so growers will know which buyers they have entered into agreements with.

NGR will advise growers of changes to the buyers list through the verification mail out in July each year. NGR further advised that the website will be updated following the annual mail out and will be valid for the season the buyer joins and for subsequent seasons until the buyer withdraws. The list would be current for the particular growing season and the NGR website will have the buyer lists for previous and current seasons.

We advise:

1. Yes. If the grower is selling to a buyer who is mentioned on the NGR buyers list which is updated annually, it is considered that NGR is acting as an agent for the buyers on the list to procure RCTI agreements.
2. It is beyond the scope of this ruling to determine prospectively if a buyer acts with reasonable care where a shortfall amount occurs as a result of using information contained in the NGR database.
3. It is beyond the scope of this ruling to determine if GIC will be remitted if a shortfall amount results from a NGR registered buyer acting on information contained in the NGR database.

Explanation:

The Commissioner has determined under subsection 29-70(3) of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) that three classes of tax invoices may be issued by a recipient of a taxable supply.

Goods and Services Tax Ruling GSTR 2000/10: GST and recipient created tax invoices explains the determination that the Commissioner made under subsection 29-70(3) of the GST Act. The determination is attached at Schedule 1 in GSTR 2000/10 titled *A New Tax System (Goods and Services Tax) Act 1999 Classes of Recipient Created tax Invoice Determination (No. 1) 2000* (RCTI Determination).

The use of recipient created tax invoices (RCTIs) is restricted to three broad classes of tax invoices. One of the classes includes taxable supplies of agricultural products. Another includes taxable supplies made to registered recipients with a turnover of least \$20 million annually. A recipient of a taxable supply of agricultural products can issue tax invoices where:

- they satisfy the requirements of issuing RCTIs, and
- determine the value of the agricultural products subject to quantitative or qualitative analysis of the supply.

The contents of paragraph 13 of GSTR 2000/10 which appear in the RCTI Determination set out the specific requirements that must be respectively satisfied by recipients and suppliers:

- (a) the supplier and the recipient must be registered for GST when the invoice is issued and the RCTI must show the Australian Businesses Number ('ABN') of the supplier;
- (b) the recipient must issue the original or a copy of the RCTI to the supplier within 28 days of the making, or determining the value, of the taxable supply and must retain the original or a copy;
- (c) the recipient must issue the original or a copy of an adjustment note to the supplier within 28 days of the adjustment and must retain the original or a copy;
- (d) the recipient must reasonably comply with its obligations under the taxation laws;
- (e) the recipient and the supplier must have a written agreement specifying the supplies to which it relates, that is current and effective when the RCTI is issued, agreeing that:
  - (i) the recipient can issue tax invoices in respect of the supplies;
  - (ii) the supplier will not issue tax invoices in respect of the supplies;
  - (iii) the supplier acknowledges that it is registered for GST when it enters into the agreement and that it will notify the recipient if it ceases to be registered;

- (iv) the recipient acknowledges that it is registered when it enters into the agreement and that it will notify the supplier if it ceases to be registered for GST; and
- (f) the recipient must not issue a document that would otherwise be an RCTI, on or after the date when the recipient or the supplier has failed to comply with any of the requirements of the determination.

An invoice issued by a recipient that fails to satisfy all of the requirements of paragraph [13] of GSTR 2000/10 will not be treated as being a tax invoice.

Grain buyers fall within one of the classes that may issue RCTIs as they satisfy paragraph 10(a) of GSTR 2000/10. However, both recipients and suppliers must meet all the requirements listed under paragraph 13 of GSTR 2000/10 for recipients to be able to issue RCTIs. One of these requirements is that both the supplier and the recipient must have a written agreement that is current and effective when the RCTI is issued.

In your submission you advised that the National Growers Register (NGR) provides an administrative grower registration service to grain buyers. Growers need to complete an NGR registration form, which details each grower's ABN, GST status, address, name, contact, and payment details. NGR as part of this service ensure that growers enter into an RCTI agreement with buyers that are registered with the NGR database.

The NGR registration form which growers complete contains a standard RCTI agreement that does not specify a specific recipient. The registration form has an attachment which lists the names of the grain buyers that access the NGR database. Your suggestion is that a grower has an RCTI agreement with all the buyers contained in the attachment.

Clause 6.10 of the RPD expressly states that a buyer appoints NGR as its agent to procure written RCTI agreements with its suppliers. It also specifically directs NGR not to enter into RCTI agreements unless all the relevant requirements as set out in the RCTI Determination are met.

When NGR receive the signed registration form from growers and a signed RPD contract from grain buyers, all parties have indicated their acceptance of NGR acting as an agent for the grain buyers in relation to the procuring of RCTI agreements.

Paragraph 11 of Goods and Services Tax Ruling GSTR 2000/37 states that 'for commercial law purposes, an agent is a person who is authorised, either expressly or impliedly, by a principal to act for that principal so as to create or affect legal relations between the principal and third parties.'

Your submission states that where grain suppliers and buyers are registered users of the NGR database, each supplier has entered into an RCTI agreement by virtue of the written agreement which was entered into, with NGR acting as an agent for each buyer who is listed in the attachment provided to the registration form.

It is considered that as long as the grower is selling to a buyer who is mentioned on the list which is provided annually, your interpretation (of NGR acting as an agent for the buyers to procure RCTI agreements), satisfies the requirements of the above mentioned RCTI Determination.

## Question 2

You ask that in the event the answer to Question 1 is “yes”, whether the Tax Office will accept that the buyer has acted with reasonable care if a shortfall has arisen but the buyer has relied upon the NGR information in good faith.

It is beyond the scope of this ruling to determine prospectively if a NGR registered buyer acts with reasonable care where a shortfall amount occurs as a result of using information contained in the NGR database.

You have advised that the NGR system has sufficient system checks to ensure that reasonable care is taken when buyers use the NGR information in determining the GST status of a grower and consequently deciding whether to claim the GST credit based on the RCTI the buyer issues. You have further submitted that the buyer and NGR have taken reasonable care because of the checks NGR has in place and the fact that both entities need to rely upon information supplied by the grower.

The Tax Office’s position on remission of penalties is expressed in the practice statement - ATO Practice Statement Law Administration PS LA 2004/5. The practice statement discusses the administration of shortfall penalties under the new tax system.

If a shortfall occurs, then any decision by the Tax Office concerning penalties for a false and misleading statement will have regard to the circumstances of the case, and the efforts made by the taxpayer to comply. Genuine attempts to comply will be treated differently to situations where a taxpayer does not make an effort to do this. This is the approach adopted in the legislation, and accords with the principles of the ATO Compliance Model and the Taxpayers’ Charter. In line with this approach, a penalty for a false or misleading statement will generally be remitted where a shortfall amount arises in circumstances where a taxpayers’ overall level of compliance is sound, and in all the circumstances of the case it is clear that:

- the shortfall amount is not a material amount (See paragraph 43 of PS LA 2000/5 if the shortfall amount is a material amount): or
- the taxpayer has made an honest mistake See paragraph 33 of PS LA 2000/5).

## Question 3

You ask that if the answer to questions 1 and 2 are “yes”, whether a full remission of the general interest charge can be made available where the buyer has relied upon the NGR information in good faith and minor shortfalls have arisen.

A general interest charge (GIC) is imposed on any tax or penalty that remains unpaid after the time it becomes due and payable. The GIC is separate from the penalty

imposed. The Commissioner can remit all or any part of the GIC in certain circumstances.

As noted above it is beyond the scope of this ruling to determine if GIC will be remitted if a shortfall amount results from a NGR registered buyer acting on information contained in the NGR database.

However, the Tax Office policy on remission of GIC is fully explained in the ATO Receivables Policy which can be found on the Tax Office website [www.ato.gov.au](http://www.ato.gov.au).

We have attached explanatory notes on the effect, duration of this advice and your review rights.

If you wish to discuss this advice, please phone Kim Anderson on 07-32138467 and quote reference number GST/CHM/4449279.

Yours faithfully

Neil Mann  
DEPUTY COMMISSIONER OF TAXATION

Per   
(Kim Anderson)

Encl.

## Explanatory notes

### Effect

This advice sets out the Tax Office view about the operation of the GST law that may apply to an entity's circumstances. To the extent that this general view applies to an entity's circumstances, the Commissioner will be bound by that advice.

If an entity wants specific advice dealing with its individual circumstances, it should apply for a private ruling using the *Application for GST Private Ruling* form available at [www.ato.gov.au](http://www.ato.gov.au) or by calling the Tax Agent Information Line on 13 72 86.

### Duration

You may rely on this advice until it is withdrawn, overridden by a public ruling or there is a change in the legislation affecting the treatment of the subject matter of this advice for GST purposes.

### Review rights

You have a right to have this advice informally reviewed under the taxpayers' charter. If you want to do this, you should contact the person handling your case or the Tax Office where the decision was made. The review is normally conducted by a tax officer who was not involved in making the original decision.

You can also contact the Tax Office on the numbers listed at the bottom of these explanatory notes.

This advice cannot, however, be reviewed under the *Taxation Administration Act 1953* (TAA), as it is not a reviewable decision under subsection 62(2) of the TAA. Also, this advice cannot be reviewed under the *Administrative Decisions (Judicial Review) Act 1977*.

### Freedom of information

The *Freedom of Information Act 1982* (FOI Act) gives you a legal right to access certain documents relating to this decision held by the Tax Office.

Requests for access under this Act must:

- be in writing
- describe the document you want in enough detail to identify the document
- give an address in Australia for reply
- include the \$30.00 application fee, and
- be posted or delivered to the Tax Office.

The Tax Office may refuse you access to some documents, or portions of documents, that are subject to exemption provisions. There are rights of review should you disagree with this decision.

For further information about access to documents under the FOI Act or to obtain a *Freedom of information request* form, please refer to the contact numbers listed below.

### **Contact numbers**

If you need help you can:

- phone **13 72 86**, or
- visit our website at **[www.ato.gov.au](http://www.ato.gov.au)**

If you do not speak English and need help from the Tax Office, phone the Translating and Interpreting Service on **13 14 50**.

People with a hearing or speech impairment with access to appropriate TTY or modem equipment should phone **13 36 77**.