

DRAFT FOR CONSULTATION

Tax Administration (GST Adjustment Rules) Modification Order 2024

Governor-General

Order in Council

At Wellington this day of 2024

Present:
in Council

This order is made under section 6D of the Tax Administration Act 1994—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister of Revenue made in accordance with section 6D(5) of that Act.

Contents

		Page
1	Title	2
2	Commencement	2
3	Revocation	2
4	Interpretation	2
5	Act to which modification relates	2
6	Modification	2
7	Application period for modification	2
8	Content of modification	2
9	Persons that have already taken tax position consistent with modification	3
10	Persons that have already taken tax position inconsistent with modification	3
11	Other persons	3

Order

1 Title

This order is the Tax Administration (GST Adjustment Rules) Modification Order 2024.

2 Commencement

This order comes into force on XX 2024.

3 Revocation

This order is revoked on the close of 31 March 2025.

4 Interpretation

In this order, unless the context otherwise requires,—

Act means the Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Act 2023

modification means the modification in clause 6

new section 21FB means section 21FB of the Goods and Services Tax Act 1985 as in force on 1 April 2023.

5 Act to which modification relates

This order modifies the application of the Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Act 2023.

6 Modification

Section 143(3) of the Act has effect as if it had provided that section 143(2) of the Act applies to a registered person's adjustments made in returns for taxable periods starting on or after 1 April 2023.

7 Application period for modification

The period for which the modification applies—

- (a) commences on 1 April 2023; and
- (b) ends on the close of 31 March 2025.

8 Content of modification

- (1) The modification is available generally to all taxpayers.
- (2) A person to whom the modification is available may choose whether or not to apply the modification.
- (3) The means by which a person may choose is as set out in clauses 9 to 11.

9 Persons that have already taken tax position consistent with modification

- (1) This clause applies to a person who has taken a tax position in a GST return that is consistent with the modification (that is, by calculating an adjustment under new section 21FB).
- (2) The default position is that the modification applies to the person.
- (3) However, a person can choose not to apply the modification at any time by requesting the Commissioner to amend their assessment, under section 113 of the Tax Administration Act 1994, to not give effect to the modification.

10 Persons that have already taken tax position inconsistent with modification

- (1) This clause applies to a person who has taken a tax position in a GST return that is inconsistent with the modification.
- (2) The default position is that the modification applies to the person only if they choose to apply it.
- (3) The person may choose to apply it by requesting the Commissioner to amend their assessment, under section 113 of the Tax Administration Act 1994, to give effect to the modification.

11 Other persons

- (1) This clause applies to a person if neither clause 9 nor clause 10 applies to them.
- (2) The person can, at any time on or before 31 March 2025,—
 - (a) choose to apply the modification by taking a tax position in a GST return that is consistent with the modification; or
 - (b) choose not to apply the modification by not doing so.

Clerk of the Executive Council.

Explanatory note

This note is not part of the order but is intended to indicate its general effect.

This order, which comes into force on XX 2024 and is revoked on 31 March 2025, modifies the application date for new adjustment rules in section 21FB of the Goods and Services Tax Act 1985. Those rules came into force on 1 April 2023 by section 143(2) of the Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Act 2023 (the **2023 Act**). The modification applies retrospectively, from 1 April 2023.

The new adjustment rules allow for one-off adjustments for the purposes of determining goods and services tax (**GST**) adjustments for assets that have a permanent change of use.

Section 143(3) of the 2023 Act says that the new adjustment rules apply from adjustment periods starting on or after 1 April 2023, which means that they may not apply when an asset was acquired before 1 April 2023 (as the acquisition date of the asset marks the beginning of an adjustment period). This application provision prevents taxpayers from being able to benefit from the new adjustment rules if they acquired an asset before 1 April 2023 and started using it to make taxable supplies on or after 1 April 2023.

The effect of the modification in *clause 6* of this order is that taxpayers should be able to apply the new adjustment rules after 1 April 2023 (when the amending legislation came into force), including for assets acquired before this date.

Statement of reasons

Minister's reasons for recommending modification

This statement of the Minister's reasons for recommending the making of this order is published in accordance with section 6D(7) of the Tax Administration Act 1994.

The Minister of Revenue is satisfied that—

- the modification is reasonably necessary to give effect to the intended purpose or object of a provision in the Inland Revenue Acts:
- the modification does not materially affect the intended scope or effect of the provision to which it applies:
- the modification is not inconsistent with the intended purpose or object of the relevant provision:
- the modification is the most appropriate way of addressing or resolving the issue at the time:
- the modification is not broader than is reasonably necessary to address or resolve the issue that gave rise to it:
- where the modification applies to a person unless they choose not to apply it, the person has a reasonable opportunity to choose not to apply it:
- a consultative process has been undertaken on the proposed modification and explanation of the way in which it complies with the requirements of the Act:
- the modification will not, in substance, have the effect of extending the period for which a modification previously made, or exemption previously granted, under the Tax Administration Act 1994 applies.

Modification is reasonably necessary to give effect to intended purpose or object of provision in Inland Revenue Acts

The Minister considers that the intended purpose or object of new section 21FB of the Goods and Services Tax Act 1985 (a simplified GST adjustment calculation) was for it to be available for taxpayers who acquired an asset before being registered for GST. This is in the same way that it would be available for taxpayers who were registered for GST at the time they acquired an asset. The purpose or object was that, in both

cases, new section 21FB would apply to any permanent change in use and allow an adjustment to be made in one adjustment period rather than two adjustment periods under the old rules.

The unintended effect of the way the application provision for new section 21FB was drafted (section 143(3) of the 2023 Act) was that the simplified GST adjustment calculation is unavailable for taxpayers who acquired an asset before 1 April 2023 and who were not using that asset for making taxable supplies until on or after 1 April 2023. This includes taxpayers who acquired an asset before 1 April 2023 and who were not registered for GST at the time they acquired the asset. The Minister considers that this effect was not intended at the time the legislation came into force, as the simplified GST adjustment calculation was intended to be available for taxpayers to apply in their GST returns for taxable periods beginning on or after 1 April 2023. This timing coincided with when the 2023 Act came into force.

Modification does not materially affect intended scope or effect of provision to which it applies

The Minister considers that the modification made by the order corrects an unintended outcome caused by the application provision (section 143(3) of the 2023 Act) for the simplified GST adjustment calculation in new section 21FB. The modification allowed for by the order enables affected taxpayers to apply the simplified GST adjustment calculation as intended.

Modification is not inconsistent with purpose or object of relevant provision

The Minister considers that the intended purpose or object of the relevant provision was to allow taxpayers to apply the simplified GST adjustment calculation in GST returns for taxable periods beginning on or after 1 April 2023. This was to align with when the 2023 Act, and therefore the simplified GST adjustment calculation, came into force.

Modification is most appropriate way of addressing or resolving issue at time

The Minister has agreed to include a permanent remedial amendment in upcoming legislation, which is yet to be introduced to the House of Representatives. This remedial legislation will resolve the issue in the primary legislation. However, until the remedial legislation has passed into law, taxpayers and the Inland Revenue Department are unable to apply the law as was intended. The Minister considers it undesirable to wait for amending legislation to pass, as this will delay taxpayers' entitlements to GST input tax deductions. The modification made by the order will allow taxpayers and the Inland Revenue Department to process GST adjustments consistent with the policy intent of the simplification measures, and in anticipation of remedial legislation becoming law.

Modification is not broader than is reasonably necessary to address or resolve issue that gave rise to it

The Minister considers that the modification in the order is not broader than is reasonably necessary to address or resolve the issue that gave rise to it. This is because the modification in the order only allows affected taxpayers to apply the simplified GST adjustment calculation in new section 21FB of the Goods and Services Tax Act 1985 in taxable periods beginning on or after 1 April 2023.

When modification applies to person unless they choose not to apply it, person has a reasonable opportunity to choose not to apply it

The modification will apply to taxpayers who have already taken a tax position in a GST return that is consistent with the modification. The Minister is satisfied that these taxpayers will have a reasonable opportunity to choose not to apply the modification, as they can ask the Commissioner of Inland Revenue to amend their assessment in a manner that is inconsistent with the modification, if they choose for it not to apply.

Consultative process has been undertaken as required by Act

The Minister consulted on a draft order that included the proposed modification and an explanation of the way the modification would comply with the requirements of section 6D of the Tax Administration Act 1994 between X July 2024 and Y August 2024. The Minister decided a two-week period of consultation to be appropriate in the circumstances because of the urgency of the situation for affected taxpayers.

Modification will not, in substance, have effect of extending period for which modification previously made, or exemption previously granted, applies

The Minister is satisfied of this criterion because no modification has previously been made, and no exemption has previously been granted, under the Tax Administration Act 1994 to address or resolve this issue.

Other

The Inland Revenue Department will publish guidance on the modification, its effect, and how affected taxpayers can choose to apply it or not to apply it. This guidance will be included on the Inland Revenue Department's website.

Issued under the authority of the Legislation Act 2019.

Date of notification in *Gazette*:

This order is administered by the Inland Revenue Department.