

NEW LEGISLATION > TAX ADMINISTRATION (GST ADJUSTMENT RULES)
MODIFICATION ORDER 2024> SPECIAL REPORT

Tax Administration (GST Adjustment Rules) Modification Order 2024

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This special report provides early information about a modification made by Order in Council to the GST adjustment rules ahead of an upcoming edition of the *Tax Information Bulletin*.

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Modification to GST adjustment rules

Clauses 1 to 11

This Order in Council modifies the effect of an application provision in the Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Act 2023 to resolve a legislative error that prevents GST-registered taxpayers from being able to make one adjustment for some goods and services acquired before 1 April 2023 that had a permanent change of use on or after 1 April 2023.

Background

In 2023, changes were made to simplify the GST apportionment and adjustment rules. These changes were given effect by amendments made to the Goods and Services Tax Act 1985 (GSTA) by the Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Act 2023 (the 2023 Act), which came into force on 31 March 2023.

One of the changes made was intended to reduce the number of GST adjustments required for goods or services (an asset) that had a permanent change of use. An asset will have a permanent change of use when it stops being used for non-taxable purposes (for example, private purposes) and permanently switches to being used for taxable purposes (for example business purposes). Under the old rules, taxpayers who wanted to make a GST adjustment for assets that had a permanent change of use needed to do so across two adjustment periods. This meant they needed to do two calculations across two years.

The amendments reduced the number of adjustment periods and calculations required in these circumstances to one. This was to simplify the rules and reduce compliance costs.

Since the changes came into force, Inland Revenue identified a legislative error that denied taxpayers access to the single adjustment when the asset in question was acquired by taxpayers before 1 April 2023. The error was included in the application provision (section 143(3) of the 2023 Act) for the provision that includes the calculation method (section 21FB of the GSTA). The application provision set out that the simplified calculation could only be applied for a GST-registered person's "adjustment period" beginning on or after 1 April 2023. This meant that it was not available in circumstances where an asset was acquired before 1 April 2023 because the acquisition date marks the start date of the adjustment period.¹ The

¹ Unless the start date for the adjustment period is the day after the last day of the preceding adjustment period. For this reason, if a taxpayer has already had an adjustment period for the relevant asset, the law operates as intended and no modification is necessary.

policy intent was that the calculation be available for taxpayers to apply in GST returns for taxable periods beginning on or after 1 April 2023. This coincided with when the 2023 Act came into force.

The Minister of Revenue agreed to include retrospective remedial amendments to address the issue in the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Matters) Bill. These amendments are expected to come into force before 31 March 2025. In the meantime, Inland Revenue must apply the current law, which would delay taxpayers' entitlements to GST input tax deductions until March 2025.

In anticipation of permanent remedial amendments coming into force, and to allow the law to apply as intended, the Minister of Revenue has exercised the remedial power available in the Tax Administration Act 1994 (TAA), recommending an Order in Council to modify the application of the law to address the legislative error. The modification in the Order in Council is time-limited and optional for affected taxpayers to apply.

The Minister's reasons for recommending the modification and an explanation of the way in which it complies with the requirements of the TAA are published in the Order in Council.

Key features

- A time-limited modification that is optional for affected taxpayers to apply has been made by Order in Council on the recommendation of the Minister of Revenue.
- The modification resolves a legislative error that prevents GST-registered taxpayers from being able to make one adjustment for some goods and services acquired before 1 April 2023 that had a permanent change of use on or after 1 April 2023.
- The modification sets out how affected taxpayers can choose for it to apply (or not apply) in their circumstances.

Effective date

The Tax Administration (GST Adjustment Rules) Modification Order 2024 came into force on 10 September 2024. It has retrospective effect, meaning it can be applied by taxpayers for the purposes of their GST returns for taxable periods beginning on or after 1 April 2023.

The Order is revoked on 31 March 2025. After this date, permanent legislative amendments included in the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill are expected to be in force. These proposed amendments would have retrospective effect and would apply from 1 April 2023.

Detailed analysis

Issue requiring modification

Section 21FB of the GSTA applies for the purposes of making an adjustment for an asset that has a permanent change of use. Before amendments were made to section 21FB in 2023, when an asset had a permanent change of use, two adjustments across two adjustment periods (and therefore, two income years) were required.

The 2023 Act amended section 21FB of the GSTA on 31 March 2023. The amended section:

- allows one adjustment to be made (instead of two) for an asset that has a permanent change of use, and
- is available from a registered person's "adjustment period" starting on or after 1 April 2023.

The problem with the legislation as it came into force is that the application provision (in section 143(3) of the 2023 Act) has the effect of denying access to the calculation for some taxpayers when they acquired an asset before 1 April 2023 and that asset has a permanent change of use on or after 1 April 2023. This is because for these taxpayers, their adjustment period began on the date they acquired the asset, and this was before 1 April 2023. The issue affects taxpayers who have not previously made an adjustment for these assets before 1 April 2023.

Modification

Clauses 5 to 8

The modification set out in the Order in Council ensures taxpayers can make one adjustment for assets that have a permanent change of use in GST returns for taxable periods that start on or after 1 April 2023. It achieves this by modifying the effect of the application provision in section 143(3) of the 2023 Act by allowing it to apply in the intended way.

The modification is expressed as being available to all taxpayers. In practice, the modification will be relevant to GST-registered persons who:

- acquired goods or services (an asset) before 1 April 2023

- had not made an adjustment for that asset before 1 April 2023,² and
- permanently changed their use of the asset from private (for example) or non-taxable use to business (for example) or taxable use on or after 1 April 2023.

The modification is available to apply up until 31 March 2025 when the Order in Council is revoked. This is because modifications by Order in Council can only be in force for a limited time, and it is expected permanent legislative amendments addressing the error will be in force by then.

Applying the modification

Clauses 9 to 11

The following table sets out how taxpayers can choose to apply (or not apply) the modification, depending on their circumstances:

Table 1: How to choose to apply the modification

Taxpayer...	...wants to apply modification	...does not want to apply modification
...has taken a tax position in a GST return that is consistent with the modification.	The modification will apply automatically. No action is required by the taxpayer.	The taxpayer can ask the Commissioner to amend their assessment under section 113 of the TAA.
... has taken a tax position in a GST return that is inconsistent with the modification.	The taxpayer can ask the Commissioner to amend their assessment under section 113 of the TAA.	The modification will not be applied. No action is required by the taxpayer.
...has not yet provided a GST return.	The taxpayer can apply the modification by taking a tax position consistent with the modification in their GST return.	The taxpayer can choose for the modification not to apply by taking a tax position consistent with the effect of the unmodified law in their GST return.

² Taxpayers who acquired an asset before 1 April 2023 may have already had an adjustment period and made an adjustment in a GST return before 1 April 2023. These taxpayers are unaffected by the issue that gave rise to the need for the modification because their second adjustment period would start on or after 1 April 2023.

The Commissioner will amend assessments to be consistent with the modification (or not) in accordance with the process set out in standard practice statement [SPS 20/03: Requests to amend assessments](#). Taxpayers who want to request an amendment to their assessment will need to provide the Commissioner with sufficient information to enable an amendment request to be made.

If a taxpayer has taken a position in a GST return consistent with the modification and asks the Commissioner to amend their assessment to be inconsistent with the modification, the taxpayer may have to account for the difference between the two assessments by making a payment to the Commissioner.

Effect of law with and without the modification

Example: Asset acquired before 1 April 2023 that has a permanent change of use on or after 1 April 2023

A taxpayer with a standard balance date acquires an asset for private purposes (non-taxable use) on 1 January 2023 for \$1,150,000 including GST.

The taxpayer registered for GST and started using the asset exclusively for business purposes (taxable use) on 1 November 2023.

Under the law without effect of modification

The taxpayer would make two adjustments to deduct GST input tax of \$150,000 across two adjustment periods. \$50,000 would be deductible in the GST return that corresponds to 31 March 2024. The balance of \$100,000 would be deductible in the GST return for the taxable period that corresponds to 31 March 2025.

Under the law with effect of modification

The taxpayer would make one adjustment of \$150,000 in their GST return for the taxable period that corresponds to 31 March 2024.

Further information

The Order in Council can be found at:

<https://www.legislation.govt.nz/regulation/public/2024/0189/latest/LMS985077.html>

About this document

Special reports are published shortly after new legislation is enacted or Orders in Council are made to help affected taxpayers and their advisors understand the consequences of the changes. These are published in advance of an article in the *Tax Information Bulletin*.