

Hon Simon Watts, Minister of Revenue

Information Release

Tax Administration (GST Adjustment Rules) Modification Order 2024

September 2024

Availability

This information release is available on Inland Revenue's tax policy website at <https://www.taxpolicy.ird.govt.nz/publications/2024/ir-modification-to-gst-adjustment-rules>

Documents in this information release

#	Reference	Type	Title	Date
1	IR2024/245	Tax policy report	Correcting a legislative error in the GST adjustment rules with the remedial power	11 July 2024
2	BN2024/302	Briefing Note	Consultation on draft modification to GST adjustment rules	24 July 2024
3	IR2024/300	Cabinet Paper	Draft Cabinet paper – Modification to GST adjustment rules by Order in Council	15 August 2024
4	N/A	Cabinet Paper	Order in Council: Tax Administration (GST Adjustment Rules) Modification Order 2024	2 September 2024
5	CBC-24-MIN-0089	Minute	Cabinet Business Committee – Minute of Decision – Tax Administration (GST Adjustment Rules) Modification Order 2024	2 September 2024
6	CAB-24-MIN-0335	Minute	Cabinet Minute of Decision – Report of the Cabinet Business Committee: Period Ended 6 September 2024	9 September 2024

Additional information

The Cabinet paper was considered by the Cabinet Business Committee on 2 September 2024 and confirmed by Cabinet on 9 September 2024.

Information withheld

Some parts of this information release would not be appropriate to release and, if requested, would be withheld under the Official Information Act 1982 (the Act). Where this is the case, the relevant sections of the Act that would apply are identified. Where information is withheld, no public interest was identified that would outweigh the reasons for withholding it.

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9(2)(a) to protect the privacy of natural persons, including deceased people

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Inland Revenue
Te Tari Taake

POLICY

Tax policy report: **Correcting a legislative error in the GST adjustment rules with the remedial power**

Date:	11 July 2024	Priority:	High
Security level:	In Confidence	Report number:	IR2024/245

Action sought

	Action sought	Deadline
Minister of Revenue	Agree to the recommendations in this report	18 July 2024

Contact for telephone discussion (if required)

Name	Position	Telephone
Ben Smith	Principal Policy Advisor	s 9(2)(a)
Martin Neylan	Policy Lead	

11 July 2024

Minister of Revenue

Correcting a legislative error in the GST adjustment rules with the remedial power

Purpose

1. This report seeks your agreement to use a remedial power you have under the Tax Administration Act 1994 to modify the application of the law to address a legislative error that has been identified. The legislative error relates to simplifications to the GST adjustment rules that were enacted in 2023. It is preventing Inland Revenue from releasing some GST refunds to taxpayers.
2. The remedial power enables the Minister of Revenue to recommend Orders in Council to modify the application of the law to align with intended policy outcomes. It can be used to resolve issues with tax legislation on a time-limited basis and at the option of affected taxpayers.

GST adjustment rules – error with the application date of a simplification measure

3. As a general principle, taxpayers can claim a deduction for GST on expenses they incur in making taxable supplies (or sales). If an asset is used for both business (taxable) and private (non-taxable) purposes, an adjustment must be made to ensure that the GST claimed is proportional to the business use of the asset. Subsequent adjustments may be required if there is a change in the use of the asset (that is, the proportion of business to private use changes). Adjustments are generally made at the end of the taxpayer's income year.
4. The GST adjustment rules also enable taxpayers to claim a deduction for GST on an asset they acquired before they became registered for GST. This might be the case when a taxpayer acquires goods or services (such as land) pre-registration, and then registers for GST because they start developing the land for sale.
5. In 2023, changes were made to simplify the GST adjustment rules. This included reducing the number of adjustment periods required in circumstances where an asset had a permanent change of use, from two adjustments to one. The rationale behind this was to reduce compliance costs by enabling taxpayers to get a full GST deduction for the asset by performing one calculation, instead of two calculations which would span two years. The measure was supported by taxpayers and practitioners because it reduced compliance costs.
6. Inland Revenue has identified an error with the application provision in the legislation for this change. Specifically, the application provision refers to the simplified calculation method being available for "adjustment periods" that begin after 1 April 2023. It should have referred to the simplified calculation method being available from 1 April 2023 instead. This error is preventing taxpayers from being able to benefit from the change if the taxpayer acquired an asset before 1 April 2023 and started using it to make taxable supplies after 1 April 2023. The following example highlights the issue.

Example

A person acquired land on 10 January 2023 and began using the land for making taxable supplies on 5 May 2023. In this case, the person's adjustment period would be from 10 January 2023 to 31 March 2024 (being the first balance date after the person used the land for making taxable supplies). Because the adjustment period began before 1 April 2023, the new provision allowing a one-off adjustment does not apply. Instead, two adjustments over consecutive adjustment periods will be required, meaning the full GST deduction will not be received until after 31 March 2025.

7. This outcome was not intended and has resulted in taxpayers having to effectively apply two different sets of rules depending on when they acquired an asset. This runs counter to the purpose and intent of the change, which was to simplify the adjustment rules with effect for calculations performed after 1 April 2023. This date was chosen because it aligned with when the bill containing the change was to become law.
8. Since the change was made, Inland Revenue has received over 300 applications (totalling in the tens of millions of dollars) for GST refunds from taxpayers relying on the change. These refunds are currently being held because Inland Revenue's Tax Counsel Office has concluded there is no lawful ability for Inland Revenue to release the full amount of the refunds calculated by taxpayers affected by this error.
9. This outcome is likely to cause significant cashflow issues for some taxpayers. These taxpayers are also contacting Inland Revenue frequently to find out what the status of their refund is.

Steps taken to resolve the error and use of the remedial power

10. You have already agreed to include a remedial amendment to address this issue in the omnibus tax bill that will be introduced in August 2024 (IR2024/092 refers). This bill is expected to become law before March 2025. Until this bill becomes law, Inland Revenue is unable to process the **full** refund claims from taxpayers who have applied the new adjustment rule as it was intended to be applied. This means that if no action is taken now, Inland Revenue will not be able to make full refunds until March 2025.
11. We have explored whether there are any other mechanisms that could be used to address the issue now. While the remedial powers do provide the Commissioner of Inland Revenue with a power of exemption (which does not require Cabinet approval), the exemption power is more constrained than the Minister of Revenue's Order in Council power. We have concluded that the constraints on the Commissioner's exemption power prevent this from being used to address the issue. There are no other mechanisms available to Inland Revenue to address the issue.
12. You have a power under the Tax Administration Act 1994 that could be used to resolve the issue in the intervening period between the August tax bill being introduced and it becoming law. This power involves you recommending an Order in Council to modify the application of the law so that it aligns with what was intended. This modification can only be made if you consider that the circumstances meet the statutory criteria for a modification. It would also be time-limited and at the option of affected taxpayers to apply. This power also allows for the modification to have retrospective effect. In these circumstances, retrospective effect is necessary back to 1 April 2023, as this is when the issue arose.
13. We have set out the criteria you need to be satisfied of before recommending an Order in Council below. We have also explained why we consider you should be satisfied that the criteria have been met. If an Order is made, your reasons for recommending an Order will need to be published alongside the Order.

Criteria	Explanation of how this criterion is satisfied
The modification is reasonably necessary to give effect to the intended purpose	The current law does not operate as intended (as described above) and you have agreed to a remedial amendment to address the issue in the upcoming tax bill. A modification to the law is necessary to enable affected taxpayers to receive their GST refunds before March 2025. If no modification is made, Inland Revenue will not be able to pay refunds until remedial legislation is passed. This will create significant cashflow issues for some taxpayers.
The modification does not materially affect the intended scope or effect of the provisions to which it applies	The modification would enable the law to operate as intended. It would not have the effect of expanding the operation of the law further than was intended when the original proposals were included in amending legislation in 2023.
The modification is not inconsistent with the intended purpose or object of the relevant provision	The intended purpose of the change was to reduce the number of adjustments required for taxpayers who had acquired assets that had a permanent change of use. It was intended this reduction in the number of adjustments was to be available for adjustments performed after 1 April 2023.
The extent of the modification is not broader than reasonably necessary to address or resolve the issue that gave rise to it	We will work with the Parliamentary Counsel Office to ensure that the modification in the draft Order in Council does not do more than address the issue with the application date of the change. That is, the modification would only allow taxpayers who had acquired an asset that had a permanent change of use to benefit from a single adjustment.
A consultative process has been undertaken	No consultative process has taken place yet. Consultation needs to occur on the draft Order in Council before you recommend it be made, however this can be truncated if you consider a case of urgency exists. This process is discussed further from paragraph 18 .
Making the modification will not, in substance, have the effect of extending the period for which a modification previously made applies	This does not apply because the issue has never been the subject of the remedial powers before.

14. A modification made to the effect of the law by Order in Council must set out how an affected person can apply it. A modification must also allow a person to choose whether or not to apply it. This requirement can be met by providing for a method allowing affected persons to opt-in or opt-out of the modification, and by setting a default position (for example, that the modification will apply to taxpayers who have provided GST returns consistent with the effect of the modification, as long as they have not chosen to opt-out of the effect of the modification).

15. Because the modification would produce outcomes consistent with what taxpayers expect, we consider the modification should apply to all taxpayers who have taken, or will take, a tax position in their GST return. In the unlikely event a taxpayer did not want to apply the modification, they could either:
 - 15.1 apply the law without the effect of the modification, or
 - 15.2 ask Inland Revenue to amend their GST return to ignore the effect of the modification if they had already provided a GST return consistent with the effect of the modification.
16. We consider both these circumstances to be highly unlikely as taxpayers applying the law, as modified by the Order in Council, will obtain GST refunds faster than if they applied the law without the effect of the modification. As a modification made by Order in Council is always optional for taxpayers to apply, it must be possible for taxpayers to ignore the effect of the modified law if they choose to.
17. It is possible that some taxpayers may have provided their GST returns in reliance on Inland Revenue's interpretation of the current law. This means they would not have benefitted from the effect of what was intended (a reduced number of adjustment periods) from a policy perspective. For taxpayers in this situation, the modification would be available for them to apply, and they could ask Inland Revenue to amend their GST returns in a manner that is consistent with the modification.

Consultation

18. We have had confidential discussions with private sector stakeholders (such as Chartered Accountants Australia and New Zealand and the New Zealand Law Society) about the potential use of the power to resolve a GST-related issue. No concerns have been raised as part of these discussions.
19. If you agree to recommend an Order in Council to resolve the issue, consultation will be required on the proposed Order before it is considered by Cabinet. The period of consultation required by law is six weeks, but if you consider a case of urgency exists, this can be shortened or removed entirely. In this situation, we recommend the matter be treated as urgent to enable affected taxpayers to receive their GST refunds as soon as possible. However, as this will be the first use of the remedial power, we do not consider that consultation be removed entirely. We therefore recommend a consultation period of two weeks.
20. We expect the Order to be supported by taxpayers and GST practitioners familiar with the 2023 changes to the GST adjustment rules. This is because many taxpayers have already provided GST returns to Inland Revenue on the understanding they will be entitled to GST refunds.
21. We also expect the Order may be of interest to the legal profession. This is because it would be the first use of the remedial powers since they were enacted in 2019 and, at the time the powers were going through the policy and legislative process, they drew attention from the legal profession as they were considered a novel means of addressing legislative errors. The powers were loosely modelled on a similar power the Commissioner of the Australian Taxation Office has to remedy legislative errors.
22. The Treasury has also been informed.

Financial implications

23. There are no financial implications of a decision to recommend an Order in Council to address the legislative issue described in this report. This is because the Order would correct a drafting error and give effect to policy decisions already taken by Cabinet.

Next steps

24. If you agree to the recommendations in this report, we will work with the Parliamentary Counsel Office on drafting the Order in Council for consultation. We will then report to you following consultation with a finalised Order and a draft paper for you to take to the Cabinet Legislation Committee ahead of Cabinet consideration and submission of the Order to the Executive Council.
25. Once the Order is published for consultation, the public will become aware of the legislative error and the intent to resolve it.
26. If you agree to our recommendations, the following table provides an indicative timeline of the next steps in the process:

Milestone	Date
Public consultation on the draft Order in Council and explanation of reasons as to why you consider a modification is needed and how the statutory tests are satisfied	22 July to 5 August
We provide you with a covering report summarising the outcome of consultation alongside a draft Cabinet paper seeking Cabinet's agreement to submit the Order in Council to the Executive Council	In week of 5 August
Lodgement of the Cabinet paper with the Cabinet Office for the Cabinet Legislation Committee	15 August
Cabinet Legislation Committee consideration	22 August
Cabinet consideration and submission to the Executive Council	26 August
Order in Council comes into force and Inland Revenue can start releasing refunds (assuming a waiver of the 28-day rule)	27 August

Recommended action

We recommend that you:

- (a) **note** that a legislative error has been identified preventing Inland Revenue from releasing GST refunds to hundreds of taxpayers

Noted

- (b) **note** that you have already agreed to include a remedial amendment in the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill but, as that amendment will not be law until March 2025, Inland Revenue is currently unable to fully process GST refund claims for hundreds of taxpayers

Noted

- (c) **note** that you have a power under the Tax Administration Act 1994 to remedy this legislative error on a time-limited basis now, provided you are satisfied the criteria for making an Order in Council have been met

Noted

- (d) **agree** that the criteria for making an Order in Council to address the legislative error has been met, as described in the table following [paragraph 13](#) in the body of this report

Agreed/Not agreed

- (e) if you agree with the recommendation in paragraph (d), **agree** that an Order in Council that would modify the application of the law to correct the legislative error in the application date for the GST adjustment rules should be prepared for public consultation ahead of Cabinet's consideration and submission to the Executive Council

Agreed/Not agreed

- (f) if you agree with the recommendation in paragraph (e), **agree** that the modification should be expressed as applying to taxpayers who have taken a tax position consistent with the effect of the modification, with taxpayers being able to specifically opt-in or opt-out of the modification by choice

Agreed/Not agreed

- (g) if you agree with the recommendations in paragraphs (e) and (f), **direct** officials to provide drafting instructions to the Parliamentary Counsel Office that gives effect to your decisions in those paragraphs

Directed/Not directed

- (h) **agree** that because a case of urgency exists, a two-week period of consultation should run on the proposed Order instead of a six-week period of consultation

Agreed/Not agreed

- (i) **note** that following consultation on the draft Order, officials will report to you with a draft Cabinet paper and a finalised Order for consideration by Cabinet and submission to the Executive Council.

Noted

s 9(2)(a)

Ben Smith

Principal Policy Advisor

Policy

Hon Simon Watts

Minister of Revenue

/ /2024

Briefing note

Reference: BN2024/302

Date: 23 July 2024

To: Revenue Advisor, Minister of Revenue – Angela Graham
Private Secretary, Minister of Revenue – Helen Kuy

From: Ben Smith

Subject: **Consultation on draft modification to GST adjustment rules**

Purpose and background

1. The Minister agreed to consider a modification by Order in Council to address an error in the GST adjustment rules (IR2024/245 refers). As part of this process, the Minister also agreed to public consultation on the draft modification for a period of two weeks.
2. This briefing note provides you with a copy of the Order in Council which includes the draft modification and an explanation of the Minister's reasons for recommending a modification (as required by the law) ahead of it being published on Inland Revenue's tax policy website for public consultation. We consider the material included in the Order in Council meets the legislative requirements for public consultation purposes.
3. We intend to publish the draft Order in Council on 26 July. Public consultation would close on 12 August 2024. We will report to the Minister with further advice following public consultation.

Timeline and remaining steps following consultation

4. Following public consultation, we will report to the Minister with advice and a draft Cabinet paper for him to take to the Cabinet Legislation Committee. The following table sets out a revised timeline of the remaining steps in the process.

Milestone	Date
Public consultation on draft modification and statement of the Minister's reasons for recommending it	26 July to 12 August
Further advice following consultation and a draft Cabinet paper	In week of 12 August
Lodgement of Cabinet paper for Cabinet Legislation Committee with Cabinet Office	22 August
Cabinet Legislation Committee consideration	29 August

Cabinet consideration and submission to Executive Council	2 September
Order in Council comes into force and Inland Revenue can start releasing refunds (assuming waiver of 28-day rule)	3 September

Ben Smith
Principal Policy Advisor
s 9(2)(a)



POLICY

Tax policy report: **Draft Cabinet paper – Modification to GST adjustment rules by Order in Council**

Date:	15 August 2024	Priority:	High
Security level:	In Confidence	Report number:	IR2024/300

Action sought

	Action sought	Deadline
Minister of Revenue	<p>Agree with the recommendation</p> <p>Authorise the lodgement of the attached Cabinet paper</p> <p>Refer a copy of this report to the Minister of Finance</p>	10am on Thursday 22 August 2024

Contact for telephone discussion (if required)

Name	Position	Telephone
Ben Smith	Principal Policy Advisor	s 9(2)(a)
Martin Neylan	Policy Lead	

15 August 2024

Minister of Revenue

Draft Cabinet paper – Modification to GST adjustment rules by Order in Council

Purpose

1. This report:
 - 1.1 updates you following public consultation on the draft modification by Order in Council that would address a legislative error in the GST adjustment rules following public consultation, and
 - 1.2 recommends you approve and lodge the attached Cabinet paper and Order in Council with the Cabinet Office by 10am on Thursday 22 August so they can be considered by the Cabinet Legislation Committee on 29 August.

Modification to the GST adjustment rules to address a legislative error

2. You agreed to consider using the remedial power available to you in the Tax Administration Act 1994 to recommend an Order in Council that would modify the application of the Goods and Services Tax Act 1985 to address a legislative error in the GST adjustment rules (IR2024/245 refers). The modification would allow affected taxpayers and Inland Revenue to apply the law as intended.
3. The law was intended to allow taxpayers to make one GST adjustment for goods and services that were acquired before 1 April 2023 that had a permanent change of use (for example from non-taxable or private purposes to taxable or business purposes) even if that permanent change of use happened on or after 1 April 2023. The 1 April 2023 date was chosen because this would have coincided with when the amending legislation came into force.

Example: Effect of error compared to policy intention

A taxpayer with a standard balance date (31 March) acquired an asset, such as land, for private (non-taxable) purposes on 1 January 2023 for \$1,150,000 including GST.

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

Under the current law

The taxpayer would make two GST adjustments to claim a credit for the \$150,000 of GST 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 that corresponds to 31 March 2025.

The policy intention of the law

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

4. The error arises because of an unanticipated interaction between the application provision that brought the new rules into force, and an existing definition in the Goods and Services Tax Act 1985. The effect of this interaction is that, when a taxpayer acquires an asset before 1 April 2023, the date they acquire the asset marks the start of their “adjustment period” for the purposes of the GST adjustment rules. The application provision should have been expressed as applying to adjustments made in GST returns for taxable periods starting on or after 1 April 2023.
5. The modification is consistent with retrospective remedial amendments you agreed be included in the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill (IR2024/092 refers). We expect these amendments will come into force before 31 March 2025. However, Inland Revenue cannot apply these amendments in anticipation of them becoming law.
6. The modification would allow affected taxpayers to make one GST adjustment in any GST return for a taxable period beginning on or after 1 April 2023. They could do this by taking a tax position in their GST return consistent with the modification, or they could ask Inland Revenue to amend their GST return to be consistent with the modification if they have already provided a return.

Outcome of public consultation

7. You agreed to a two-week period of public consultation on the draft modification by Order in Council between 26 July and 12 August. We received and considered submissions from Chartered Accountants Australia and New Zealand, Deloitte, EY, and Findex. We also discussed aspects of the modification with KPMG.
8. Submitters were generally supportive of the use of the remedial power to address the issue and the process followed (including the consultation period). Two submitters made technical submissions about the Order in Council. One suggested the explanation of the circumstances that gave rise to the need for the modification could be better explained. The other suggested improvements to the drafting to avoid potential ambiguity. We agree with these submissions and have worked with the Parliamentary Counsel Office to address the points raised. This is reflected in the revised Order in Council.
9. One submitter commented that taxpayers who need to amend their GST returns to be consistent with the modification should have a streamlined process for doing so. We agree that the process for taxpayers to request amendments to their GST returns to ensure consistency with (or inconsistency with) the modification should be straightforward. However, we do not consider a separate process needs to be designed to achieve this outcome. Taxpayers who want to request an amendment to their GST returns will be able to do so through myIR, as an example, and will be required to provide sufficient information to Inland Revenue to enable an amendment to be made.
10. There are no outstanding issues following public consultation.

Next steps

11. If you agree with the attached draft Cabinet paper and the Order in Council, the next step would be to authorise lodgement of these the Cabinet Office by 10am on 22 August. The paper and the Order in Council would then be considered at the Cabinet Legislation Committee meeting on 29 August ahead of Cabinet on 2 September and submission to the Executive Council on the same day.

12. The Cabinet paper has been prepared to seek a waiver of the 28-day rule. This would ensure the modification in the Order in Council could come into force as soon as possible. We recommend this to ensure that affected taxpayers can make use of the modification in the Order in Council and obtain their anticipated GST refunds as soon as possible.
13. The attached Order in Council is suitable for the purposes of ministerial consultation. It is still subject to finalisation by the Parliamentary Counsel Office. This will occur ahead of 10am on Thursday 22 August.
14. We will support your office with any communications material for publication following the Order in Council coming into force. We will also provide guidance to taxpayers consistent with our usual practices.

Recommended action

We recommend that you:

- (a) **agree** to recommend an Order in Council be made to modify the application of the GST adjustment rules for the reasons set out in the attached draft Cabinet paper and Order in Council

Agreed/Not agreed

- (b) **authorise** the lodgement of the attached Cabinet paper and finalised Order in Council with the Cabinet Office by 10am on Thursday 22 August

Authorised/Not authorised

- (c) **refer** a copy of this report to the Minister of Finance for her information.

Referred/Not referred

s 9(2)(a)



Ben Smith

Principal Policy Advisor

Policy

Hon Simon Watts

Minister of Revenue

/ /2024

In Confidence

Office of the Minister of Revenue
Chair, Cabinet Business Committee

ORDER IN COUNCIL: TAX ADMINISTRATION (GST ADJUSTMENT RULES) MODIFICATION ORDER 2024

Proposal

- 1 This paper seeks the Cabinet Business Committee's agreement to submit the Tax Administration (GST Adjustment Rules) Modification Order 2024 to the Executive Council.

Executive summary

- 2 I am seeking Cabinet's agreement to an Order in Council that would allow taxpayers affected by a legislative error in the GST adjustment rules in the Goods and Services Tax Act 1985 to apply the law as intended. This would be time-limited and optional for affected taxpayers to apply ahead of permanent retrospective amendments being made to address the legislative error in the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill, which is expected to come into force before 31 March 2025.
- 3 The Order in Council would be made using a remedial power available to the Minister of Revenue under the Tax Administration Act 1994. The remedial power was enacted in 2019 and this would be the first use of the power. Before I can recommend an Order in Council that modifies the application of the Inland Revenue Acts, I need to be satisfied the criteria set out in the empowering provision have been met. I am satisfied the criteria for recommending an Order in Council has been met in these circumstances.
- 4 Inland Revenue advises me that more than 350 taxpayers are affected by the legislative error. For many of these taxpayers, they are facing significant financial pressure. I therefore consider an Order in Council should be made now, and it should come into force as soon as possible, to relieve this financial pressure. This would ensure these taxpayers did not need to wait until March 2025 for GST refunds that they should be able to receive.

Legislative error in the GST adjustment rules

- 5 In 2023, a range of amendments were made to the Goods and Services Tax Act 1985 to simplify the apportionment and adjustment rules for GST. These amendments were included in the Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Act 2023.
- 6 One of these changes was intended to reduce the number of GST adjustments required for 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 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 would need to do so across two adjustment periods. This meant they needed to do two calculations across two years, meaning it could take them two years to get a full GST credit for the asset.

- 7 The change was intended to reduce the number of adjustment periods and calculations required in these circumstances to one. This was to simplify the rules and reduce compliance costs. The measures were supported by taxpayers and practitioners for these reasons.
- 8 The problem is the new rule cannot be applied for some assets acquired before 1 April 2023 where the permanent change of use occurred on or after 1 April 2023. This is because an application provision in the amending legislation prevents the new rules from being used in these circumstances. This was unintentional. Instead, what was intended was that the new rule be available to be applied in GST returns for taxable periods starting on or after 1 April 2023. This timing coincided with when the amending legislation received the Royal assent.
- 9 Inland Revenue identified the error shortly after 31 March 2024. This coincided with when GST returns were provided by taxpayers who wanted to apply the new rule. Inland Revenue officials advise me that they are aware of more than 350 taxpayers who are affected by the issue. For some of these taxpayers, the issue is causing them significant cashflow problems as they had anticipated access to these GST refunds.

Temporary mitigation of the error ahead of permanent legislative amendments

- 10 I have already agreed to address this issue with permanent retrospective legislative amendments. These amendments will be included in the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill which will be introduced shortly.
- 11 In the meantime, Inland Revenue must apply the law as it currently stands. It cannot release GST refunds in anticipation of a future law change. However, as Minister of Revenue, I can recommend time-limited Orders in Council be made under the Tax Administration Act 1994 that modify the application of the Inland Revenue Acts in circumstances where I consider it reasonably necessary to give effect to the intended purpose or object of a provision of the Inland Revenue Acts. I consider that these circumstances warrant the use of this power.
- 12 This Order in Council would ensure the law as it was intended to be applied was available for taxpayers who wanted to apply it that way. It would also enable Inland Revenue to process GST returns in a manner consistent with what was intended ahead of permanent amendments coming into force before 31 March next year.
- 13 No taxpayers can be disadvantaged by this decision. This is because the effect of the modification in the Order in Council is that it brings forward the date that these taxpayers will be entitled to GST refunds. Without the modification, affected taxpayers would need to wait until March 2025 for their GST refunds. This is the case under existing law. The retrospective amendments I agreed be included in the Taxation

(Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill would, on coming into force, retroactively allow taxpayers to make one GST adjustment in the circumstances.

- 14 The Order in Council must set out how affected taxpayers can choose for the modification to apply or not. If taxpayers choose to apply the modification, they will be able to apply the law as intended. This will allow them to make one GST adjustment for assets that have had a permanent change of use on or after 1 April 2023. If taxpayers choose to apply the law without the effect of the modification, they would need to make two GST adjustments across two years if they acquired the asset before 1 April 2023 and there was a permanent change of use of that asset on or after 1 April 2023.
- 15 To reduce compliance costs for affected taxpayers who have already taken a tax position in their GST returns consistent with the modification, I consider the modification should apply to them automatically. This ensures they do not need to do anything to get their expected GST refunds as Inland Revenue would be able to process these GST returns and release the GST refunds these taxpayers have calculated on the Order in Council coming into force.
- 16 For other taxpayers, I consider the modification should be available to apply (or not apply) as follows:
 - 16.1 If the taxpayer has not provided their GST return, they can take a tax position consistent with the effect of the modification (or not).
 - 16.2 If the taxpayer has provided their GST return but wants it to be changed to reflect the modification (or not), they can ask the Commissioner of Inland Revenue to amend their GST return to be consistent (or not) with the modification.

Timing and 28-day rule

- 17 I propose that the Order in Council comes into force on 10 September 2024. This is the date after it would be signed by the Governor-General.
- 18 To achieve this, I also seek Cabinet’s agreement to a waiver of the 28-day rule. This is because the Order in Council can and will only benefit the public. Complying with the 28-day rule would mean affected taxpayers would have to wait longer to receive GST refunds they are entitled to. This would add to the financial strain of those affected by the issue.

Compliance

- 19 The Order in Council complies with:
 - 19.1 the principles of the Treaty of Waitangi;
 - 19.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 19.3 the principles and guidelines set out in the Privacy Act 2020;

19.4 relevant international standards and obligations; and

19.5 the Legislation Guidelines (2021 edition).

20 I also consider the Order in Council complies with the requirements set out in section 6D of the Tax Administration Act 1994. My reasons for this are set out in full in the appendix to this paper. Broadly, I consider the modification is the most appropriate way of resolving the issue at the time and I consider its scope to be appropriately targeted at the issue that gave rise to the need for it.

Regulations review committee

21 I am not aware of any grounds for the Regulations Review Committee to draw the Order in Council to the attention of the House of Representatives under Standing Order 327.

Certification by Parliamentary Counsel

22 The Parliamentary Counsel Office has certified that the Tax Administration (GST Adjustment Rules) Modification Order 2024 is in order for submission to Cabinet provided that my recommendation has been made in accordance with section 6D(5) of the Tax Administration Act 1994.

Impact analysis

23 The Ministry for Regulation has confirmed the regulatory impact assessment requirements are not triggered for this proposal.

Communications

24 I will issue a media statement once the Order in Council is made by the Executive Council.

25 Inland Revenue will publish an article about these changes in its *Tax Information Bulletin*.

Proactive release

26 I propose to proactively release this Cabinet paper, associated minutes, and key advice papers with appropriate redactions within 30 working days of Cabinet making final decisions.

Consultation

27 Inland Revenue officials undertook public consultation on a draft of the Tax Administration (GST Adjustment Rules) Modification Order 2024. This included the modification and an explanation of how I consider the requirements for recommending an Order in Council to be met. I decided a two-week period of public consultation was appropriate in the circumstances to balance the need for urgent action for affected taxpayers and the importance of consultation in the tax policy development process.

28 Inland Revenue officials considered submissions from Chartered Accountants Australia and New Zealand, Deloitte, EY, and Findex. Submitters were generally supportive of the use of the remedial power to address the legislative issue and the process followed to date, including consultation. Submitters also made technical recommendations on the drafting of the Order in Council. These submissions resulted in minor changes to the Order in Council to ensure it works as intended.

Recommendations

I recommend that the Committee:

- 1 **note** that the Tax Administration (GST Adjustment Rules) Modification Order 2024 will allow taxpayers affected by a legislative error in the Goods and Services Tax Act 1985 to ignore the effect of that legislative error and apply the legislation in the manner intended;
- 2 **note** that the legislative error referred to in recommendation 1 prevents some taxpayers from making a single GST adjustment calculation for goods and services acquired before 1 April 2023 that had a complete change of use (for example, from non-taxable or private purposes to taxable or business purposes) on or after 1 April 2023;
- 3 **note** that I have agreed to include retrospective remedial amendments to address the legislative error in the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill and that until this Bill comes into force, Inland Revenue must apply the law as it currently stands;
- 4 **note** that the modification included in the Order in Council would allow Inland Revenue and affected taxpayers to apply the law as was intended, as if the legislative error did not exist, and in anticipation of permanent remedial legislation coming into force;
- 5 **note** that under section 6D of the Tax Administration Act 1994, the Minister of Revenue can only make a recommendation for an Order in Council if satisfied that:
 - 5.1 the modification in the Order in Council is reasonably necessary to give effect to the intended purpose or object of a provision of the Inland Revenue Acts;
 - 5.2 the modification in the Order in Council does not materially affect the intended scope or effect of the provision to which it applies;
 - 5.3 the modification in the Order in Council is not inconsistent with the intended purpose or object of the relevant provision;
 - 5.4 the modification in the Order in Council is the most appropriate way of addressing or resolving the issue at the time;
 - 5.5 the modification in the Order in Council is not broader than is reasonably necessary to address the issue that gave rise to it;
 - 5.6 where the modification in the Order in Council applies to a person unless they choose for it not to apply, that the person has a reasonable opportunity to choose for it not to apply;

- 5.7 a consultative process has taken place on the proposed modification and explanation of the way in which I, as Minister of Revenue, consider the requirements for the modification under the Tax Administration Act 1994 have been met; and
- 5.8 that the modification in the Order in Council does not have the effect of extending the period for which a modification previously made, or an exemption previously granted, under the Tax Administration Act 1994 applies;
- 6 **note** the advice of the Minister of Revenue that these requirements have been met;
- 7 **authorise** the submission to the Executive Council of the Tax Administration (GST Adjustment Rules) Modification Order 2024;
- 8 **note** that a waiver of the 28-day rule is sought:
- 8.1 so that the regulations can come into force as soon as possible;
- 8.2 on the grounds that the regulations will only be to the benefit of affected taxpayers; and
- 9 **agree** to waive the 28-day rule so that the Tax Administration (GST Adjustment Rules) Modification Order 2024 can come into force on 10 September 2024.

Authorised for lodgement

Hon Simon Watts

Minister of Revenue

Appendix: Explanation of how requirements for modification by Order in Council met

Criterion	I am satisfied this is met because...
<p>The modification must be reasonably necessary to give effect to the intended purpose or object of a provision of the Inland Revenue Acts</p>	<p>I consider the law as currently drafted does not achieve the outcome that was intended in all circumstances. Taxpayers who acquired goods and services before 1 April 2023 and who permanently changed the use of those goods and services on or after 1 April 2023 should not be precluded from making a single GST adjustment in their GST returns.</p> <p>The intended purpose or object of the relevant provision was to allow for one adjustment to be made instead of multiple adjustments. The policy rationale behind the measure was to reduce compliance costs for taxpayers. The current law does not achieve this outcome in all cases. I consider the modification in the order would achieve the intended purpose or object of the provision, by allowing taxpayers to make one GST adjustment for assets that have had a permanent change of use in GST returns for taxable periods starting on or after 1 April 2023.</p>
<p>The modification does not materially affect the intended scope or effect of the provision to which it applies</p>	<p>I consider the modification made by the order corrects an unintended outcome caused by an application provision in the amending legislation (section 143(3) of the 2023 Act). The modification allowed for by the order enables affected taxpayers to apply the law as intended and make a single adjustment for assets that had a permanent change of use on or after 1 April 2023 even though the asset was acquired before 1 April 2023.</p>
<p>The modification is not inconsistent with the intended purpose or object of the relevant provision</p>	<p>I consider the intended purpose or object of the relevant provision was to allow taxpayers to make one adjustment for assets that had a permanent change of use in GST returns for taxable periods that began on or after 1 April 2023. This was to align with when the amending legislation that introduced the change came into force. The modification in the order ensures the law can be applied as intended.</p>
<p>The modification is the most appropriate way of addressing or resolving the issue at the time</p>	<p>I have agreed to include a retrospective amendment addressing this issue in the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill. This Bill will come into force before 31 March 2025. This remedial legislation will resolve the issue in the primary legislation. However, until this Bill comes into force, taxpayers and Inland Revenue are unable to apply the law as was intended. I consider it undesirable to wait for amending legislation to come into force, as this will delay taxpayers' entitlements to GST input tax deductions.</p> <p>The modification will allow taxpayers and Inland Revenue to process GST adjustments consistent with the policy intention of the simplification measures made in 2023, and in anticipation of the remedial legislation coming into force next year.</p>

<p>The modification is not broader than is reasonably necessary to address or resolve the issue that gave rise to it</p>	<p>The modification only allows affected taxpayers to make a single adjustment for assets that have had a permanent change of use in taxable periods that began on or after 1 April 2023. I consider this means the modification is not broader than is reasonably necessary to address or resolve the issue that gave rise to it.</p>
<p>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</p>	<p>The modification will apply to taxpayers who have already taken a tax position in a GST return that is consistent with the modification. I am 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 inconsistent with the modification, if they choose for it not to apply.</p>
<p>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</p>	<p>Inland Revenue undertook public consultation on a draft of the modification and an explanation of the way in which I consider it complies with the requirements of the Tax Administration Act 1994 between 26 July 2024 and 12 August 2024. I decided a two-week period of consultation was appropriate because of the urgency of the situation for affected taxpayers. Submissions received during the consultation process resulted in changes to the Order in Council to improve clarity and address potential ambiguity.</p>
<p>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</p>	<p>I am satisfied this criterion is met because no modification has previously been made, or exemption has previously been granted by the Commissioner of Inland Revenue, under the Tax Administration Act 1994 to resolve this issue.</p>



Cabinet Business Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Tax Administration (GST Adjustment Rules) Modification Order 2024

Portfolio **Revenue**

On 2 September 2024, the Cabinet Business Committee:

- 1 **noted** that the Tax Administration (GST Adjustment Rules) Modification Order 2024 (the Order) will allow taxpayers affected by a legislative error in the Goods and Services Tax Act 1985 to ignore the effect of that legislative error and apply the legislation in the manner intended;
- 2 **noted** that the legislative error referred to in paragraph 1 above prevents some taxpayers from making a single GST adjustment calculation for goods and services acquired before 1 April 2023 that had a complete change of use (for example, from non-taxable or private purposes to taxable or business purposes) on or after 1 April 2023;
- 3 **noted** that the Minister of Revenue (the Minister) has agreed to include retrospective remedial amendments to address the legislative error in the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill and that, until this Bill comes into force, Inland Revenue must apply the law as it currently stands;
- 4 **noted** that the modification included in the Order would allow Inland Revenue and affected taxpayers to apply the law as was intended, as if the legislative error did not exist, and in anticipation of permanent remedial legislation coming into force;
- 5 **noted** that under section 6D of the Tax Administration Act 1994, the Minister can only make a recommendation for an Order in Council if satisfied that:
 - 5.1 the modification in the Order in Council is reasonably necessary to give effect to the intended purpose or object of a provision of the Inland Revenue Acts;
 - 5.2 the modification in the Order in Council does not materially affect the intended scope or effect of the provision to which it applies;
 - 5.3 the modification in the Order in Council is not inconsistent with the intended purpose or object of the relevant provision;
 - 5.4 the modification in the Order in Council is the most appropriate way of addressing or resolving the issue at the time;
 - 5.5 the modification in the Order in Council is not broader than is reasonably necessary to address the issue that gave rise to it;

- 5.6 where the modification in the Order in Council applies to a person unless they choose for it not to apply, that the person has a reasonable opportunity to choose for it not to apply;
- 5.7 a consultative process has taken place on the proposed modification and explanation of the way in which the Minister considers the requirements for the modification under the Tax Administration Act 1994 have been met;
- 5.8 the modification in the Order in Council does not have the effect of extending the period for which a modification previously made, or an exemption previously granted, under the Tax Administration Act 1994 applies;
- 6 **noted** the advice of the Minister that the above requirements have been met;
- 7 **authorised** the submission to the Executive Council of the Tax Administration (GST Adjustment Rules) Modification Order 2024 [PCO 26544/4.0];
- 8 **noted** that a waiver of the 28-day rule is sought:
- 8.1 so that the Order can come into force as soon as possible;
- 8.2 on the grounds that the Order will only be to the benefit of affected taxpayers;
- 9 **agreed** to waive the 28-day rule so that the Order can come into force on 10 September 2024.

Jenny Vickers
Committee Secretary

Present:

Rt Hon Winston Peters (Chair)
Hon David Seymour
Hon Nicola Willis
Hon Brooke van Velden
Hon Dr Shane Reti
Hon Simeon Brown
Hon Paul Goldsmith
Hon Todd McClay
Hon Simon Watts
Hon Penny Simmonds

Officials present from:

Office of the Prime Minister
Department of the Prime Minister and Cabinet



Cabinet

Minute of Decision

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Report of the Cabinet Business Committee: Period Ended 6 September 2024

On 9 September 2024, Cabinet made the following decisions on the work of the Cabinet Business Committee for the period ended 6 September 2024:

Not in scope



CBC-24-MIN-0089	Tax Administration (GST Adjustment Rules) Modification Order 2024 Portfolio: Revenue	CONFIRMED
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Not in scope



Rachel Hayward
Secretary of the Cabinet