PS LA 2003/2 (Withdrawn) - GST 'Wash' Transactions

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ATO Practice Statement Law Administration

PS LA 2003/2

Refer to end of document for amendment history. Prior versions can be obtained from the PTI & Public Rulings Branch if required

FOI status: may be released

This Practice Statement is issued under the authority of the Commissioner and must be read in conjunction with Law Administration Practice Statement PS LA 1998/1. It must be followed by ATO officers unless doing so creates unintended consequences. Where this occurs ATO officers must follow their Business Line's escalation process.

SUBJECT: **GST 'Wash' Transactions**

PURPOSE: **To outline the ATO policy on retrospective correction of 'wash' transactions and application of the General Interest Charge (GIC).**

BACKGROUND

What is a GST 'wash' transaction?

1. In general terms, a GST 'wash' transaction is one where:

   - a GST-registered supplier fails to include GST in the price of a taxable supply and remit it to the ATO; and

   - the supply in question is made to a recipient who is registered for GST and would have been entitled to claim back from the ATO a full input tax credit if the transaction had been correctly treated as taxable by the supplier.

2. The term 'wash' refers to the fact that the effect on primary GST revenue is neutral.

What is the scope of this Practice Statement?

3. This Practice Statement is limited to 'wash' transactions involving supplies that are 'taxable supplies' in accordance with Subdivision 9-A of the *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act).

4. It does *not* apply to transactions that fall within the scope of subsection 105-65(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA), which relates to supplies that are non-taxable but which have been incorrectly treated as taxable. Practice Statement PS 2002/12 addresses the application of subsection 105-65(1).

To which entities does this Practice Statement apply?

5. This Statement applies to all entities that are registered for GST, whether or not they are members of a GST group, and whether or not other entities with which they trade are at arm's length.

STATEMENT

6. Where a GST-registered supplier underpays an amount of GST as a result of a 'wash' transaction, and the supplier satisfies all of the conditions set out below, the Commissioner will consider a partial remission of the GIC payable in respect of the underpaid GST. The appropriate amount of GIC to be remitted in such a case is an amount equivalent to the prevailing uplift factor. This means that the amount of GIC payable in such a case will be equivalent to the prevailing base interest rate.

7. *All* of the following conditions ***must*** be met for the GIC to be partially remitted in a 'wash' situation:

- The supplier must demonstrate that the recipient was registered for GST;
- The supplier must demonstrate that the recipient would have been entitled to claim a full input tax credit;
- The failure to remit GST must have been in circumstances that do not give rise to a liability for an administrative shortfall penalty under section 284-75 of the TAA; that is, the exceptions in section 284-215 of the TAA must apply;
- The supplier must not have made the same mistake previously, and must have a good compliance record;
- The supplier must have remedied the situation to ensure that GST is included in the price of future taxable supplies.

8. A good compliance record will generally require that all lodgement obligations, including Activity Statements and income tax returns, are up to date; all non-disputed debt is paid or under arrangement; and there is no recent history of the entity being subject to a shortfall penalty.

9. Requests for remission of the GIC in GST 'wash' transactions must be provided to the ATO in writing, clearly indicating that the request is in respect of a GST 'wash' transaction, together with documentary evidence sufficient to satisfy all of the conditions set out in paragraph 7. This evidence may include statements from the recipient supporting the supplier's claim that the recipient would be entitled to a full input tax credit.

10. If a supplier requests remission of the GIC and is unable to satisfy the conditions set out in paragraph 7, or if a supplier who satisfies the conditions for partial remission of the GIC requests remission of an amount of GIC greater than the prevailing uplift factor, such a request must be considered in accordance with the GIC remission guidelines set out in Chapter 93 of the *ATO Receivables Policy*.

11. Where a decision is made to refuse a request for remission of the GIC (in whole or in part), the client must be provided with the reasons for the decision in writing.

EXPLANATION

Retrospective correction of the errors

12. Notwithstanding a 'wash' situation, an entity that has made a taxable supply and has (mistakenly or otherwise) failed to remit an amount of GST on the taxable supply is required to remit that amount to the Commissioner. The amount to be remitted is one-eleventh of the price of the supply.

13. A GST-registered entity that is the recipient of the supply is accordingly entitled to claim as an input tax credit one-eleventh of the price, provided that the acquisition is a creditable acquisition and the entity holds a valid tax invoice for the supply.

14. Generally, the supplier must revise their activity statements for the tax periods in which the errors occurred, in order to remit the underpaid GST. However, if the amount of GST revenue involved is within the time and dollar correction constraints in the GST Fact Sheet, *Correcting GST Mistakes* (NAT4700), they may use those guidelines to correct the error without having to revise all activity statements. The recipient can claim the input tax credit in the first tax period when a tax invoice is held.

Remission of GIC

15. The GIC rate is worked out by adding the uplift factor (currently 7 percentage points) to the base interest rate. The base interest rate is determined by the average yield of 90-day Bank Accepted Bills for the relevant month (refer sub-section 8AAD(2) of the TAA).

16. In GST 'wash' situations, the ATO may grant partial remission of the GIC that is payable by a supplier on GST that was not remitted when it was due, if the supplier satisfies ***all*** of the conditions set out in paragraph 7.

17. The extent of remission of the GIC that has been determined to be appropriate in 'wash' cases where the conditions have been satisfied is remission to the base interest rate.

18. Where any of the conditions are not met, or in other situations where GST on a taxable supply is not remitted when it is due, any shortfalls in GST will be subject to the full GIC. However, this Practice Statement does not preclude a supplier from requesting remission (in whole or in part) of GIC payable in respect of a 'wash' transaction if they are unable to satisfy any of those conditions. Such a request must be considered in accordance with the GIC remission guidelines in Chapter 93 of the *ATO Receivables Policy*. Similarly, a request for remission of an amount of GIC greater than the prevailing uplift factor must be considered in accordance with the GIC remission guidelines.

subject references:	GST 'wash' transactions
legislative references:	ANTS(GST)A Subdiv 9-A TAA 8AAD(2) TAA, Schedule 1 105-65(1) TAA, Schedule 1 284-75 TAA, Schedule 1, 284-215
related public rulings:	
related practice statements:	Law Administration Practice Statement PS LA 2002/12
other related documents:	*ATO Receivables Policy*, Chapter 93 GST Fact Sheet, *Correcting GST Mistakes* (NAT4700)
case references:	
file references:	

Date issued:	
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Other Business Lines consulted	**GST; PTAX; Operations**
Amendment History	1 July 2006: References to subsection 39(3) of the TAA updated to subsection 105-65(1) of Schedule 1 to the TAA