PS LA 2008/9 - Goods and services tax 'revenue-neutral' corrections

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PS LA 2008/9
Goods and services tax 'revenue-neutral' corrections

This Practice Statement outlines guidelines for the remission of general interest charge on goods and services tax (GST) revenue-neutral corrections.

This Practice Statement is an internal ATO document and an instruction to ATO staff.

Taxpayers can rely on this Practice Statement to provide them with protection from interest and penalties in the following way. If a statement turns out to be incorrect and taxpayers underpay their tax as a result, they will not have to pay a penalty, nor will they have to pay interest on the underpayment provided they reasonably relied on this Practice Statement in good faith. However, even if they do not have to pay a penalty or interest, taxpayers will have to pay the correct amount of tax provided the time limits under the law allow it.

1. What this Practice Statement is about

When an error is found in an activity statement, it must be corrected through revision or amendment of that activity statement.[1] If the correction results in an increased amount of GST being payable or a reduction in the GST credits claimable, general interest charge (GIC) is imposed on this amount from the original due date of the activity statement to the date the revision or amendment was made (the shortfall period).

Because of the nature of GST, some corrections will be 'revenue-neutral'. For example, this occurs where a correction increasing GST for one party also gives rise to an entitlement to GST credits for another party equal to that increased GST.

This Practice Statement sets out our policy in regard to remission of the GIC for the shortfall period where revenue-neutral corrections occur.

Remission of GIC for late payment after the shortfall period is not covered by this Practice Statement[2], nor is the application of administrative penalties.[3]

2. General interest charge principles

Taxpayers have a responsibility to meet their payment obligations as and when their tax debts fall due for payment. The GIC is intended to encourage the timely payment of tax and to deny late payers an advantage over those who pay on time. The GIC also serves to compensate the revenue for the lost 'time value' of tax amounts not paid by the due date.

However, we have a discretion to remit the GIC, in full or in part, under section 8AAG of the *Taxation Administration Act 1953*. All legislative references in this Practice Statement are to that Act, unless otherwise indicated.

Where an amount remains unpaid after the due date, subsection 8AAG(2) provides that we may only remit all or part of the GIC in the circumstances set out in subsections 8AAG(3), (4) and (5). This Practice Statement is concerned with the remission of GIC under those subsections.

Subsection 8AAG(3) requires that we be satisfied that the shortfall did not arise as a result of an act or omission of the person. Subsections 8AAG(4) and (5) both allow remission if certain criteria are met and we are satisfied that it is fair and reasonable to do so.[4] Paragraph 8AAG(5)(b) also allows remission if we are satisfied that it is otherwise appropriate to do so.[5]

3. Examples of GST revenue-neutral corrections

The following are some examples of situations where GST revenue-neutral corrections occur:

- Where a supplier fails to include GST in the price of a taxable supply and the recipient would have been entitled to claim full GST credits if they were issued with a valid tax invoice.
- Where the wrong entity accounts for the GST or claims the GST credits; this may occur with associated entities, under a joint venture or

[1] Unless the conditions in *A New Tax System (Goods and Services Tax) (Correcting GST Errors) Determination 2023* are met, allowing for correction on a later activity statement.
[2] See instead Law Administration Practice Statement PS LA 2011/12 *Remission of General Interest Charge*.
[3] See instead Law Administration Practice Statement PS LA 2012/5 *Administration of the false or misleading statement penalty – where there is a shortfall amount*.
[4] You should consider the question of whether it is fair and reasonable to remit not only from the perspective of the taxpayer, but also from the perspective of the broader community. It may not be fair and reasonable to remit GIC if remission provides the taxpayer with an advantage over others who meet their responsibilities in full.
[5] This is a broader discretion than the other provisions of section 8AAG, but before you exercise the discretion to remit GIC under paragraph 8AAG(5)(b), see the content under heading 'Where it is 'otherwise appropriate' to remit' in section 4 of PS LA 2011/12.

similar type of 'partnership' arrangement, or an agency arrangement.

- Where entities transact with each other as if they were members of a GST group, when they are not (for example, because one is not eligible to be a member).
- Where a transaction has taken place, involving equal and offsetting GST amounts, but the Commissioner of Taxation declines to exercise their discretion to treat a document as a tax invoice or adjustment note.[6]

4. Remission requests

Requests for remission of the GIC for the shortfall period should indicate that the request is in respect of a GST revenue-neutral correction and set out all the relevant circumstances. This should include evidence to satisfy the guidelines for GIC remission in section 5 of this Practice Statement. It should also outline the action taken to remedy the error in respect of future transactions.

If an entity does not meet the conditions for GIC remission in section 5 of this Practice Statement, the request should be considered in accordance with the GIC remission guidelines set out in Law Administration Practice Statement PS LA 2006/8 *Remission of shortfall interest charge and general interest charge for shortfall periods*, taking into account all the relevant circumstances.

If you refuse the request for remission of the GIC (in whole or in part), you must notify the entity of your decision in writing and include the reasons for refusal.

5. When remission of GIC for the shortfall period is appropriate

Where the following conditions are met, full or partial remission of GIC for the shortfall period in relation to GST revenue-neutral corrections can be considered. These are illustrated by the examples in this Practice Statement.

Condition for partial remission

Partial remission to the base rate of GIC can be considered when another entity is entitled to an equal and corresponding reduction in their net amount.

Conditions for full remission

Full remission can be considered for an entity when another entity is entitled to an equal and corresponding reduction in their net amount and

- the entity can demonstrate that they received no comparative advantage over other entities which correctly accounted for GST, or
- the entity can demonstrate that the correct amount of GST was accounted for in the correct period, but by the wrong entity, or
- the entity who incorrectly claimed the GST credits demonstrates that the recipient has not included the GST credits in a previous activity statement.

These conditions are not intended to limit the circumstances in which you can exercise the discretion for GIC remission if you are satisfied that it is fair and reasonable or otherwise appropriate to do so in accordance with section 8AAG. That is, exercise of the discretion must not be approached in a rigid or inflexible way. Each case must be considered on its merits in accordance with administrative law principles.

Note that the following should not factor into your decision:

- the taxpayer's compliance history; however, compliance history may be relevant in the consideration of shortfall penalties[7] and if there was repeated non-compliance, to the consideration of penalties for failure to keep or retain records[8]
- the effect of differing lodgment cycles or accounting methods (cash or accrual); the resulting timing differences can work either way and could balance each other out over time.

No comparative advantage

Not including GST in the price of a supply may provide an advantage to a supplier by effectively reducing the price by one-eleventh. On the other hand, it is recognised that in some contexts, businesses deal with each other by reference to GST-exclusive prices and therefore purchasing decisions are not influenced by whether the supply is regarded as a taxable supply. Further, there can be factors other than price that influence a purchasing decision.

When considering whether a benefit has been obtained, you should consider the situation at the time the error was made, not the situation that results from the correction. You should not consider factors such as an inability by the supplier to recover an increased amount for the GST, resulting from the correction.

[6] Under subsections 29-70(1B) and 29-75(1) of the *A New Tax System (Goods and Services Tax) Act 1999*.
[7] PS LA 2012/5.
[8] See Law Administration Practice Statement PS LA 2005/2 *Penalty for failure to keep or retain records*.

Accounted for by the wrong entity

If the wrong entity has otherwise correctly accounted for the GST in a transaction and in the correct period, the revenue has not suffered a 'time-value' loss related to the amount. We have been in receipt of the correct GST payable from the correct due date.

GST credits have been claimed by the wrong entity

If the wrong entity has otherwise correctly claimed the GST credits for a transaction and the recipient has not, then the revenue has not suffered a time-value loss in relation to the amount.

6. Examples

The examples in this Practice Statement are illustrative of some situations in which full or partial remission of GIC in relation to GST revenue-neutral corrections is appropriate. Other circumstances will arise for which full or partial remission is also appropriate.

Partial remission

Example 1 – GST not included on tax invoice; recipient would have been able to claim full GST credits

Amity (annual turnover of $36 million) makes a supply to an arm's length party, Bunya, for the price of $100,000 for the monthly period ending 31 March 2009. The supply should have been subject to GST; however, Amity misinterpreted the legislation and treated the supply as non-taxable. As a consequence, the invoice issued by Amity for the supply does not show an amount of GST, nor does it state that the supply is GST-inclusive.

In October 2009, Amity realises that it made an error and re-invoices Bunya for $110,000, including $10,000 on account of GST. Bunya pays Amity the additional $10,000. Bunya is then able to claim GST credits for $10,000 in their October 2009 activity statement. Amity lodges a revised March 2009 activity statement on 27 November 2009.

Once the revision is made, GIC is imposed for the period from 21 April 2009 (the due date for the March activity statement) until the outstanding GST amount is paid. Amity requests that you partially remit the GIC based upon the transaction being a GST revenue-neutral correction.[9] Amity informs you that it has taken steps to correct its error for future taxable supplies. It would be appropriate for you to remit the GIC in this case to the base rate for the shortfall period (that is, 21 April 2009 until 26 November 2009).

Example 2 – a comparative advantage may have been derived from the error

Carina (annual turnover of $3 million) makes a supply to an arm's length party, Darra, for the price of $60,000 for the monthly period ending 30 April 2010. GST should have been charged on the supply; however, the invoice issued by Carina for the supply does not show an amount of GST, nor does it state that the supply is GST-inclusive. When this error is detected on 24 September 2010, Carina revises the April 2010 activity statement and pays GST of $5,454 on the same day. Carina had failed to secure an increased price from Darra. Carina re-invoices Darra to show a GST-inclusive price of $60,000. Darra then claims GST credits for $5,454 in the September 2010 period.

Once the revision is made, GIC is imposed for the period from 21 May 2010 (the due date for the April activity statement) to 23 September 2010. Carina requests that you remit the GIC based upon the transaction being a GST revenue-neutral correction and that no comparative advantage was derived from the error, contending it was disadvantaged by the correction.

In this instance, it would not be appropriate for you to grant full remission of GIC for the shortfall period, as the 'no comparative advantage' test is not satisfied. When the transaction was entered into, not charging GST might have allowed Carina to charge a lower price than competitors and this may have been a factor in Carina securing the supply. However, you could remit the GIC to the base rate for the shortfall period; that is, 21 May to 23 September 2010.

Full remission

Example 3 – no comparative advantage derived from the error, not grouped for GST purposes

Ekibin (annual turnover of $650 million) makes a supply to a wholly owned subsidiary, Forestdale, for the price of $700,000 for the monthly period ending 28 February 2009. Ekibin had incorrectly assumed that it and Forestdale were grouped for GST purposes. GST should have been charged on the supply; however, the invoice issued by Ekibin for the supply does not show an amount of GST, nor does it state that the supply is GST-inclusive. Ekibin discovers the error and, on 25 June 2009, revises its February 2009 activity statement. On 9 July 2009, Ekibin pays the GST of $70,000 resulting from the revision. Ekibin re-invoices Forestdale for the full $770,000 and

[9] Amity may wish to seek full remission of GIC if it can demonstrate that it has not received an advantage over other entities which correctly accounted for GST.

Forestdale pays Ekibin the increased price amount. Forestdale then claims GST credits for $70,000 in the June 2009 period.

GIC is imposed on Ekibin for the period 23 March 2009 (the due date for the February activity statement) to 8 July 2009. Ekibin requests that you remit the GIC based upon the transaction being a GST revenue-neutral correction and no comparative benefit being derived from the error. Ekibin and Forestdale have since notified you of the formation of a GST group.

In considering the remission request, you determine that the entities were non-arm's length and that, in practice, Ekibin was not competing with other parties for the provision of services to Forestdale. Consequently, it would be appropriate for you to accept that no comparative advantage was obtained by Ekibin at the time of the original transaction and grant full remission of the GIC for the shortfall period; that is, 23 March 2009 to 24 June 2009.

Example 4 – no comparative advantage derived from the error, individual supplier

Camille wishes to provide motivational training to her employees to assist with her business. She puts the training services out for tender. The tenderer is required to specify the GST-exclusive price they will charge for the training. Rohan specifies a GST-exclusive price of $100,000 and is the successful tenderer.

When Rohan invoices for the work in August 2008, he does not charge GST, because he mistakenly concludes that his services are a GST-free educational supply.

Camille later queries the GST-free treatment. Rohan seeks advice and, in October 2008, finds out that the supply of training was in fact a taxable supply.

Rohan issues a tax invoice to Camille for $110,000, including $10,000 for GST. He submits a revised August 2008 activity statement and pays $10,000 of GST on 31 October 2008.

Rohan has received no comparative advantage. Because the potential suppliers of the motivational training quoted their prices on a GST-exclusive basis and Rohan was selected as the successful tenderer on the basis of his GST-exclusive price, Rohan did not obtain a comparative advantage. Accordingly, it would be appropriate for you to remit the GIC in full for the shortfall period.

Example 5 – no comparative advantage derived from the error, sole supplier

Stretton, a monthly remitter, has a licensing agreement granting it the exclusive Australian rights for the importation, sale and servicing of specialised equipment manufactured overseas. Stretton imports equipment and, in September 2007, sells some of it to Tennyson, which uses the equipment in its operations. GST should have been charged on the supply but was not. This error is detected in November 2009. On 4 December 2009, Stretton revises its September 2007 activity statement and pays the additional GST.

In November 2009, when Stretton issues a valid tax invoice for the supply, Tennyson pays the additional GST. Tennyson claims GST credits for this amount on its November 2009 activity statement (Tennyson had not claimed the GST credits at the time of the original transaction).

GIC is imposed on Stretton for the period 22 October 2007 (the due date for the September activity statement) to 3 December 2009. Stretton requests that you remit the GIC based on the transaction being a GST revenue-neutral correction and that no comparative benefit was derived from the error.

In the circumstances, you accept that there was no comparative advantage. Stretton was the only supplier from whom Tennyson could make the acquisition. Stretton's misclassification of the supply as non-taxable did not influence the purchasing decision. Therefore, it would be appropriate for you to remit the GIC for the shortfall period in full on the basis that Stretton received no comparative advantage at the time of the original error.

Example 6 – GST has been accounted for in the correct period, albeit by the wrong entity

Grange and Hendra engage in a GST joint venture. Grange, a monthly remitter, is both the joint venture operator and a participant; Hendra is a participant. In the monthly period ending 31 March 2007, Grange makes a taxable supply on behalf of Hendra under the joint venture to Ithaca. An error occurs and Hendra includes the GST related to the supply on its activity statement for that period and pays the GST. When the error is detected in August 2009, Grange (as the joint venture operator) revises the March 2007 activity statement for the joint venture operations to include the GST associated with the supply.

Once the revision is made, GIC is imposed on Grange in its role as joint venture operator for the period 23 April 2007 (the due date of its March activity statement) until the day before the outstanding GST amount was paid. Grange requests that you remit the GIC based on the transaction being a GST revenue-neutral correction. Grange states that internal control processes for both itself and Hendra have been strengthened to prevent the error reoccurring. Grange explains that the GST relating to the original transaction was included in the March 2007 activity

statement for Hendra. Evidence of this is included in the remission request.

You accept that the correct amount of GST was paid in relation to the transaction in the correct period, but by the wrong entity. Therefore, it is appropriate for you to allow full remission of the GIC for the shortfall period.

Example 7 – GST credits claimed by the wrong entity and the recipient has not included the GST credits in a previous activity statement

In November 2006, Kedron, a monthly remitter, makes a $55,000 creditable acquisition from an unrelated party. In June 2009, an ATO audit of Kedron's GST affairs reveals that the $5,000 GST credits in relation to this supply was claimed by Kedron Services Trust, rather than by Kedron. The audit establishes that Kedron has not made any claim for GST credits in relation to the same supply.

On 2 July 2009, a notice of assessment for $5,000 issues to Kedron Services Trust. This amount is paid on 10 July 2009. GIC is imposed for the period 21 December 2006 to 9 July 2009.

Kedron Services Trust requests that you remit the GIC based upon the transaction being a GST revenue-neutral correction. Kedron Services Trust informs you of the steps it has taken to ensure the correct identification of the recipient for future GST credits claims. You remit the GIC in full for the shortfall period (21 December 2006 to 1 July 2009). GIC that has accrued on the shortfall amount from 2 July 2009 to 9 July 2009 is not remitted.

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Business line FC

Amendment history

10 October 2024

Part	Comment
All	Content checked for technical accuracy and currency. Updated in line with current ATO style and accessibility guides.

13 August 2015

Part	Comment
All	Updated to current LAPS format and style.

26 May 2014

Part	Comment
Paragraph 3	Removed reference to GST being a 'self-executing system' by 'self-assessment system' which became effective as of 1 July 2012.
Paragraphs 17, 19, 20, 21, 24, 33 and footnotes 8, 10 and 12	Reference to Chapter 93 of the *ATO Receivables Policy* and PS LAs 2002/12, 2004/11 and 2006/2 updated to refer to their respective replacement products.

7 April 2014

Part	Comment
Contact details	Updated.

27 June 2013

Part	Comment
Paragraphs 6 and 7 and other references	Updated for the release of GSTE 2013/1 *Goods and Services Tax: Correcting GST Errors Determination 2013* and the guide Correcting GST errors

1 July 2010

Part	Comment
Paragraphs 15, 20, 40 and 56	Updated to reflect changes to the *A New Tax System (Goods and Services Tax) Act 1999* under the *Tax Laws Amendment (2010 GST Administration Measures No. 2) Act 2010*.

11 September 2008

Part	Comment
Paragraphs 17, 21 and 24; footnotes 9, 11 and 13, and references section	References to PS LA 2006/11 removed. Link to the ATO Receivables Policy added.

References

Legislative references	ANTS(GST)A 1999 29-70(1B) ANTS(GST)A 1999 29-75(1) TAA 1953 8AAG TAA 1953 8AAG(2) TAA 1953 8AAG(3) TAA 1953 8AAG(4) TAA 1953 8AAG(5) TAA 1953 8AAG(5)(b)
Other references	A New Tax System (Goods and Services Tax) (Correcting GST Errors) Determination 2023
Related Practice Statements	PS LA 2005/2 PS LA 2006/8 PS LA 2011/12 PS LA 2012/5

ATO references

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