



PS LA 2012/1 (GA) - How to calculate input tax credits and bad debt adjustments when a dividend is paid to creditors

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Law Administration Practice Statement (General Administration)

PS LA 2012/1 (GA)

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.

SUBJECT:	How to calculate input tax credits and bad debt adjustments when a dividend is paid to creditors
PURPOSE:	To assist representatives of incapacitated entities in calculating input tax credits and bad debt adjustments when a dividend is paid to creditors

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About this Practice Statement

1. This Practice Statement applies to representatives of an incapacitated entity who pay a dividend of less than 100c in the dollar to creditors towards satisfaction of debts owed by the incapacitated entity. The payment of such a dividend may create either an increasing adjustment (as a consequence of the creditor writing off the remainder of the debt) or an input tax credit (ITC) entitlement, depending on the incapacitated entity's accounting basis for goods and services tax (GST) purposes. This Practice Statement discusses how representatives may calculate the increasing adjustment (which we refer to as a 'bad debt increasing adjustment')¹ or the ITC and its impact upon the dividend, if any, payable by the representative to us.
2. This Practice Statement does not consider the GST consequences for creditors who receive a dividend from the representative of an incapacitated entity.
3. All legislative references in this Practice Statement are to the *A New Tax System (Goods and Services Tax) Act 1999*, unless otherwise indicated.

Date of effect

4. This Practice Statement applies to tax periods commencing both before and after its date of issue.

BACKGROUND

5. The formulas contained in this Practice Statement were previously contained in GST Bulletin GSTB 2003/1 *How to calculate input tax credits and bad debt adjustments when a dividend is paid to creditors*, which has been withdrawn. GSTB 2003/1 referred to Division 147, which was repealed and replaced by Division 58 on 4 December 2009. Although the accepted formulas previously contained in GSTB 2003/1 remain unchanged, the discussion on the operation of these formulas has been revised to reflect the legislative provisions of Division 58.

STATEMENT

6. We will accept the use of the formulas set out in the Explanation section of this Practice Statement to calculate the amount of:
 - a bad debt increasing adjustment arising from a final dividend payment²
 - a bad debt decreasing adjustment arising from an additional dividend payment³, or

¹ This expression refers to increasing adjustments under section 21-15 of the *A New Tax System (Goods and Services Tax) Act 1999*, in relation to creditable acquisitions, as a consequence of debts being written off by the supplier or overdue for 12 months or more.

² Paragraphs 11 to 20 of this Practice Statement.

³ Paragraphs 39 to 52 of this Practice Statement.

- an ITC entitlement arising from the payment of a first and final dividend.⁴

EXPLANATION

7. A representative of an incapacitated entity is required to be registered for GST if the incapacitated entity was registered or required to be registered for GST. A representative is⁵:
- a trustee in bankruptcy
 - a liquidator
 - a receiver
 - a controller (within the meaning of section 9 of the *Corporations Act 2001*)
 - an administrator appointed under Division 2 of Part 5.3A of the *Corporations Act 2001*
 - a person appointed or authorised under an Australian law⁶ to manage the affairs of an entity because it is unable to pay all of its debts as and when they become due and payable, or
 - an administrator of a deed of company arrangement executed by the entity.
8. An incapacitated entity is⁷:
- an individual who is bankrupt
 - an entity that is in liquidation or receivership, or
 - an entity that has a representative.
9. A representative, in the course of their duties, may pay a dividend to unsecured creditors⁸ of the incapacitated entity. At the time that an entity becomes incapacitated, it may have a number of creditors, including the Commissioner of Taxation.
10. The dividend is calculated by dividing the pool of funds available for distribution to unsecured creditors by the total amount of the admitted proofs of debt. This Practice Statement assumes the dividend is less than the amount owed to creditors, that is, less than 100c in the dollar. A dividend that pays 100c in the dollar does not give rise to an increasing adjustment.

Incapacitated entities accounting on a non-cash basis

Bad debt increasing adjustments

11. A dividend payment of less than 100c in the dollar may result in the creditors writing off as bad the parts of their debts which remain unpaid (that is, the debt minus the dividend payment).

⁴ Paragraphs 53 to 64 of this Practice Statement.

⁵ Representative is defined in section 195-1.

⁶ An Australian law is defined in section 995-1 of the *Income Tax Assessment Act 1997* as a law of the Commonwealth, a State or a Territory.

⁷ Incapacitated entity is defined in section 195-1.

⁸ 'Unsecured creditors' in this context refers to ordinary unsecured creditors and not to other special classes of unsecured creditors, such as employees.

12. For an entity that accounts for GST on a non-cash basis, an ITC for a creditable acquisition can be attributed to the tax period in which an invoice is issued or any of the consideration is paid (whichever occurs earlier), provided that (where required) a tax invoice is held when the entity's business activity statement for the period is lodged.⁹ The entity has a bad debt increasing adjustment¹⁰ in respect of the acquisition when the supplier (creditor) writes all or part of the debt off as bad.¹¹
13. It is reasonable to assume that creditors will have written off the remainder of the debts as bad by the time the final dividend is paid. However, the incapacitated entity and the representative will not usually be aware if individual creditors have previously written off all or part of the debt as bad. In those circumstances, if the dividend payment to a creditor is for a creditable acquisition that the incapacitated entity had made before the appointment, but not fully paid for, the bad debt increasing adjustment may be attributed wholly to the tax period in which the representative pays the final dividend.
14. The amount of the increasing adjustment in respect of an acquisition which was fully creditable is equal to one-eleventh of the amount written off.¹² However, if the acquisition by the incapacitated entity was only partly creditable, the increasing adjustment is calculated in proportion to the extent of the creditable purpose and extent of the consideration.¹³
15. We will accept the use of the following formula for calculating the bad debt increasing adjustment arising from a final dividend payment. It is referred to as the 'bad debt increasing adjustment formula'.

Bad debt increasing adjustment formula

$$B = A [1 - (Y \div X)]$$

$$\text{Dividend rate} = Y \div (X + B)$$

Where:

- B is the total bad debt increasing adjustment to be notified to us.
- A is the amount of ITCs the incapacitated entity was entitled to in relation to the unsecured creditors' admitted debts. This figure takes into account fully and partly creditable acquisitions made by the incapacitated entity.
- Y is the total funds that are available to be paid as distributions to the unsecured creditors.
- X is the total admitted unsecured debts, before any bad debt increasing adjustments that arise as a consequence of creditors writing off part of the debts as bad.

Example 1 – applying the bad debt increasing adjustment formula

16. *Mark, the representative of Fabulous Fabrics Pty Ltd (the incapacitated entity), admits unsecured creditors' claims of \$5,152,991. ITCs of \$294,368, for*

⁹ If a taxpayer does not take into account an ITC in a GST return for the tax period to which it is attributable to under subsections 29-10(1), (2) or (3), under subsection 29-10(4) the ITC is attributable to the first tax period in which it is included in a GST return by the taxpayer.

¹⁰ Section 21-15.

¹¹ For further discussion on when a debt is 'bad', refer to Goods and Services Tax Ruling GSTR 2000/2 *Goods and Services Tax: adjustments for bad debts* and Taxation Ruling TR 92/18 *Income tax: bad debts*.

¹² Section 21-15.

¹³ Section 136-10.

acquisitions from these creditors included in the admitted claims, were claimed by Fabulous Fabrics Pty Ltd prior to Mark's appointment. The admitted unsecured creditors' claims include a debt to us of \$493,587. Mark has funds of \$1,405,646 available to pay unsecured creditors.

17. Accordingly, applying the bad debt increasing adjustment formula¹⁴:

$$A = \$294,368$$

$$Y = \$1,405,646$$

$$X = \$5,152,991$$

$$B = 294,368 [1 - (1,405,646 \div 5,152,991)] = \$214,069.55.$$

18. The total bad debt increasing adjustment (that is, the amount by which we would increase our proof of debt) is \$214,069.55. As the bad debt increasing adjustment increases our claim, the total admitted unsecured debts (X) will also increase by this amount. The dividend must be calculated on this new amount. The ATO dividend is based on the increased proof of debt of \$707,656.55:

$$\text{Dividend rate} = 1,405,646 \div (5,152,991 + 214,069.55)$$

$$= 0.26190$$

$$= 26.190\text{c in the dollar.}$$

19. The dividend payable to us is calculated as:

$$\text{ATO dividend} = 0.26190 \times \$707,656.55$$

$$= \$185,335.25.$$

-
20. The bad debt increasing adjustment formula assumes that bad debt increasing adjustments relating to acquisitions referable to the unsecured creditors' admitted claims have not previously been made. This formula is not to be used to the extent that bad debt increasing adjustments (that have arisen in respect to debts that have been outstanding for 12 months or more or previously written off) have already been made in a business activity statement of:

- the entity prior to the appointment of the representative, or
- the incapacitated entity, or
- the representative.

Is it the incapacitated entity or the representative that has the adjustment?

21. The representative is personally liable for a bad debt increasing adjustment if:

- the making of the acquisition to which the bad debt increasing adjustment relates is within the scope of the representative's responsibility or authority for managing the incapacitated entity's affairs¹⁵, and

¹⁴ Note for calculation accuracy, figures should only be rounded at the final stage of the calculation, to the nearest cent.

¹⁵ Subsection 58-10(1).

- the adjustment is attributable to a tax period applying to the representative in their capacity as representative of the incapacitated entity.¹⁶
22. The incapacitated entity has bad debt increasing adjustments for pre-appointment acquisitions. The incapacitated entity also has a bad debt increasing adjustment for post-appointment acquisitions where the bad debt increasing adjustment is attributable to a tax period after the cessation of the representative's appointment. The latter will arise where a debt remains outstanding when the representative of the incapacitated entity ceases their appointment and the entity resumes normal trading. If the creditor writes off the debt after the representative's appointment has ceased, then the entity is liable for the bad debt increasing adjustment.

Notification prior to declaring a dividend

23. A representative of an incapacitated entity must notify us, in the prescribed form, of an amount of GST for which the incapacitated entity is liable or an increasing adjustment that the incapacitated entity has if:
- the representative becomes aware, or could reasonably be expected to have become aware, of the amount of GST or the adjustment, and
 - the amount of GST or adjustment has not been taken into account in a previously lodged GST return, and
 - we have not previously been notified of the amount of GST or the adjustment.¹⁷
24. The representative is required to notify us of such an amount before the day on which a dividend is declared to unsecured creditors of the incapacitated entity.¹⁸ In cases where there is more than one dividend to be paid to creditors, notification will be required prior to the declaration of each dividend. Each successive notification will only need to notify relevant liabilities that have not been included in prior notifications.

Interim dividends

25. A bad debt increasing adjustment does not necessarily arise as a result of an interim dividend payment. This is because creditors may not write-off the whole or part of a debt owed by the incapacitated entity as bad until it is certain that no further payments will be received. In any case, representatives will not usually know whether creditors have written off any part of the debt as bad at that point. We therefore accept that payment of an interim dividend does not in itself trigger an increasing adjustment.
26. When a representative makes a final dividend payment, creditors will generally make a bona fide commercial decision that the unpaid portion of the debt is unlikely to be recovered and therefore write-off the remainder of the debt.¹⁹ Thus, a bad debt increasing adjustment potentially arises when a final dividend is paid and it is at this point the bad debt increasing adjustment formula may be used to calculate it.²⁰

¹⁶ Subsection 58-10(4).

¹⁷ Subsection 58-60(1).

¹⁸ Subsection 58-60(2).

¹⁹ See paragraph 37 of GSTR 2000/2 and paragraphs 3 and 4 of TR 92/18.

²⁰ Section 21-15. See paragraphs 37 and 38 of this Practice Statement for a discussion of debts overdue for 12 months or more.

27. Where a representative pays interim dividends to unsecured creditors, those payments are based on the admitted claims of the creditors. In the case of dividend payments that are made to us, the interim dividends may be based on the admitted claim (including amounts owed us), prior to any bad debt increasing adjustments which may arise as a consequence of the remainder of the debts being written off after these dividend payments have been paid.
28. The interim dividends paid to us may not have taken bad debt increasing adjustments into account because the interim dividends will usually be based on our original proof of debt, which will not have taken into account increasing adjustments that do not arise until creditors write-off the remainder of the debts owed by the incapacitated entity. Consequently, in addition to the bad debt increasing adjustment, an equalisation payment to us is required.²¹ The equalisation payment may be made at the time the final dividend is paid. The representative will need to ensure that sufficient funds are set aside for this equalisation payment and may wish to make an estimate of the amount of the equalisation payment, at the time of paying the interim dividends.
29. If there is more than one interim dividend, the bad debt increasing adjustment formula is applied only at the time of the expected final dividend. The equalisation payment, that takes into account the interim dividends, is also required at the time of the final dividend. If the bad debt increasing adjustment formula is applied at the time of the expected final dividend, but there is a later dividend, the bad debt decreasing adjustment formula must also be applied in respect of the later dividend.

Example 2 – equalisation payments

30. *Paul, the representative of Stunning Services Pty Ltd (the incapacitated entity), admits unsecured creditors' claims of \$5,250,000. ITCs of \$300,000, for acquisitions from these creditors, were claimed by Stunning Services Pty Ltd prior to Paul's appointment. The admitted unsecured creditors' claims include our claim of \$400,000. Paul pays an interim dividend to unsecured creditors of 20c in the dollar (\$1,050,000).*
31. *There is no bad debt increasing adjustment at this time. We receive an interim dividend based on a debt of \$400,000 (that is, \$80,000). Paul may wish to make an estimate of the equalisation payment that will be due to us and set these funds aside.*
32. *Paul then declares a final dividend and has \$787,500 (including the amount set aside as the equalisation payment) available for this payment.*
33. *Accordingly, applying the bad debt increasing adjustment formula:*

$$A = \$300,000$$

$$Y = \$1,837,500 \text{ (that is, } \$1,050,000 + \$787,500)$$

$$X = \$5,250,000$$

$$B = 300,000 [1 - (1,837,500 \div 5,250,000)] = \$195,000.$$
34. *Y is the total funds that are paid as a dividend (that is, interim dividend plus final dividend). The total amount of the bad debt increasing adjustment (that is, the amount by which we will increase the proof of debt) is \$195,000. As the adjustment increases our claim, the total admitted unsecured debts (X) also*

²¹ This assumes that the Commissioner has amended the proof of debt to claim the increase in its debt due to the bad debt increasing adjustments. A creditor's entitlement to equalisation payments arises under regulation 5.6.55 & 5.6.68 of the *Corporations Regulations 2001* and section 144 of the *Bankruptcy Act 1966*.

increases by this amount. The dividend rate must be calculated on this new amount:

$$\begin{aligned}\text{Dividend rate} &= 1,837,500 \div (5,250,000 + 195,000) \\ &= 0.33747 \\ &= 33.747\text{c in the dollar.}\end{aligned}$$

35. Our claim is now \$595,000 (that is, \$400,000 + \$195,000) and the final dividend rate is calculated to be 13.747c in the dollar (that is, 0.33747 – 0.20). Based on this figure, the final dividend payment to us would be \$81,794.65. However, the first dividend payment to us was based on the lesser debt and therefore we are entitled to an equalisation payment. The equalisation payment is calculated as:

$$\begin{aligned}\text{Equalisation payment} &= (595,000 \times 0.20) - 80,000 \\ &= \$39,000.\end{aligned}$$

36. The final payment to us consists of \$81,794.65 for the final dividend and \$39,000 for the equalisation payment. The total payments made to us by the representative are \$200,794.65 (that is, \$80,000 + \$39,000 + \$81,794.65).

Bad debt increasing adjustments – debts overdue for 12 months or more

37. A bad debt increasing adjustment also arises when a debt has been overdue for 12 months or more, if it has not already been written off.²²
38. This may occur prior to the appointment of the representative or during the period of representation, prior to the payment of the final dividend. Adjustments are attributable to the tax period in which you become aware of them.²³ This could require a series of bad debt increasing adjustments to be attributed as the representative becomes aware of each adjustment.

Bad debt decreasing adjustments

39. In situations where a dividend was expected to be the final dividend, but a subsequent dividend is paid, a bad debt decreasing adjustment may arise.²⁴
40. A bad debt decreasing adjustment will arise if an increasing adjustment²⁵ arose when the earlier dividend, which was expected to be the final, was paid. Where a subsequent dividend is paid which results in a decreasing adjustment, our admitted debt will decrease. This is because the previous dividend payment was based on the admitted debt, which included the bad debt increasing adjustment, but did not take into account the subsequent decreasing adjustment.
41. The amount effectively overpaid may be deducted from the final dividend payment to us, or we may be required to repay the overpaid amount.

²² Paragraph 21-15(1)(c).

²³ Subsection 29-20(1).

²⁴ Section 21-20.

²⁵ Section 21-15.

42. The following bad debt decreasing adjustment formula can be used to calculate the decreasing adjustment:

Bad debt increasing adjustment formula

$$\text{Decreasing adjustment (D)} = A (Y \div X)$$

$$\text{Dividend rate} = Y \div (X - D)$$

Where:

- D is the decreasing adjustment of the incapacitated entity.
- A is the amount of ITCs the incapacitated entity was entitled to in relation to the unsecured creditors' admitted debts. This figure takes into account fully and partly creditable acquisitions made by the incapacitated entity and is the same as that used in originally applying the bad debt increasing adjustment formula.
- Y is the extra funds that are available for distribution to the unsecured creditors.
- X is the total admitted unsecured debts. This figure includes the bad debt increasing adjustment calculated previously.

Example 3 – applying the bad debt increasing adjustment – decreasing adjustment

43. *Mark, the representative of Fabulous Fabrics Pty Ltd (the incapacitated entity), has previously paid what was expected to be the final dividend. Fabulous Fabrics Pty Ltd had an increasing adjustment for the bad debt amount written off using the final bad debt increasing adjustment formula as provided in Example 1 of this Practice Statement.*

44. *Mark now becomes aware of an asset that was not previously included in the records of Fabulous Fabrics Pty Ltd. Mark sells the asset, and now has available additional funds of \$400,222 (net of costs and GST on the sale) to pay a further dividend to the unsecured creditors. The amount of ITCs previously claimed by the incapacitated entity that relate to acquisitions for which there was a bad debt increasing adjustment remains unchanged at \$294,368. The total of the admitted unsecured debts is now \$5,367,060.55 (which includes the increasing adjustment of \$214,069.55).*

45. *Accordingly, applying the bad debt increasing adjustment formula:*

$$Y = \$400,222$$

$$X = \$5,367,060.55$$

$$A = \$294,368$$

$$\text{ATO debt} = \$707,656.55.$$

46. *As Fabulous Fabrics Pty Ltd has a decreasing adjustment in relation to amounts previously written off by creditors when Mark pays the dividend, the dividend rate will increase.*

47. *The decreasing adjustment of Fabulous Fabrics Pty Ltd is calculated as:*

$$D = A (Y \div X)$$

$$= 294,368 \times (400,222 \div 5,367,060.55)$$

$$= \$21,951.04.$$

48. *The decreasing adjustment is \$21,951.04. This decreasing adjustment is offset against our outstanding claim. The total of the unsecured creditors'*

debts is reduced by the amount of the decreasing adjustment and the dividend rate is calculated as:

$$\begin{aligned} \text{Dividend rate} &= Y \div (X - D) \\ &= 400,222 \div (5,367,060.55 - 21,951.04) \\ &= 0.07488 \\ &= 7.488c \text{ in the dollar.} \end{aligned}$$

49. As our claim is reduced by the amount of the decreasing adjustment, the total unsecured creditors' amount (X) is reduced by this amount. We are still entitled to a dividend payment, although this will be calculated on the reduced debt of \$685,705.51.²⁶
50. Also, as the previous dividend payment to us was based on the admitted debt of \$707,656.55 (including the bad debt increasing adjustment) and our final claim is \$685,705.51 (taking into account the decreasing adjustment), we effectively have been overpaid by the initial dividend payment. Therefore, a calculation of the overpayment must be made.
51. The total dividend rate paid to unsecured creditors is 33.678c in the dollar (that is, 26.190 + 7.488). The total dividend payment to us is calculated on the final debt:

$$\begin{aligned} &\$685,705.51 \times 0.33678 \\ &= \$230,931.90. \end{aligned}$$

52. Therefore, the final dividend paid to us is:

$$\begin{aligned} &\$230,931.90 - \$185,335.25^{27} \\ &= \$45,596.65. \end{aligned}$$

Incapacitated entities accounting on a cash basis

Input tax credits as a result of a first and final dividend to creditors

53. Entities that account for GST on a cash basis are entitled to claim ITCs to the tax period in which they provide the consideration for the acquisition.²⁸
54. For example, if the consideration for a creditable acquisition is \$220 and the entity pays \$110 of that amount in a given tax period, it is entitled to claim an ITC of \$10 to that tax period.²⁹ This means that, to the extent that the purchases of an incapacitated entity (which accounts for GST on a cash basis) referable to the unsecured creditors' admitted claims were creditable acquisitions, ITCs in proportion to the rate of the dividend paid by the representative are attributed when the dividend is paid.³⁰
55. When the representative pays a dividend to unsecured creditors for acquisitions made by the incapacitated entity prior to the appointment of the representative, the entitlement to ITCs remains with the incapacitated entity.

²⁶ Refer to Example 1 of this Practice Statement for the Commissioner's proof of debt.

²⁷ This is the amount of the interim dividend paid to the Commissioner – refer to Example 1 of this Practice Statement.

²⁸ Subsection 29-10(2); provided that, where required, they hold a tax invoice at the time of lodging their business activity statement: subsection 29-10(3).

²⁹ Subsection 29-10(2); provided that, where required, they hold a tax invoice at the time of lodging their business activity statement: subsection 29-10(3).

³⁰ Subsection 29-10(2); provided that, where required, they hold a tax invoice at the time of lodging their business activity statement: subsection 29-10(3).

How is the amount of the input tax credit calculated?

56. We will accept the following method for calculating the ITC entitlement which arises where there is a payment of a first and final dividend.³¹ This is referred to as the 'ITC formula'. A representative may use the ITC formula upon payment of a first and final dividend to calculate the ITC entitlement.
57. Note that Division 3 in Part IIB of the *Taxation Administration Act 1953* provides that these ITCs will be offset against the outstanding tax debt of the incapacitated entity before any refund is issued.
58. Where the ITC amount is larger than the debt owed by the incapacitated entity to us, the incapacitated entity is entitled to a refund of the excess amount. This refund will be included in the funds available for distribution by the representative. If, however, the ITC amount is less than the debt owed to us, there is no refund to the incapacitated entity. The debt owed to us is merely reduced by this amount.

ITC formula

Step 1

$$\text{ITC} = A (Y \div X)$$

If the ITC is greater than the debt to us, go to Step 2.

If the ITC is less than or equal to the debt to us, go to Step 3.

Step 2

$$\text{Dividend rate} = (Y + \text{ITC} - \text{ATO debt}) \div (X - \text{ATO debt})$$

Do not go to Step 3. This is the end of the calculation.

Step 3

$$\text{Dividend rate} = Y \div (X - \text{ITC})$$

Where:

- ITC is the ITC entitlement of the incapacitated entity referable to the unsecured creditors' admitted claims.
- A is the GST component included in the admitted unsecured debts of the incapacitated entity to the extent that the incapacitated entity is entitled to an ITC. This figure takes into account fully creditable and partly creditable acquisitions made by the incapacitated entity.
- Y is the total funds that are available to be paid as distributions to the unsecured creditors.
- X is the total admitted unsecured debts.
- ATO debt is the total debt owed to us by the incapacitated entity.

Example 4 – applying the ITC formula

59. *Tan, the representative of Kerry Club Pty Ltd (the incapacitated entity), admits unsecured creditors claims of \$525,000 and has funds available of \$164,249 to pay these debts. The GST component of the total admitted unsecured creditors' claims is \$38,674 and the debt that Kerry Club Pty Ltd owes to us is \$74,007.*

³¹ That is, where only one dividend is anticipated.

60. Accordingly, applying the ITC formula:

$$Y = \$164,249$$

$$X = \$525,000$$

$$A = \$38,674$$

$$\text{ATO debt} = \$74,007.$$

61. As Kerry Club Pty Ltd is entitled to ITCs when Tan makes the dividend payment, the dividend rate will increase. The ITC of Kerry Club Pty Ltd is calculated as:

Step 1

Calculate the amount of ITCs.

$$\begin{aligned} \text{ITC} &= A (Y \div X) \\ &= 38,674 \times (164,249 \div 525,000) \\ &= \$12,099.36. \end{aligned}$$

62. As the amount of the ITC is less than the tax debt to us, Step 3 is applied.

63. The amount of the ITCs to which Kerry Club Pty Ltd is entitled is \$12,099.36. These ITCs are offset against our outstanding claim, with the result that the total of the unsecured creditors' debts is also reduced by the amount of the ITCs and the dividend rate is calculated as:

Step 3

$$\begin{aligned} \text{Dividend rate} &= Y \div (X - \text{ITC}) \\ &= 164,249 \div (525,000 - 12,099.36) \\ &= 0.32024 \\ &= 32.024\text{c in the dollar.} \end{aligned}$$

64. We are still entitled to a dividend payment, although this will be calculated on the reduced debt. As our claim is not cleared by the ITCs, there is no refund. The amount of money that is available for distribution (Y) remains unchanged.

Interim dividends

65. A representative may pay interim dividends to creditors which result in ITCs being attributed to the tax period in which each dividend is paid. However, the ITC formula cannot be applied at the time of the interim dividend as this will result in an inaccurate calculation of the ITC amount.

66. A representative may apply the ITC formula at the time of the final dividend to calculate the total amount of the ITCs. However, at the time of the final dividend, we effectively will have been overpaid on the previous dividends if the interim dividends were based on the admitted debt before taking into account the ITCs attributable as a result of the part payment of the creditors.

67. The amount may be deducted from the final dividend payment to us or we may be required to repay the overpaid amount.³²

³² Under regulation 5.6.55 of the *Corporations Regulations 2001* and section 144 of the *Bankruptcy Act 1966*.

Example 5 – applying the ITC formula at the final dividend

68. *Marius, the representative of Norved Pty Ltd (the incapacitated entity), admits unsecured creditors' claims of \$780,000 and declares an interim dividend of 20c in the dollar to the unsecured creditors (that is, Marius is distributing \$156,000). The GST component of the total admitted unsecured creditors' claims is \$54,003 and the debt owed us by Norved Pty Ltd (the incapacitated entity) is \$103,000. Marius pays the interim dividend to us based on the admitted proof of debt (without any adjustments to the ATO claim for ITCs that result from the interim dividend payment). The interim dividend payment to the ATO is $\$103,000 \times 0.20 = \$20,600$.*

69. *Marius has funds available of \$186,050 for the final dividend, making the total funds distributed to the unsecured creditors \$342,050. This example illustrates how the ITC entitlement of Norved Pty Ltd is attributed at the time of the final dividend is calculated using the formula.*

70. *Accordingly, applying the ITC formula:*

$$Y = \$342,050$$

$$X = \$780,000$$

$$A = \$54,003$$

$$\text{ATO debt} = \$103,000$$

Step 1

Calculate the amount of ITCs.

$$\begin{aligned} \text{ITC} &= A (Y \div X) \\ &= 54,003 \times (342,050 \div 780,000) \\ &= \$23,681.70. \end{aligned}$$

71. *As the amount of the ITC is less than the tax debt us, Marius applies Step 3.*

72. *The amount of the ITCs to which Norved Pty Ltd is entitled is \$23,681.70. These ITCs are offset against the outstanding ATO claim, with the result that the total of the unsecured creditors' debts is also reduced by the amount of the ITCs.*

Step 3

$$\begin{aligned} \text{Dividend rate} &= Y \div (X - \text{ITC}) \\ &= 342,050 \div (780,000 - 23,681.70) \\ &= 0.45226 \\ &= 45.226\text{c in the dollar.} \end{aligned}$$

73. *We are still entitled to a dividend payment, although this will be calculated on the reduced debt of \$79,318.30. As the debt us is greater than the ITCs, there is no entitlement to a refund. The amount of money that is available for distribution (Y) remains unchanged. We receive the interim dividend payment based on the admitted debt of \$103,000. However, the final debt to us after taking into account the ITCs available to Norved Pty Ltd is reduced to \$79,318.30. Therefore, we effectively have been overpaid by the interim dividend and when Marius pays the final dividend to us, this overpayment is taken into account so that we receive a total dividend based on the reduced debt (that is, $\$79,318.30 \times 0.45226 = \$35,872.49$). Marius pays us a final dividend of \$15,272.49 (that is, $\$35,872.49 - \$20,600$).*

Date issued: 28 March 2012

Date of effect: Before and after its date of issue

Business line: ISP – GST

Amendment history

14 November 2024

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

1 June 2018

Part	Comment
Contact details	Updated.

References

Legislative references	ANTS(GST)A 1999 21-15 ANTS(GST)A 1999 21-15(1)(c) ANTS(GST)A 1999 21-20 ANTS(GST)A 1999 29-10(1) ANTS(GST)A 1999 29-10(2) ANTS(GST)A 1999 29-10(3) ANTS(GST)A 1999 29-10(4) ANTS(GST)A 1999 29-20(1) ANTS(GST)A 1999 Div 58 ANTS(GST)A 1999 58-10(1) ANTS(GST)A 1999 58-10(4) ANTS(GST)A 1999 58-60(1) ANTS(GST)A 1999 58-60(2) ANTS(GST)A 1999 Div 147 (repealed) ANTS(GST)A 1999 136-10 ANTS(GST)A 1999 195-1 ITAA 1997 995-1 TAA 1953 Div 3 Pt IIB Bankruptcy Act 1966 144 Corporations Act 2001 9 Corporations Act 2001 Pt 5.3A Div 2 Corporations Regulations 2001 5.6.55 Corporations Regulations 2001 5.6.68
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