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Tax Association

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Committee Secretary
Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

Via email: economics.sen@aph.gov.au

Dear Committee,

Inquiry into Treasury Laws Amendment (Tax Incentives and Integrity) Bill 2024 [Provisions]

We are writing to you as the representative of over 160 large corporates that operate across 22 industries regarding your inquiry into *Treasury Laws Amendment (Tax Incentives and Integrity) Bill 2024 (Bill)*. Our comments specifically relate to Schedule 2 of the Bill which focusses on denying deductions for general interest charges (**GIC**) and shortfall interest charges (**SIC**).

We acknowledge the overarching policy setting behind the introduction of Schedule 2 which is designed to enhance incentives for all entities to correctly self-assess their tax liabilities, pay on time, and level the playing field for individuals and businesses who already do so.¹ While these simple amendments achieve the stated objective, we submit that the proposed amendments may result in unintended behavioural consequences around how taxpayers and the ATO constructively engage to resolve long-running disputes.

Australian tax laws are complex. In most instances, a taxpayer would self-assess a position to comply with the law and this would often include receiving advice that the position taken is reasonably arguable. The ATO may then take an alternative view at some later point with the taxpayer being notified of this alternate position many years after the tax return was filed, resulting in an amended notice of assessment being issued. Due to the retrospective nature of the amendment notice, GIC and SIC will accrue from the time the tax shortfall arose.

In these instances, the ATO “encourages you to enter into a ‘50:50 arrangement’, which will reduce the amount of general interest charge (GIC) payable if your dispute is unsuccessful”² to manage any unforeseen tax liabilities that arise. Taxpayers that have entered into these tailored arrangements on the basis that GIC and SIC would be deductible and where relevant, any interest received on overpayments would be assessable.³

¹ See: https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r7299_ems_f004b6fb-348b-4a62-ab16-ae85c4b67d11/upload_pdf/JC014750.pdf;fileType=application%2Fpdf

² See: <https://www.ato.gov.au/businesses-and-organisations/corporate-tax-measures-and-assurance/privately-owned-and-wealthy-groups/what-you-should-know/tailored-engagement/resolving-disputes>

³ See: <https://www.ato.gov.au/individuals-and-families/paying-the-ato/interest-and-penalties/interest-we-pay/interest-on-overpayments>

These arrangements are an important feature of the tax dispute management landscape. They recognise the complex tax law environment corporate taxpayers operate within and that outcomes can as a result be uncertain for both the taxpayer and the ATO. These arrangements also recognise that the design of Australia's tax systems provides the ability for filed positions to be reviewed well after the tax return is lodged and that our systems include various dispute resolution pathways.

Recent disputes settled in the Courts provide clear examples of this. In many instances, disputes heard before the Courts are long-running disputes. In some instances, these Court decisions deal with disputes over 10 years old, with both parties equally confident in their positions.

While we recognise that the change to the law seeks to reinforce the requirements imposed on all taxpayers to correctly self-assess their income tax liability, pay their tax on time, and assist in lowering the amount of collectable debt owed to the ATO,⁴ we submit that disputed debts that are subject to 50:50 arrangements before the announcement of the measure should be excluded from the rules as the ATO and taxpayers have entered into such arrangements on the basis that any interest incurred would be deductible.

Considering the above, we recommend the following amendments to the Bill to ensure an appropriate balance is struck:

1. Historical 50:50 arrangements (or similar administrative arrangements between the ATO and taxpayers) entered into before the announcement of this measure in the 2023–24 Mid-Year Economic and Fiscal Outlook on 13 December 2023 be excluded from the application of Schedule 2.
2. The denying of deductions for GIC and SIC be limited to amounts accrued after 1 July 2025.
3. Interest on overpayments be treated as non-assessable non-exempt income to maintain symmetry.

Should you have any questions or wish to discuss this matter, please do not hesitate to contact me at [REDACTED] or on [REDACTED].

Yours sincerely,

[REDACTED]

Simon Staples
Assistant Director

⁴ See: https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r7299_ems_f004b6fb-348b-4a62-ab16-ae85c4b67d11/upload_pdf/JC014750.pdf;fileType=application%2Fpdf