9 January 2025

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

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

Dear Dr Sean Turner

Treasury Laws Amendment (Tax Incentives and Integrity) Bill 2024

Chartered Accountants Australia and New Zealand (CA ANZ), the Institute of Public Accountants, National Tax and Accountants Association and the SMSSF Association appreciate the opportunity to provide a submission to the Senate Standing Committees on Economics regarding Treasury Laws Amendment (Tax Incentives and Integrity) Bill 2024 (the Bill).

The Bill makes changes to the Luxury Car Tax Act 1999, extends the mandatory notification period within which the Commissioner of Taxation must notify a taxpayer of their decision to retain a business activity statement refund and denies tax deductions for the general interest charge (GIC) and shortfall interest charge (SIC). This submission discusses the proposed non-deductibility of GIC and SIC.

Executive summary

Schedule 2, which makes SIC and GIC non-deductible, should be removed from the Bill.

The argument for making SIC and GIC non-deductible is that it increases the cost of tax debt thus, encouraging the likelihood of tax being paid on time and/or increase incentives for all entities to correctly self-assess their tax liabilities. With the tax debt book of the Australian Taxation Office (ATO) exceeding $100 billion[1] and interest charges for 2024 of $8.99 billion[2], this seems like an appealing option to both reduce debt and increase revenue.

However, it is unlikely that increasing the cost of SIC will impact an entity's ability to correctly self-assess their tax liability and the current cost of GIC means that many taxpayers already have a strong incentive to pay tax on time. Making SIC and GIC non-deductible will inappropriately increase compliance costs of honest taxpayers. It will also disproportionally impact small businesses who owe $35.2B (or 67%) of collectable tax debt.

There are already a wide range of targeted measures that the Australian Taxation Office can undertake to improve the collection of tax debt, and the latest annual report indicates that such measures are beginning to make an impact.

[1] https://www.ato.gov.au/media-centre/commissioners-address-to-the-tax-institutes-tax-summit-2024
[2] Commissioner of Taxation annual report 2023-24 Table 4.13 page 136 This has doubled since 2021-22

Background

SIC is payable in relation to errors made in a tax return that result in the underpayment of tax. It is broadly calculated from the date the tax should have been paid, up to the time the amended assessment is made. GIC is not payable during this time but will apply instead of the SIC from the date of the amended assessment. SIC is equal to the 90-day bill rate, plus 3%. As of 20 December 2024, SIC is 7.38%.

GIC is payable when a taxpayer does not pay tax on time. It is calculated as the 90- day bank bill rate, plus 7% (the uplift factor). As of 20 December 2024, the GIC rate is 11.38%.

Like interest, the payment of both GIC and SIC is currently deductible.

Proposals are inconsistent with the policy intent of SIC and GIC

The policy intent of both SIC and GIC is to neutralise the loan benefit that a taxpayer receives due to the late payment of tax. It is meant to put a taxpayer who is late paying tax in the same position as a taxpayer who has paid tax on time.

Making SIC and GIC non-deductible increases the impact of SIC and GIC beyond the neutralisation of the loan benefit. The extra amounts payable due to denial of a tax deduction could be viewed as a penalty which is imposed regardless of the culpability of the taxpayer.

The policy intent of GIC and SIC was comprehensively considered in the Review of Self Assessment (RoSA).

RoSA noted that GIC is designed to encourage the payment of tax.

> *"In formal terms, the GIC rate is determined by adding a 7% uplift factor to the 90-day bank bill rate (the 'base rate'). The base rate feeds through movements in the overall profile of interest rates, ensuring that the GIC retains commercial relevance.* ***The uplift factor's role is to make the GIC rate sufficiently high to encourage the payment of tax liabilities when due, discouraging the use of tax debts as a source of business or private finance.*** *Although the GIC is calculated by adding the uplift factor to the base rate, the uplift factor is not intended to reflect the risk premium that applies to the normal finance costs of affected taxpayers,* ***nor to serve as a penalty*** *for having engaged in blameworthy conduct"*[3]

RoSA also noted that:

> "*In practice, it is not feasible to fine-tune the interest charge to the circumstances of each taxpayer. Further, it is not feasible to apply differential rates to different market segments (such as individuals, very small businesses and other businesses), because the loan benefit within segments can vary widely*"[4].

[3] Page 49 https://treasury.gov.au/sites/default/files/2019-03/p2004-aspects-income-tax-self-assessment.pdf
[4] Page 53 https://treasury.gov.au/sites/default/files/2019-03/p2004-aspects-income-tax-self-assessment.pdf

In formulating how SIC is calculated RoSA noted that:

> *"in shortfall cases, taxpayers are unaware of their debts. Therefore, any differential between the GIC and their alternative borrowing rate strikes them as a penalty that has been imposed irrespective of whether the conditions for a formal culpability penalty (such as lack of reasonable care) have been triggered.*
>
> *Because taxpayers are not usually in a position to respond to the GIC in shortfall cases, the Review has concluded that full statutory GIC should not apply to shortfalls during the pre-amendment period."*[5]
>
> "*The Review considers that, in principle, the objective of a shortfall interest charge should be to neutralise loan benefits that taxpayers might typically receive from their shortfall, so that they do not receive an advantage over those who assess correctly. Ideally, the shortfall interest charge for a given taxpayer would be set at a level just sufficient to offset the loan benefit that the taxpayer received from the shortfall.*"[6]

SIC not an appropriate incentive to assess correctly

SIC is payable for the period between when tax would have been due and when the assessment is corrected. A revised tax assessment can occur for many reasons. These reasons can vary from honest mistake, uncertainty about a complex tax issue, to fraud.

For example, SIC could be imposed where a taxpayer relies on a court decision that is subsequently overturned, there are substantial delays in resolving an issue due to the complexity of the issue or there have been unreasonable delays in progressing the audit by the ATO or due to natural disasters.

Making SIC non-deductible results in it having a penalty component that is applicable to taxpayers who have made an honest mistake as well as those who have been reckless or deliberately fraudulent. This is not appropriate.

Specific consideration was given in RoSA to the proposition that an 'incentive to pay' premium might be viewed as an 'incentive to assess correctly'. This idea was rejected.

> *"An interest charge is ill suited to such a de facto penalty role, imposing an uncertain effect that depends significantly on factors other than the size of the shortfall and the degree of culpability. In particular, the effect of imposing a penalty interest rate on shortfalls would depend on the period taken for the shortfall to be identified and the rate at which the taxpayer would voluntarily have borrowed a similar amount. Furthermore, the perception that taxpayers are being penalised twice for the same offence or* ***being penalised where it was decided that no culpability penalty should apply, is undesirable****."*[7]

---

[5] Page 51 https://treasury.gov.au/sites/default/files/2019-03/p2004-aspects-income-tax-self-assessment.pdf Note SIC was created due to this review hence the reference to GIC in this quote
[6] Page 53 https://treasury.gov.au/sites/default/files/2019-03/p2004-aspects-income-tax-self-assessment.pdf
[7] Page 52 https://treasury.gov.au/sites/default/files/2019-03/p2004-aspects-income-tax-self-assessment.pdf

RoSA also considered whether SIC should be non-deductible and rejected the idea:

> *"similarly, because tax deductibility is only one factor affecting the impact of shortfall interest on a particular taxpayer, the **Review does not recommend altering current arrangements whereby all GIC is tax deductible.**"*[8]

This review preferred reliance on the raft of existing penalty provisions which reflect the taxpayer's culpability to encourage taxpayers to correctly self-assess their liabilities.

> *"The Review recognises that reducing shortfall interest charges might increase the incentives to deliberately under assess. However, this concern should be addressed through the culpability penalty regime, rather than by having a shortfall interest charge regime that implicitly assumes the worst about the cause of shortfalls."*[9]

The existing penalty regime can impose substantial sanctions where there is inappropriate taxpayer behaviour.

	Penalty units (if no shortfall)	Shortfall penalty
Failure to take reasonable care	20	25% of shortfall
Recklessness	40	50% of shortfall
Intentional disregard	60	75% of shortfall

The above penalties are doubled for significant global entities and can be increased by 20% for certain aggravating behaviours. Amounts paid under the existing penalty regime are non-deductible.

The interaction between SIC and penalties is explained in PSLA 2006/8:

> *4A. Interest charges are intended to restore a fair balance between taxpayers, as mentioned above. They apply regardless of whether or not the taxpayer is liable to any administrative penalty, and do not depend upon, nor imply, culpability on the part of the taxpayer.*
>
> *4B. Shortfall penalties, however, relate to the taxpayer's behaviour leading up to and making a statement that results in a shortfall amount. Imposition of a shortfall penalty or reduced or remitted shortfall penalty does not mean a reduction or remission of the shortfall interest charge will be given."*

This approach is targeted, does not penalise honest taxpayers, and should be maintained.

---

[8] Page 53 https://treasury.gov.au/sites/default/files/2019-03/p2004-aspects-income-tax-self-assessment.pdf
[9] Page 53 https://treasury.gov.au/sites/default/files/2019-03/p2004-aspects-income-tax-self-assessment.pdf

Existing GIC calculation encourages payment of tax

GIC is designed to be set at a rate that is sufficiently high to encourage the payment of tax debt.

> *"By design, for many affected taxpayers the GIC rate will be higher than a readily available commercial alternative. In the situation of non-payment of a known tax debt, this premium can be managed or avoided by arranging to use their alternative lower cost finance."*[10]

GIC is currently 11.38%, an amount that is significantly higher than commercial interest rates available to many businesses and individuals. This is reflective in the type of taxpayers that have collectable tax debt. The table below demonstrates that public entities, superannuation funds and individuals have little collectable tax debt.

Type of entity	Collectable tax debt[11]	
	$B	%
Individuals	4.7	9
Small business	35.2	67
Privately owned and wealthy groups	10.3	19
Public groups	2.0	4
Not for profits	0.3	1
Self-Managed Superannuation Funds	0.4	1
Superannuation Funds	0.0	0

It is small business that will be most impacted if GIC is non-deductible. This is due to two factors:

- small business owes $35.2B (67%) of collectable debt, and
- making GIC non-deductible substantially increases the cost of tax debt for individuals (most small businesses are sole traders and thus subject to individual tax rates) and small business that are corporates. The rate of increase is shown below. Appendix A shows how these amounts have been calculated.

[10] Page 51 https://treasury.gov.au/sites/default/files/2019-03/p2004-aspects-income-tax-self-assessment.pdf
[11] Table 7.12 on page 269 https://www.ato.gov.au/about-ato/commitments-and-reporting/annual-report-and-other-reporting-to-parliament/annual-report

Individual >18,201-45,000	19%
Individual >45,000-135,000	43%
Individual >135,000 - 190,000	59%
Individual > 190,000	82%
Small business corporate	33%

GIC compounds daily and can grow quickly.

> *"At a GIC rate of 12.5%, interest charges would be approximately 28% of the shortfall after two years, 65% by the end of the normal four year review period and 112% after six years."*[12]

During COVID, the ATO supported businesses by not actively collecting tax debts. This position has now changed, and the ATO's debt collection activity is returning back to normal. This is evident in the statistics included in the annual report. For example:

- The percent of tax (by value) paid on time at 30 June 2024 and 30 June 2023, was more than 89%[13] which is higher than the 88% target and the ATO is actively implementing measures to improve this metric even more.
- The ratio of collectable debt to net tax collections increased "5%. This is the smallest yearly increase seen since prior to the COVID-19 pandemic, demonstrating that we are slowing the growth in collectable debt". [14]

The ATO has announced on 23 October 2024[15] that it will be utilising its existing tools to further improve the payment of tax. The ATO will be focusing efforts on businesses that are not engaging with the ATO about tax debts by moving more quickly to firmer actions such as Director Penalty Notices (DPNs) and garnishees.

With $10.9 billion of small business collectable debt[16], being for amounts more than $100,000 which is more than 90 days old and for which the taxpayer has not engaged with the ATO, this new initiative should have a significant impact on collectable tax debt.

[12] Page 50 https://treasury.gov.au/sites/default/files/2019-03/p2004-aspects-income-tax-self-assessment.pdf
[13] Page 59 https://www.ato.gov.au/about-ato/commitments-and-reporting/annual-report-and-other-reporting-to-parliament/annual-report
[14] Page 60 https://www.ato.gov.au/about-ato/commitments-and-reporting/annual-report-and-other-reporting-to-parliament/annual-report
[15] https://www.ato.gov.au/tax-and-super-professionals/for-tax-professionals/tax-professionals-newsroom/we-re-changing-our-approach-to-collecting-unpaid-tax-and-super
[16] Table 7.14 https://www.ato.gov.au/about-ato/commitments-and-reporting/annual-report-and-other-reporting-to-parliament/annual-report

These statistics and new initiatives demonstrate that the existing tools available to the ATO can and will make an impact on the collection and payment of tax debt. There are also further changes that could be considered, such as lowering the threshold for reporting tax debts to credit reporting agencies and tailoring access to payment plans according to the size of the taxpayer.

Importantly, these tools can be used to target problematic taxpayers unlike the proposed increase to GIC which affects all taxpayers.

Applying for remission of SIC and GIC is costly to both taxpayers and the ATO

It has been argued that taxpayers would be able to apply for remission of SIC and GIC so that they would not be penalised in grievous cases. That is true, but it creates an extra administrative burden on the taxpayer (i.e. time to apply, adviser costs, uncertainty waiting for a decision) who has been trying their best to comply with complex tax laws rather than penalising wrong doers by using the existing penalty provisions. Increasing the cost of SIC and GIC also creates extra incentive to apply for a remission, which will also increase the administrative burden on the ATO of processing remission requests.

Disputing decisions to deny remission is difficult

Our members who have been applying for remissions are finding that it is much more difficult to be successful. Disputing decisions to deny remission of SIC and GIC is difficult and costly.

Objections to unsuccessful SIC remission requests can only be made if the SIC amount is more than 20% of the shortfall amount of tax. This means some taxpayers are unable to object to unsuccessful remission requests.

Disputing a decision regarding GIC remission is even harder. An ATO decision to deny the remission of GIC is not subject to an internal ATO review. The only recourse available to the taxpayer is to appeal the ATO's decision in the Federal Court of Australia (FCA) under the Administrative Decisions (Judicial Review) Act 1977 (Cth), which is a lengthy and complex process that is out of reach of most taxpayers, who are small businesses or individuals.

Changes required if Schedule 2 remains

If, contrary to our recommendation, Schedule 2 is retained, then it is recommended that remission decisions in relation to both GIC and SIC are unconditionally reviewable.

Should you have any queries please contact Susan Franks at [redacted].

Yours sincerely

Susan Franks
Australian leader–Tax, Superannuation and Financial Services
CA ANZ

Tony Greco
Senior Tax Advisor
IPA

Geoff Boxter
CEO
NTAA

Tracey Scotchbrook
Head of Policy and Advocacy
SMSF

CHARTERED ACCOUNTANTS AUSTRALIA + NEW ZEALAND

IPA INSTITUTE OF PUBLIC ACCOUNTANTS

NTAA

SMSF ASSOCIATION

Appendix A

Taxpayer type	Debt	Tax rate	GIC	Tax back	Net cost	Net increase
Corporate	$ 100.00	30%	$ 11.38	$ 3.41	$ 7.97	43%
Small business corporate	$ 100.00	25%	$ 11.38	$ 2.85	$ 8.54	33%
Loss making corporate	$ 100.00	0%	$ 11.38	$ -	$ 11.38	0%
Loss making individual	$ 100.00	0%	$ 11.38	$ -	$ 11.38	0%
Tax exempt income individual	$ 100.00	0%	$ 11.38	$ -	$ 11.38	0%
Individual <18,201	$ 100.00	0%	$ 11.38	$ -	$ 11.38	0%
Individual >18,201-45,000	$ 100.00	16%	$ 11.38	$ 1.82	$ 9.56	19%
Individual >45,000-135,000	$ 100.00	30%	$ 11.38	$ 3.41	$ 7.97	43%
Individual >135,000 - 190,000	$ 100.00	37%	$ 11.38	$ 4.21	$ 7.17	59%
Indivudal > 190,000	$ 100.00	45%	$ 11.38	$ 5.12	$ 6.26	82%