

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

TREASURY

Australian Taxation Office

(Budget Estimates 2 June 2005)

Outcome 2

Topic: ROSA

Written Question Supp W15

Senator Watson asked:

**Tax Laws Amendment (Improvements to Self Assessment) Bill (No 1) 2005 and
Shortfall Interest charge (Imposition) Bill 2005**

Generally the amendments contained in these Bills have been welcomed, as they offer much needed relief from the operation of the general interest charge (GIC) regime for the income years 2004-2005 and beyond. However, as the proposed amendments will only apply to amendments of assessments for the 2004-2005 income year and later years, there is concern about the existing GIC regime continuing to apply for income years prior to the 2004-2005 income year.

The main issue is that the GIC does not sit well with the policy for tax penalties, in that it effectively includes a substantial penalty component. This has resulted in a broad punitive-like effect for large taxpayers. There is also concern that section 8AAG of the *Taxation Administration Act 1953*, which provides for the GIC to be remitted in full or in part, is drafted too narrowly and has been interpreted in a very restrictive manner.

1. Why is the ATO interpreting this section in such a restrictive manner so as to create a punitive effect on large taxpayers?
2. In view of the amendments contained in the Bills, does the ATO intend to reconsider its approach?

Answer:

The Tax Office is currently reviewing the guidelines for the remission of general interest charge, particularly in respect of pre-amendment cases. It is expected that this will lead to recognition of expanded circumstances in which some remission would be warranted. The Tax Office does not, however, consider it appropriate to adopt a broad policy to remit pre-amendment general interest charge (applying to 2003-04 and earlier years) to a rate equivalent to the lower shortfall interest charge. The Government has expressly decided that the new shortfall interest charge is to apply only to the 2004-05 years onwards.

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Similarly it is not considered appropriate to adopt a policy for remission of general interest charge for a particular taxpayer solely on the basis of their perceived penalty effect. In the context of the shortfall interest charge, paragraph 5.4.1 of the *Report on Aspects of Income Tax Self Assessment* states that the “presence of a penalty effect should not, of itself, provide a basis for remission nor need it be established as a pre-requisite to remission. Rather, remission should generally require circumstances such as delay, contributory cause or fault....”.

The *ATO Receivables Policy* currently provides guidance on when it would be appropriate to remit pre-amendment general interest charge in certain situations, including situations where:

- there has been a delay in issuing an amended assessment;
- GST ‘wash’ scenarios; and
- situations where taxpayers follow TaxPack or other ATO publications, and are either misled or make an honest mistake in doing so.

On 18 November 2004, the Commissioner announced that these guidelines would be reviewed to develop more practical and accessible information for the community, particularly around interest that accrues prior to the issue of an amended assessment. In developing these guidelines, the Tax Office is consulting with the Inspector-General, the Ombudsman and other key community representatives.

The new guidelines are currently being developed. They will outline remission policy in relation to a number of further situations where some remission of interest charges may be appropriate, including situations where:

- an audit has taken longer to complete than might reasonably have been expected in the circumstances of the case;
- taxpayers are affected by announced legislative changes with retrospective effect;
- taxpayers rely upon a draft Ruling or determination, and find that the final version of the ruling changes to their detriment;
- other sorts of ‘revenue neutral’ scenarios occur, including GST cases involving the use of the Commissioner’s discretion to treat a particular document as a tax invoice or adjustment note;
- situations where a tax shortfall on one account is offset by a related credit amendment on another account.

Other situations are being considered where a tax shortfall arises because, when the taxpayer lodged their original return or activity statement, they did not know, and could not have known, that a shortfall would arise are being considered.

Generally these involve the development of more broadly based guidelines from specific instances where remissions have been granted on the facts of particular cases.

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