

LABOR SENATORS' MINORITY REPORT

1.1 Labor Senators join with the majority report in welcoming these bills, which represent a step in the right direction in moving the balance of fairness back towards taxpayers who act in good faith. However, Labor Senators consider that the bills do not go far enough to address shortcomings identified by the Treasury Review of Aspects of Income Tax Self-assessment (the Treasury review).

1.2 The establishment of a shortfall interest charge (SIC), which will replace the General Interest Charge (GIC) for shortfalls of tax paid in the period between when a taxpayer submits a tax return and when the ATO reassesses the return, addresses a notable shortcoming in the GIC system.

1.3 GIC is set at a high rate, currently the 90-day bill rate plus 7 per cent to encourage the prompt settlement of tax debts. The Treasury review has rightly observed that until they receive an amended assessment, taxpayers are not in a position to respond to this incentive to settle. As such, applying the GIC to reassessments in this way is inequitable.

1.4 The effects of applying the GIC at a high rate can be very punitive in effect. The Treasury review notes that over a six year period, the GIC can, at current interest rates, more than double a tax debt.¹ This can result in crushing liabilities from which affected taxpayers can find it difficult to recover. Many of the submissions received by the Committee confirm that this is the case.

1.5 The Treasury review rejected the use of the GIC as a penalty. As the review rightly observes:

Furthermore, the perception that taxpayers are being penalized twice for the same offence, or being penalized where it was decided that no culpability penalty should apply, is undesirable.²

1.6 In introducing the SIC, the Government clearly recognizes that in many circumstances, the GIC is both inequitable and applied inappropriately. Yet, instead of taking steps immediately to redress the shortcomings that have been identified, the SIC will only apply to the 2004-05 income year and future years. This means that back assessments, which can still be conducted for ordinary taxpayers, as distinct from those who are reassessed under Part IVA, can still be subjected to the GIC charge for up to four years.

1.7 Further, the ATO will have to administer two systems in parallel, for up to six years, the period it will take for the changes proposed to be fully implemented.

1 The Treasury, Report on Aspects of Income Tax Self Assessment, p. 50.

2 Report, P52.

1.8 Labor Senators therefore consider that the SIC should apply to back assessments made from the date of royal assent to the bills and recommend that the bill be amended accordingly.

1.9 Labor Senators recognise that some people who have already been assessed and who have either paid or are in the process of paying their tax debts under settlement arrangements may feel unjustly treated, as they do now. It is administratively impractical to re-open such cases, however, and the amendment proposed by Labor Senators will at least ensure that all assessments made after the bills receive assent will benefit from the introduction of the SIC.

1.10 Labor Senators were also concerned at the apparent conflict between evidence received from the ATO and Treasury and from the many persons and organisations that made submissions. ATO evidence appeared to indicate that the mass marketed schemes issue has been settled and that all participants were offered favorable terms. This may be the case for many of the agricultural and franchise scheme participants, but it is of concern that there may be substantial numbers of other people who found themselves entrapped by bad advice in schemes such as EBAs and retirement home schemes who have not been offered realistic settlement terms. Many of these people have been ruined financially as a result.

1.11 Labor Senators urge the ATO, when making future settlement offers, to be mindful of the policy intent in introducing the SIC and ensure that the GIC is not applied as a quasi penalty in such cases.

Recommendation:

Labor Senators recommend that the SIC apply to all back assessments from the date of royal assent to the bills.

**Senator Ursula Stephens
Deputy Chair**

Senator Ruth Webber