



26 May 2005

The Secretary  
Senate Economics Legislation Committee  
Suite SG.64  
Parliament House  
CANBERRA ACT 2600

Dear Mr. Hallahan,

**Inquiry into the  
Tax Laws Amendment (Improvements to Self Assessment) Bill (No1) 2005  
and the Shortfall Interest Charge (Imposition) Bill 2005**

Thank you for providing Taxpayers Australia Inc with the opportunity to forward a submission on the abovementioned Bills.

Taxpayers Australia Inc was one of the many organizations that lodged a submission with Treasury on the Review of Aspects of Self Assessment. We also were privileged to meet with Treasury representatives on several occasions to discuss the issues affecting taxpayers and to canvas possible solutions to self assessment that would promote certainty and protection for taxpayers while still enabling the Australian Taxation Office to collect the revenue and carry out its statutory functions.

We welcome the Government's support of the recommendations in the Review of Self Assessment Report.

Under the existing penalty regime, taxpayers can have several penalties imposed where the Tax Office makes an amendment to increase the tax liability of the taxpayer. In the first instance the amount of any primary tax must be paid. The first penalty imposed is a culpability penalty that is imposed according to the severity of the taxpayer's negligence. For example, deliberate evasion could result in a culpability penalty of up to 90% of the primary tax. The second penalty imposed is the General Interest Charge (GIC). The GIC penalty is on top of the culpability penalty and is supposed to compensate the

government for the use of the funds between the date of the original assessment and the date when the tax is collected.

Rather than being an interest component the General Interest Charge is a penalty in itself. The GIC rate is calculated as the monthly average yield of 90 day Bank Accepted Bills plus an additional 7%. For example the rate for the period April to June 2005 is 12.57% (ie 5.57% + 7%). The GIC is calculated on the unpaid daily balance from the date the tax became due and payable (ie the date of the original assessment).

The effect of the GIC is that it more than compensates the government for the delay in paying the outstanding primary tax and acts as a penalty on a penalty. The end result for many taxpayers has been that the GIC was higher than the primary tax, especially where there were delays in issuing the amended assessment increasing their tax liability.

The Shortfall Interest Charge (SIC) is meant to overcome that problem by imposing a lower interest charge during the period of an audit. Thereafter the General Interest Charge would apply to any tax debt that was not paid by the due date on the amended assessment. The logic of this approach is that the taxpayer should not be disadvantaged during the period of an audit. The SIC is to commence from assessments for 2004/05 and later income years. The existing GIC will continue to apply for 2003/04 and earlier amendments.

Essentially, Taxpayers Australia endorses that approach. However, we are concerned that the rate of interest imposed under both the SIC and GIC continue to act as penalties and not merely as compensation. The SIC is to include a premium of an additional 3% and the GIC includes a premium of an additional 7%. Those premiums are in fact penalties and do not merely compensate the government for the late payment of taxes.

In respect of the SIC there should be no premium inbuilt into the rate. Until the taxpayer's increased tax liability, if any, is established then such a premium cannot act as an incentive to resolve the case except in those instances where the taxpayer knowingly is aware of their underpayment of tax. In those cases it is the opportunity to have a lower culpability penalty through co-operation and voluntary disclosure that acts as the incentive to resolve the case quickly. In all other instances the taxpayer has to await the outcome of the audit or review before their increased tax liability, if any, is known. If the premium is to act as an incentive to resolve the taxpayer's tax position then it should apply from the time that increased tax debt is known.

We can appreciate that the government wants to discourage taxpayers from using the Tax Office as a borrowing facility; however few taxpayers would have cause to borrow funds at the GIC rate. Further the government wants to encourage taxpayers to pay outstanding debts quickly. The 7% premium in the GIC rate is designed to achieve that result and the 7% premium will have no financial impact on the taxpayer if the debt is paid by the due date. However, if the taxpayer does not have the capacity to pay nor the ability to borrow then it has the opposite effect. The end result is that taxpayers without the capacity to pay are locked into an ever increasing tax debt.

A more appropriate rate might be to abolish the interest premium for the SIC and reduce the interest premium to 3% for the GIC. Alternatively, the benchmark interest rate under Div 7A for loans to company shareholders' or the FBT rate for loans to employees could be used. If the first option is adopted then the 90 day Bank Accepted Bill would still operate to impose interest on the daily unpaid amount. If either of that alternative options were adopted then the advantage is that taxpayers would be certain of the interest rate that is applicable for the income year as those benchmark rates are set at the start of the income year

Yours sincerely

A handwritten signature in black ink, appearing to read 'Peter McDonald', with a stylized, cursive script.

Peter McDonald  
National Director  
Taxpayers Australia Inc