27th May, 2005

Mr Peter Hallahan
Committee Secretary
Senate Economics Legislation Committee
Suite SG.64
Parliament House
CANBERRA ACT 2600

Dear Mr Hallahan,

TAX LAWS AMENDMENT (IMPROVEMENTS TO SELF ASSESSMENT) BILL (No 1) 2005 AND THE SHORTFALL INTEREST CHARGE (IMPOSITION) BILL 2005

The Corporate Tax Association (CTA), which represents the taxation interests of some 120 of the largest corporate groups in Australia, welcomes the opportunity to make this brief submission to the Senate Economics Legislation Committee in respect of the above Bills. These Bills, read as one Bill, give effect to some of the Government's responses to the Treasury's Review of Aspects of Income Tax Self Assessment (ROSA). With the aim of providing more certainty in the self assessment system for taxpayers, the Bill mitigates and in some cases reduces penalty and interest consequences resulting from taxpayer errors.

Most notably the Bill imposes a separate shortfall interest charge (SIC) for shortfalls of income tax between the time of lodgement and any amended assessment. The uplift factor for the new interest charge will be 3% and will not be due for payment until 21 days after the amounts are notified to the taxpayer. This is a significant change from the existing regime, under which an income tax shortfall is treated in the same way as a late payment, with the general interest charge (GIC) being applied from the due date of the original assessment, at a rate 4% higher than the proposed SIC.

Other changes to the administrative penalty regime addressed in the Bill include the abolition of the penalty for a tax shortfall resulting from a failure to follow an ATO private ruling and the clarification of the meaning of 'reasonably arguable' in the context of a taxpayer relying on a 'reasonably arguable' position in relation to a large item. Clarification around these words is important, as those taxpayers who can establish a 'reasonably arguable' position for a large item are not subject to the penalty for a tax shortfall resulting from taking a position that is not reasonably arguable. The Bill also

amends the law to require the Commissioner to provide reasons as to why a tax shortfall penalty applies and why the penalty is not being remitted in full.

The CTA views the proposed amendments as being very positive, and fully supports the introduction of the measures summarised above. This aside, it is important for the Committee to recognise that the impact of these changes may not be felt until the audit cycle for the 2004-05 income year.

The proposed amendments, most notably the proposed SIC, will only apply to amendments of assessments for the 2004-05 income year and later years. For income years prior to 2004-05, the existing GIC regime will continue to apply. Given this, we believe that further consideration needs to be given to the impact of the existing GIC regime on those prior years, particularly in the context of amended assessments in large case audits and the Commissioner's policy regarding the remission of GIC.

The CTA in its joint submission to the Treasury on ROSA dated 27 May 2004 addressed the policy and practical issues surrounding the existing GIC regime in these contexts. These issues have been the subject of rigorous debate for many years, and calls for reform to these measures have been ongoing for some time. The crux of the issue is that that the GIC does not integrate properly with the policy for tax penalties, primarily because it includes a substantial effective penalty component, particularly for large taxpayers as its rate is far in excess of their marginal borrowing rate. This, combined with significant time delays in completing large case audits, has resulted in the imposition of GIC having a very broad punitive-like effect for large taxpayers. This is particularly the case where interest has accrued over a period of up to four to six years.

Further, the rules allowing for GIC to be remitted in part or full as set out in section 8AAG of the Taxation Administration Act 1953 are framed too narrowly, requiring in section 8AAG(5) special circumstances, and have been applied by the ATO in a very restrictive manner. Also, the ATO has also been slow to introduce policies for the remission of GIC in appropriate circumstances.

This approach to GIC, combined with significant delays in large case audits, has created the perception that the ATO has been using the threat of GIC, and its restrictive rules for the remission of GIC, to enhance its negotiating position with large taxpayers.

In summary, although the Bill offers some much needed relief for large taxpayers from the operation of the GIC for income years 2004-05 and beyond, we thought it prudent to point out to the Committee that the impact of this policy change may not be felt until the beginning of the audit cycle for the 2004-05 year. Given the existing GIC regime will continue to apply to pre

2004-05 amended assessments, we will continue to engage the Australian Taxation Office on its punitive impact.

The CTA appreciates this opportunity to put our members' views to the committee and we respectfully urge senators to support the passage of these Bills.

Yours sincerely,

Frank Drenth
Executive Director
Corporate Tax Association