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PUBLIC ACCOUNTS & AUDIT

Mr Tony Smith
Chairman
Joint Committee of Public Accounts and Audit
Parliament House
CANBERRA ACT 2600

Submission No: 50-2

18 September 2006

Dear Mr Smith

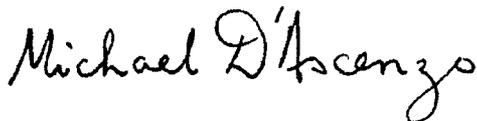
In my correspondence of 24 July 2006 I indicated that the Tax Office would be providing a further supplementary submission to the inquiry into a range of taxation issues. This submission will answer all questions taken on notice at the first hearing of 22 June 2006 as well as provide more general background material where appropriate.

I also indicated that I would arrange for a more immediate response where the Committee indicated specific information was required more urgently.

The Inquiry Secretary recently indicated that Mrs Bishop was seeking a response in relation to the questions taken on notice by the Tax Office on penalties, interest and debt related matters.

The attached brief submission provides the Tax Office's response to some of the information requested by Committee members.

I look forward to further assisting the Committee



Michael D'Ascenzo
Commissioner of Taxation



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MANAGING DEBT

BACKGROUND

The general statutory framework for tax debts starts from the general expectation that taxpayers will pay their tax debts when they fall due, unless there are special circumstances. If this was not so, there would be a strong financial advantage on the part of taxpayers and businesses vis-à-vis other taxpayers and business competitors.

As an incentive to ensure that tax is paid when due, the law imposes a general interest charge where tax debts are paid late. In order to accommodate taxpayers who are unable to pay their tax in the short-term, the policy of the law suggests that they should not generally be given an unfair advantage over others, unless there are special circumstances.

The law provides the Commissioner with the opportunity to remit the general interest charge (for example where taxpayers have short term payment difficulties for reasons outside their control – the classic example being natural disasters), and also to allow payment by instalments having regard to the taxpayer's or business' capacity to pay (with or without some or all of the interest that occurs by the operation of the law).

The law also provides for the cancellation of debts through bankruptcy or liquidation where a taxpayer or business is unable to pay their debts (including their tax debts).

CURRENT STRATEGY

While the Tax Office wants viable business to continue to trade, it cannot ignore taxpayers who repeatedly fail to meet their obligations and gain an unfair business advantage over those who do.

In collecting outstanding tax debt, the Tax Office is responsible for making decisions about what action to take based on the individual circumstances and facts of the case.

Where taxpayers are having difficulty paying, the Tax Office will engage with them to set up sustainable payment arrangements that fit their circumstances. The Tax Office gives taxpayers every opportunity and assistance to meet their obligations, whilst encouraging them to work with us where they have problems in order to resolve them together.

The Tax Office employs a wide range of strategies in the collection of outstanding tax obligations.

In the first instance taxpayers will receive a letter requesting payment of the outstanding tax debt prior to referral for collection activity. These letters advise the taxpayer of the debt and

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request the taxpayer to either pay the amount in full or contact us to apply for a payment arrangement.

Generally, taxpayers with small debts receive two letters and taxpayers with large debts receive one letter. Taxpayers are asked to respond to these letters within 7 to 28 days depending on the size of the debt.

Where taxpayers do not respond to these letters we usually telephone them to see if there are any problems or special circumstances that impact on the taxpayers' ability to pay their tax at this time.

Taxpayers with tax debts in excess of \$1 million are individually case managed. Contact is made with the taxpayer by phone within 7 days of the obligation falling due.

Ordinarily, debt cases over \$100,000 are actively managed. Debts under \$100,000 are actioned according to defined strategies directed at encouraging the taxpayer/business to reduce their tax debts.

The Tax Office has established specialist collections areas that focus on:

- debt cases such as Superannuation Guarantee Charge and Surcharge, Fringe Benefits Tax and Schemes
- types of taxpayers including large business and persistent debtors, and
- Insolvency matters.

Firmer action, including legal action, is taken where taxpayers consistently fail to work with the Tax Office to clear their debts. Taxpayers are notified before this step is taken to give them the opportunity to pay their debts immediately, or provide evidence that they are committed to meeting a payment arrangement.

Legal action taken by the Tax Office is based on the key principles of fairness, equity, consistency, and differentiated treatment based on individual circumstances. Whilst the Tax Office has significantly reduced the rate of growth of collectable debt in 2005-06, there are still many taxpayers, particularly small businesses, who have not worked with us to clear their debt.

The Tax Office uses a number of strategies aimed at encouraging taxpayers to comply with their debt obligations, including:

- better targeting of collection activities through increased use of analytics
- early intervention on new debts
- timely actioning of defaulted arrangements
- actioning escalating debt more quickly, and
- using firmer action where taxpayers ignore demand letters /phone calls, continually default on promises to pay or choose not to engage with the Tax Office.

As outlined in our initial submission of 4 April 2006, in June 2004 the Tax Office gave small businesses an opportunity to clear their outstanding tax debts under favourable terms. Over 160,000 small businesses chose to take up the offer. Over 96,000 of those chose to enter into payment arrangements with a total value of \$846 million.

Unfortunately many small businesses chose not to work with the Tax Office to clear their debt.

As a result, in 2005-06, the Tax Office piloted new strategies to contact and engage with people who have an outstanding debt. These included:

- after hours calling
- referral of debt cases with a balance of less than \$7,500 to external collection agency Dun and Bradstreet, and
- successful piloting of dialler technology – which works through a list of phone numbers, automatically dials and puts all answered calls straight through to a staff member for action.

These strategies have shown some very promising results to date. The after hours calling pilot resulted in some 2,000 promises to pay by instalments or in full to the value of approximately \$52 million. Through dialler technology, at 3 September 2006, people had made around 19,000 promises to pay by instalments or in full to the value of some \$361 million. The trial referral of debt cases to Dun and Bradstreet finished on 30 June 2006 and we are currently analysing the results.

The Tax Office will use learnings taken from these pilots to inform and determine the range of treatments and suite of strategies to be used in the future business design of our collection activities, where taxpayers and businesses have not complied with their payment obligations and who have ignored our prompts to them to do so, or to engage with us about their individual facts and circumstances.

Building on the success of these pilots and continuing with the focus of contacting a broader base of taxpayers more quickly, the Tax Office will continue to trial new debt pilots in 2006-07.

BANKRUPTCIES

The Committee asked for specific information on the number of Tax Office initiated bankruptcies¹.

In collecting tax debts we consider people's circumstances. The Tax Office does not want to send viable businesses into liquidation, however out of fairness to other businesses and taxpayers regularly meeting their responsibilities, we take firmer action against those not willing to pay their debts. Our concern is to not allow businesses to gain an unfair commercial advantage by failing to pay their taxes or continually deferring payment.

¹ Mrs Bishop, Joint Committee of Public Accounts and Audit Hansard, Reference: Certain taxation matters, 22 June 2006, reference PA 45.

Bankruptcies over the last five years

| Financial year | Number of Tax Office-initiated Bankruptcies | Number of non Tax Office-initiated Bankruptcies ^{1/3} |
|----------------------|---|--|
| 2001-02 | 268 | |
| 2002-03 ² | 244 | |
| 2003-04 | 266 | 3,276 |
| 2004-05 | 385 | 3,770 |
| 2005-06 | 798 | 4,178 |

Note:

- 1 Information provided by ITSA (Insolvency Trustee Services of Australia).
- 2 ITSA not able to supply this information for years prior to financial year ended 30 June 2004.
- 3 Tax Office listed as a creditor but not the petitioning creditor.

OUTSTANDING BAS DEBT

The Committee also asked the Tax Office to provide information on the level of outstanding debt as a result of business activity statements².

The breakdown of collectable debt by revenue type at 30 June 2006 is as follows:

| Revenue Type | Collectable Debt (\$b) at 30 June 2006 |
|--|--|
| Activity statement | 5.94 |
| Income tax | 3.68 |
| PAYE, PPS & Sales tax (debt prior to the New Tax System) | 0.07 |
| Fringe benefits tax | 0.10 |
| Superannuation Surcharge | 0.15 |
| Superannuation Guarantee | 0.29 |
| Total | 10.23 |

The major components of activity statement debt include:

- GST (Goods and services tax)
- PAYG W (Pay as you go withholding), and
- PAYG ITI (Pay as you go income tax instalments).

It is generally considered that GST, PAYG W and PAYG ITI each account for approximately one third of the outstanding activity statement collectable debt.

² Senator Watson, Joint Committee of Public Accounts and Audit Hansard, Reference: Certain taxation matters, 22 June 2006, reference PA 51.

EXTERNAL REVIEWS

Tax Office debt collection activities have been, or are currently, subject to a number of external reviews. These include:

KPMG Insolvency review

The Tax Office has engaged KPMG to independently review a sample of our debt collection cases to test whether our action led to the premature insolvency of a business. Reviews conducted to date have found that in no sampled case did our actions lead to the premature insolvency of a business. These reviews provide an assurance that the Tax Office gave the taxpayer reasonable time and opportunity to address their debt.

KPMG conduct these reviews 3 times a year, with the results published on the Tax Office's website. A copy of this year's review is attached for the convenience of the Committee.

Inspector General of Taxation

The Inspector-General of Taxation undertook a review of the Tax Office's small business debt collection activities. The report was provided to the Minister on 12 April 2005.

The Inspector-General has been quoted as saying that serial non-payers need to be singled out and dealt with. He pointed out in his review of our debt collection practices that there was no evidence to suggest we act inappropriately when we take bankruptcy or liquidation action.

The Inspector-General has commenced a review into the Tax Office's implementation of the recommendations of his reports, including the report on small business debt collection. We are working collaboratively with his office on this review.

Commonwealth Ombudsman

The Ombudsman currently has a number of reviews underway in our debt area. This includes Garnishee powers, administration of the process for the release from tax debt on the basis of hardship and payment arrangements.

Information on Garnishee powers and release from tax debts has already been provided to the Ombudsman. The Tax Office is currently preparing material for the Ombudsman's review of payment arrangements. The purpose of which is to evaluate Tax Office policy, practice, decision-making and communication in relation to the administration of payment arrangements as a debt collection strategy.

Australian National Audit Office (ANAO)

Under the ANAO Work Program 2006-07, the Tax Office's management of debt collection is currently subject to a performance audit. The ANAO will focus on micro business debt collection, as a priority area for the Tax Office. The ANAO will also conduct field work as part of this audit.

The ANAO consulted with the JCPAA as the audit committee of the Parliament in forming the work program. The JCPAA agreed that the program effectively represented the audit priorities of the Parliament for the 2006-07 financial year.

APPLICATION OF PENALTIES AND GENERAL INTEREST CHARGE

The Committee asked for information on the level of penalties and interest collected from taxpayers as a percentage of total revenue³. Our initial submission of 4 April 2006 outlined the operation of the penalty and interest regimes in the tax laws.

Penalties and interest imposed

Current Tax Office systems cannot separate revenue collections into the different components that may make up a debt for a specific liability or product. Release 3 of the Tax Office Change Program is scheduled to deliver the new integrated processing solution that will meet the Tax Office's requirements for revenue management capabilities and is expected to be delivered in the 2008 financial year.

The table below provides information on total revenue, as well as interest and penalties imposed for the financial years 2000-01 to 2004-05.

The penalties data only incorporates penalties related to activity statement and income tax. It does not include penalties related to excise, superannuation and failure to lodge penalties. Excise penalties are generally less than \$1 million annually, with the exception of 2003-04 where collections were higher but due to only one taxpayer.

Penalties related to superannuation surcharge are also less than \$1 million each year. Information related to penalties on superannuation guarantee shortfalls is not available for all of the financial years considered by the table.

³ Mrs Bishop, Joint Committee of Public Accounts and Audit Hansard, Reference: Certain taxation matters, 22 June 2006, reference PA 45.

| Financial year | Total revenue collected (\$m) | GIC ¹ brought to account (\$m) | Penalties imposed ¹ (\$m) (AS, IT) | GIC and penalties imposed as % of total revenue |
|----------------|-------------------------------|---|---|---|
| 2000-01 | 165,426 | 494 | 699 | 0.72 |
| 2001-02 | 168,660 | 656 | 625 | 0.76 |
| 2002-03 | 185,044 | 1,076 | 955 ² | 1.10 |
| 2003-04 | 198,732 | 1,331 | 606 | 0.97 |
| 2004-05 | 214,850 | 2,493 ³ | 788 | 1.53 |

Note:

- 1 Amount of net GIC and penalties imposed relates to the financial year in which the change is made to the client's account. Some GIC could be amounts related to debts established in a prior year.
- 2 This figure is impacted by a small number of high-value penalties being applied. 20 taxpayers accounted for over \$420 million.
- 3 This figure is impacted by a small number of corporate taxpayers. 35 accounts represent 64% of the total amount of GIC imposed in 2004-05.
- 4 The rate of GIC applied is updated quarterly. The annual rate trended downwards from July 2000 (14%) to March 2002 (11.28%) and has since trended upwards. The current annual rate applying to September 2006 is 12.87%.

Background information - penalties

The uniform penalties system came into effect with the introduction of the new tax system and consolidated a range of penalties that had been included in various sections of a number of Acts into a single section of the *Taxation Administration Act 1953*.

With the introduction of the new tax system, the Tax Office recognised that taxpayers had significant challenges in adjusting to new taxes and new reporting requirements and that this may impact on their ability to comply. As such, Practice Statements 2000/9 and 2002/8 directed staff to make allowance for the challenges faced by taxpayers by remitting penalties on some circumstances where they may not normally be remitted. This approach to penalties applied to statements lodged between 1 July 2000 and 31 March 2004.

Explanations

Penalties

Penalties related to activity statements increased over the financial years 2000-01 to 2004-05. This is consistent with the Tax Office approach of progressively moving from an education focus to a compliance focus over this period, with a particular focus on larger taxpayers.

Examination of penalties related to income tax for non-individuals showed that several high value penalties significantly contributed to most year's results. For example, in 2002-03, the top 20 taxpayers contributed over \$420 million.

General interest charge

GIC was introduced in July 1999 and the results show an increasing trend over the time that GIC has been in place. As the GIC system has been bedded down more aspects have been automated. For example, GIC has been automatically imposed on outstanding accounts on a quarterly basis for individuals and monthly for corporates where previously this was not the case. The increase in the last year of the table is the result of some large corporate accounts. For 2004-05, 64% of GIC imposed relates to only 35 corporate clients.

RECENT INITIATIVES**Practice statement on remission of interest**

In our initial submission of 4 April 2006 we foreshadowed the release of a practice statement providing guidelines for the remission of the shortfall interest charge and general interest charge during a shortfall period. This was released publicly on 1 August 2006.

The shortfall interest charge was introduced for tax shortfalls for the 2004-05 and later income years. To recognise this, the Commissioner will reduce the GIC on income tax amendments to the lower SIC rate for the period after 1 July 2005.

A copy of the practice statement is attached.



Practice Statement Law Administration

PS LA 2006/8

FOI status: may be released

This practice statement is issued under the authority of the Commissioner and must be read in conjunction with Law Administration Practice Statement PS LA 1998/1. It must be followed by Tax office staff unless doing so creates unintended consequences or is considered incorrect. Where this occurs Tax office staff must follow their business line's escalation process.

SUBJECT: Remission of shortfall interest charge and general interest charge for shortfall periods

PURPOSE: To provide guidelines on the remission of shortfall interest charge and general interest charge accrued during shortfall periods.

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STATEMENT

Introduction

1. Taxation interest charges are imposed:
 - to act as an incentive for payment of liabilities by their due date
 - to ensure that taxpayers who fail to fulfil their payment and return or statement obligations do not receive an advantage over those who meet their tax liabilities in full by the due date, and
 - to compensate the community for the impact of late payments.
2. To do this the taxation laws impose interest charges from the date a taxation liability should have originally been paid. These laws also provide the Commissioner with a discretionary power to remit interest charges where it is fair and reasonable to do so. For example, remission would occur where circumstances justify the Commonwealth bearing part or all of the cost of not having the funds at the proper time.
3. This practice statement outlines the Commissioner's remission guidelines in relation to interest charges:
 - that are imposed on shortfall amounts – that is an amount understated at the time of assessment, or notification, and
 - that accrue during the shortfall period – that is the period between when the shortfall would originally have been due for payment and when the shortfall is corrected, for example by giving a notice of an amended assessment.
4. These guidelines help decision makers make fair and consistent decisions on the remission of interest charges having regard to the facts of the matter and the individual circumstances of the taxpayer involved.

Application of this practice statement

5. This practice statement applies to interest charges that are imposed on shortfall amounts and accrue during the shortfall period. This is:
 - shortfall interest charge (SIC)
 - shortfall general interest charge (GIC) – that is, GIC accrued during the shortfall period on the shortfall amount, and
 - interest and GIC imposed under section 170AA of the *Income Tax Assessment Act 1936* (ITAA 1936).

Exceptions

GIC imposed on superannuation guarantee charge excluded from application of this practice statement

6. This practice statement does not cover the remission policy in relation to shortfall GIC imposed on superannuation guarantee charge (SGC).

7. The SGC is an amount collected by the Commissioner on behalf of employees. It is payable by employers who have failed to provide the prescribed minimum level of superannuation support to their employees. GIC imposed on unpaid SGC is payable to the employees' superannuation funds to compensate the employees for loss of earnings that result when the SGC is paid late. Therefore it is not appropriate for the remission guidelines provided in this practice statement to apply to GIC imposed in respect of unpaid SGC.
8. Guidelines for remission of GIC imposed in respect of SGC are contained in the chapter 'General Interest Charge' in the *ATO Receivables Policy*.

General interest charge not accrued in the shortfall period excluded from application of this practice statement

9. Unless specifically provided for, this practice statement does not apply to GIC that is not shortfall GIC.
10. Guidelines for remission of GIC for late payment are contained in the chapter 'General Interest Charge' in the *ATO Receivables Policy*.

Imposition of interest charges

11. SIC and GIC are imposed by law. A summary of the legislation for SIC and GIC is in paragraphs 124 to 150.
12. The following table details the main provisions relating to the imposition of interest charges during the shortfall period.

| Type of shortfall | Period to which shortfall relates: | Interest type | Legislative references |
|---------------------|---|----------------------------------|--|
| Income tax | 1999-2000 and earlier income years: | | |
| | i. periods up to and including 30 June 1999 | interest | Sections 170AA and 214A of the ITAA 1936 |
| | ii. periods after 30 June 1999 | general interest charge | Section 170AA of the ITAA 1936 and Division 1 of Part IIA of the <i>Taxation Administration Act 1953</i> (TAA) |
| | 2000-01 to 2003-04 income years | general interest charge | Section 204 of the ITAA 1936 and Division 1 of Part IIA of the TAA |
| | 2004-05 and later income years | shortfall interest charge | Division 280 of Schedule 1 to the TAA |
| Fringe benefits tax | amounts that are due to be paid on or after 1 July 1999 | general interest charge | Section 93 of the <i>Fringe Benefits Tax Assessment Act 1986</i> and Division 1 of Part IIA of the TAA |

| | | | |
|--|-------------|--------------------------------|---|
| Indirect taxes – goods and services taxes (GST), wine equalisation tax, (WET) and luxury car tax | all periods | general interest charge | Section 40 and Division 1 of Part IIA of the TAA |
| Pay as you go withholding (PAYG(W)) | all periods | general interest charge | Section 16-80 of Schedule 1 and Division 1 of Part IIA of the TAA |

13. SIC and GIC apply regardless of whether or not the taxpayer is liable to any administrative penalty. Liability to SIC and GIC does not depend upon, nor imply, culpability on the part of the taxpayer.

Terms used

14. For the purposes of this practice statement some terms are defined in the following paragraphs.
15. **Audit Cycle Timeframes** – The time that it is expected a particular type of audit should take from commencement to completion. The amount of time will vary depending on the type of activity being audited, the tax type and market.
16. **Base interest rate or base rate** – A rate set by law which is used as a base for calculating SIC and GIC. For each day in a particular quarter of the year, the base interest rate equals the monthly average yield of 90 day Bank Accepted Bills for a prescribed previous month. For example, for the quarter 1 January to 31 March, the base interest rate is the monthly average yield of 90 day Bank Accepted Bills for the preceding November (subsection 8AAD(2) of the TAA).
17. **Commencement of audit** – The day that the taxpayer is advised the audit is commencing.
18. **Completion of audit** – The date the amended notice of assessment or the notification of the adjustment issues.
19. **Expected audit completion date** – When notifying a taxpayer of the intention to audit, the Tax Office will generally provide an expected audit completion date in that notice. This date will be determined by applying a pre-determined audit cycle timeframe to the commencement of the audit to calculate the expected completion date. The cycle timeframe will be different for different taxes, products and markets. The cycle timeframes will be:
- for Large Corporate audits commencing on or after 1 July 2005 – the time notified at the commencement of the audit or 2 years, whichever is the shorter period, and
 - for all other audits commencing on or after 1 July 2006 – as published on the Tax Office intranet.
20. **GIC rate** – The GIC rate is the base interest rate plus an uplift factor of seven percentage points. This rate including uplift factor is imposed by law (subsection 8AAD(1) of the TAA).¹

¹ The relevant rate for a period can be accessed at <http://atogovau/taxprofessionals/content.asp?doc=/content/gic.htm>

21. **Interest Charges** – includes shortfall interest charge (SIC), shortfall general interest charge and interest imposed under section 170AA of the ITAA 1936. Section 170AA interest relates to periods up to 30 June 1999.
22. **Shortfall amount** – the amount understated at the time of assessment or notification.
23. **Shortfall GIC** – GIC which relates to the shortfall period. It is payable in respect of:
- amended income tax liabilities for the 2000-01 to 2003-04 income years, and
 - shortfalls raised for other tax-related liabilities.
24. **Shortfall period** – The shortfall period starts from the day the tax debt was due for payment or would have been due for payment had the shortfall been correctly reported and ceases on the day before the Commissioner gives the taxpayer an amended notice of assessment (or an equivalent notification for taxes other than income tax).
- Example: Taxpayer has an income tax liability for the 2004-05 income tax assessment of \$500 due for payment on 21 November 2005. The taxpayer requests amendment of the assessment on 1 March 2006. An amended notice of assessment is given to the taxpayer on 20 March 2006 increasing the tax payable by \$125 to \$625. The shortfall amount is \$125 and the shortfall period is from 21 November 2005 to 19 March 2006.*
- Example: Taxpayer has a 2003-04 income tax assessment of \$15,000 due on 1 December 2004. Following an audit by the Tax Office an amended notice of assessment is given to the taxpayer on 1 June 2006 increasing the tax payable by \$3,000 to \$18,000. The shortfall amount is \$3,000 and the shortfall period is 1 December 2004 to 31 May 2006.*
- Example: Taxpayer lodges an activity statement on 10 April 2006 reporting a GST liability of \$20,000 for the month of February 2006. The debt was due on 21 March 2006. The taxpayer advises on 25 May 2006 that the GST liability was understated by \$8,720. The activity statement is adjusted on 25 May 2006 and a notice is given to the taxpayer the following day. The shortfall period is from 21 March 2006 until 25 May 2006.*
25. A diagram illustrating when interest charges accrue in shortfall periods can be found at paragraph 151.
26. **SIC rate** – The SIC rate is the base interest rate plus an uplift factor of three percentage points. This rate including the uplift factor is imposed by law (subsection 280-105(2) of Schedule 1 to the TAA.)²

EXPLANATION

Shortfall interest charge (2004-05 and later income years – income tax)

27. An interest charge at a lower rate than GIC has been introduced for shortfall amounts for income tax amendments for the 2004-05 and later income years. This lower interest charge is known as the shortfall interest charge (SIC).
28. This lower rate was introduced because taxpayers who are genuinely unaware of the shortfall may be unable to take any steps to reduce their exposure to GIC.

² The relevant rate for a period can be accessed at <http://atogovau/taxprofessionals/content.asp?doc=/content/65367.htm>

29. The principal object of the SIC is to neutralise benefits that taxpayers could otherwise receive from shortfalls of income tax, so that they do not receive an advantage over those who pay the tax properly owing at the appropriate time.

GIC relating to the shortfall period (other taxes; 2003-04 and earlier years – income tax)

30. As SIC only applies to amended income tax liabilities for the 2004-05 and later income years, shortfalls in respect of other taxes, and shortfalls that relate to income tax liabilities for income years 2000-01 to 2003-04 will continue to attract GIC from the original due date for payment.
31. Income tax amendments for the 1999-2000 and earlier income years attract interest in the shortfall period under section 170AA of the ITAA 1936. For shortfall periods from 1 July 1999 this interest is imposed as GIC. A reference in this practice statement relating to the remission of shortfall GIC will apply equally to remission of interest and general interest charge imposed under section 170AA of the ITAA 1936.

Remission guidelines

32. SIC and GIC are imposed by the law in all relevant shortfall cases. Interest charges in the shortfall period are intended to reconcile the position of those taxpayers whose liabilities are amended and those who paid the correct amount of tax under the original assessment.
33. The Commissioner has a responsibility to recover unpaid interest charges like any other tax-related liability.
34. The Commissioner may remit all or part of SIC or shortfall GIC where the Commissioner considers it fair and reasonable to do so. In relation to the remission of SIC, paragraph 280-160(2)(b) of Schedule 1 to the TAA states that the Commissioner must have regard to the principle that remission should occur where the circumstances justify the Commonwealth bearing part or all of the cost of delayed payments.
35. The extent of the remission must take into account the individual circumstances of a case. In the examples below guidance is provided on the extent of the remission. In a number of examples remission of the interest charge to the base rate is considered to be appropriate. However, the extent of the remission in any case must have regard to the particular circumstances and the extent to which factors beyond the taxpayer's control were responsible for the size and duration of the shortfall. In some cases, circumstances may justify remission to below the base rate, including full remission.
36. Remission can be requested by the taxpayer or initiated by the Commissioner.
37. In all cases where there is a SIC and/or GIC liability tax officers should consider remission where circumstances justifying remission are readily apparent. Such circumstances may not be readily apparent in automatic amendment and data matching cases.
38. Taxpayers can request remission of SIC or GIC at any time. In addition to the right to formally object in certain circumstances as outlined in paragraph 139, a taxpayer is not prevented from making their own representations addressing similar or different grounds after the Commissioner has considered remission.

39. The taxpayer's application should be in writing, describing their circumstances, and the grounds on which the taxpayer relies for remission. The Commissioner will consider all of the factors put forward by a taxpayer in a request for remission and any other factors that may be relevant.
40. SIC and GIC (interest charges) are intended to restore a fair balance between taxpayers, ensuring that taxpayers who have paid tax on time are not disadvantaged relative to those who had the benefit of the tax shortfall until the amended assessment. This should be contrasted with shortfall penalties, which relate to the taxpayer's behaviour leading up to the shortfall and the degree of cooperation or obstruction demonstrated by the taxpayer in correcting the shortfall. Accordingly, it does not necessarily follow that a reduction or remission in shortfall penalty will automatically mean a reduction or remission of the interest charge.

Remission of shortfall GIC to the SIC rate

Partial remission for income tax – 2003-04 and earlier income years

41. As SIC only applies to income tax shortfalls for the 2004-05 and later income years, the higher GIC applies in relation to income tax shortfalls for earlier years.
42. The extension of the SIC regime to earlier income years would have resulted in unequal treatment of assessments for the same year. For example, those taxpayers whose assessments were amended before the introduction of the SIC would have had the higher GIC imposed. On the other hand continuing to apply the higher GIC rate from 1 July 2005 (when the SIC regime broadly commenced after the end of the 2004-05 income year) could be seen to be unfair and at odds with Parliament's decision that the GIC rate was excessive during a shortfall period.
43. Having regard to these circumstances it is considered fair and reasonable that shortfall GIC generally be remitted to the SIC rate for the period from 1 July 2005 to the day before the amended assessment is issued.

Example: An amendment to Service Pty Ltd's 2002-03 income tax assessment issues on 15 March 2006. Shortfall GIC accrues from 1 December 2003.

The GIC would be remitted by 4 percentage points for the period from 1 July 2005 to 14 March 2006. This will equate the GIC for that period to the SIC rate. Further remission during the shortfall period may occur if some other circumstance exists which would warrant further remission in accordance with the guidelines contained in this practice statement.

No remission of GIC to SIC rate for other taxes

44. As the SIC regime only applies to income tax shortfalls the above considerations do not apply to GIC imposed in respect of other shortfall amounts.
45. The remission of GIC that accrues during a shortfall period for other tax liabilities will be considered in accordance with the guidelines outlined in this practice statement.

Circumstances where remission may be appropriate

46. The following are examples of circumstances in which remission may be appropriate. The considerations set out are not exhaustive and are not intended to limit the Commissioner in his discretion to remit interest charges when it is fair and reasonable to do so.

Tax Office delay

47. The Commissioner may remit where there has been delay or a longer than expected time taken in issuing an amended assessment.

Delay in commencing audit

48. The allocation of the Tax Office's resources necessarily means that not all audits can start immediately following self-assessment by a taxpayer.
49. As a rule of thumb it could be expected that an audit will commence within a period equivalent to 50% of the relevant period of review. However cases may commence at a later time, for example, where information is provided to the Tax Office from an external source at a later time. Where there has been an unreasonable delay in the Tax Office allocating a case for audit, remission of interest charges to the base rate may be appropriate for the period of such delay.
50. Where there is an unlimited period to amend an assessment it would normally be appropriate when considering remission to adopt the standard period of review applicable to the year being adjusted.

Expected audit completion date exceeded

51. Cycle timeframes have been set for specific types of audit activity. They will differ according to the expected type of activities being audited, the tax type and the market.
52. When notifying a taxpayer of the intention to audit, the Tax Office will generally provide an expected audit completion date in that notice. This date will be determined by applying a pre-determined cycle timeframe, or some lesser time having regard to the circumstances of the case, and calculating the expected completion date.³
53. Providing the scope of the audit remains much the same throughout the course of the audit and the taxpayer does not unreasonably delay or obstruct the progress of the audit, interest charges may be remitted to the base rate for the period the audit goes beyond the expected completion date.

Example: The GST record keeping audit cycle timeframe is 30 days. If the GST audit takes 40 days, remission to base rate for the final 10 days may be appropriate.

Example: The GST record keeping audit cycle timeframe is 30 days. On 1 July 2006, 8 days into the audit, it becomes apparent that there is a significant risk involved in that case and the work is more appropriately considered as a GST micro cash economy audit with a 150 day cycle timeframe. The cycle timeframe will extend to 150 days from 1 July 2006.

³ There will be some circumstances when notification will not be appropriate, for example where it is suspected a case involves fraud or evasion or other criminal activity.

54. This ground for possible remission based on the expected audit completion date applies to audits which started on or after 1 July 2006 when these cycle times were first published, other than for Large Corporate audits where an earlier announcement was made: see paragraphs 65 to 69. For audits commenced before that date, remission will occur on a case by case basis using the principles outlined in this practice statement.
55. Remission for periods during the cycle timeframe period may still occur if there are other grounds for remission, as set out in other sections of this practice statement. Where remission relating to a period during the audit cycle timeframe is granted this may need to be taken into account when determining the extent of remission for the period beyond the expected completion date.

Example: An audit commences on 1 February 2006 and has an expected audit completion date of 30 June 2006. The audit is not completed until 30 September 2006. Due to an unreasonable Tax Office delay full remission is granted for the period 1 April 2006 to 31 May 2006. Normally remission to the base rate would be applicable for the three month period which exceeded the expected audit completion date – 1 July 2006 to 30 September 2006. However as full remission has already been granted for a period of two months remission to the base rate is only appropriate for one month – 1 September 2006 to 30 September 2006.

56. Where an audit case is completed beyond the expected audit completion date, the case authorising officer must undertake a full review of the reasons for the delay to determine whether further remission grounds apply.

Unreasonable delay

57. The completion of an audit within the cycle timeframe and before the expected audit completion date does not preclude other grounds for remission. There may have been unreasonable delays or periods of inactivity outside the control of the taxpayer during the audit that warrant remission of interest charges.
58. As a general rule where there has been no action on a case for 30 days or more and it was possible for the case to progress during that time, full remission of the interest charges for the period of unreasonable delay would be warranted.

Example: An audit of John's 2004-05 income tax affairs commences on 1 July 2006 with an expected audit completion date of 27 November 2006.

On 2 September 2006 the auditor seeks more information from the taxpayer and provides a response date of 30 September 2006.

By that date all the necessary information to determine a shortfall has been gathered and interviews have occurred.

On 2 October 2006 the auditor submits his final audit report to his team leader to authorise the case result. The team leader does not review the submission until 15 November 2006 and then authorises the result without change. The amendment issues on 20 November 2006.

Assuming there are no other circumstances relevant to the remission of interest charges full remission of interest charges will be appropriate from 2 November 2006 to 15 November 2006 (the total period of inactivity which exceeds 30 days).

59. The cycle timeframe is set to enable Tax Office auditors to complete the audit as well as carry out other appropriate duties that may occur concurrently. If there are up to 30 days where the auditor did not work on the audit and the audit is completed within the benchmark, generally ordinary delays of this nature would not of themselves warrant remission.

Tax Office delay in obtaining information from a third party

60. Where the Tax Office or the taxpayer experiences delay in obtaining information from a third party and this information is not otherwise available to the taxpayer remission to the base rate is warranted for the period of the delay.
61. However where the Tax Office experiences delay in obtaining information because the taxpayer has been unwilling or unable to supply information that they should have, or that they are readily able to obtain, remission will generally not be granted for the delay.

Longer resolution times due to complexity of issues

62. Where there is complexity involved in the issues underlying a shortfall, it may take some time to come to a view as to the proper operation of the law. So there may be a hiatus between the commencement of the audit and the amendment of the assessment.
63. The referral of a complex matter to a specialist forum or network for resolution does not in itself constitute a delay that would warrant remission of interest charges. The cycle timeframes for the audit generally factor in issues of complexity, and the time taken for their resolution.
64. However, remission to the base rate would be warranted where the resolution of the issue took longer than would be reasonably expected and resulted in the case exceeding the expected audit completion date.

Large Corporate audits – delay based upon a reasonable time for completion of audit

65. Shortfall GIC and SIC will be remitted to the base interest rate for the period that a Large Corporate audit extends beyond two years.
66. Only in exceptional cases involving blatant obstruction, delays or obfuscation will this remission not apply. Such cases will need to be agreed to by the Deputy Commissioner of the Tax Office's Large Business area following discussion with executives of the relevant corporation.
67. This approach will apply for audits commenced on or after 1 July 2005. For audits commenced prior to that date remission based on delay will continue to be considered on a case by case basis using the principles outlined in this practice statement.
68. This '2 year' policy will not apply to transfer pricing audits subject to a Mutual Agreement Procedure which are covered by other arrangements in the *ATO Receivables Policy* and Taxation Ruling TR 2000/16. Otherwise the principles in this practice statement apply to transfer pricing cases.
69. This '2 year' policy does not preclude remission being granted for periods prior to the commencement of the audit or the period within two years from commencement of the audit, if particular delays occur which might warrant remission. The factors outlined in other sections of this practice statement may also need to be considered in some cases.

Cases involving fraud or evasion

70. Where a case involves fraud or evasion remission would not normally be granted notwithstanding that there may have been some delay attributable to the Tax Office or the expected audit completion date is exceeded. Remission in these cases would still be considered on a case by case basis, but having due regard to the circumstances giving rise to the shortfall.
71. In such cases, the taxpayer would have been aware of the potential tax shortfall and could have taken steps to reduce their exposure to interest charges.

Taxpayer delay

Delay is outside of taxpayer's control

72. Full remission for the period of the delay may be appropriate where the taxpayer can demonstrate the delay in supplying information or documents for the audit was directly attributable to:
- natural disasters (flood, fire, drought, earthquake and the like)
 - other disasters that may have, or have had, a significant impact on the taxpayer or region, or
 - the serious illness of the taxpayer or key personnel where there is no other person that could have mitigated the length of the delay.
73. Remission is not usually appropriate where the reasons for the delay are within the taxpayer's control. This may include delays where the taxpayer takes an extended vacation after the commencement of the audit. However if the taxpayer had booked prior to the commencement of the audit or needs to travel overseas for business purposes those circumstances could be taken into account in considering remission to the base rate.

Taxpayer contributing to delay

74. Where the taxpayer unreasonably delays, obstructs or obfuscates the progress of an audit, and the audit is completed beyond the expected audit completion date, remission will not generally be warranted. Examples of such conduct include:
- repeated failure by the taxpayer to keep appointments or supply information, or
 - repeated failure by the taxpayer to respond adequately to reasonable requests for information. This will include excessive or repeated delays in responding, not replying to the request for information, giving information that is not relevant or does not address all the issues in the request or supplying inadequate information.

Example: The company Tenor Pty Ltd claimed losses in its 2003-04 income tax return. The auditor asks for a copy of the loss schedule and other information, which should have been prepared in order to lodge the return, to be provided within 28 days. Not having received the information, on the 25th day following the request the auditor rings the company and four days later the documents are faxed to the Tax Office. In this instance the time taken to collect the information would not be considered a delay attributable to the taxpayer (or the Tax Office).

However, Soprano Pty Ltd when asked for the same information on the 30th day following the request advised that it had overlooked the enquiry, and would deal with it quickly. Fourteen days later the auditor contacted the company and was unable to speak with anyone who knew about the request. The auditor then sent a further request for information to the company. At the end of the 28 day period after the second request the auditor received a copy of the profit and loss statement for the 2003-04 year but not the loss schedule and the remaining information was only partially provided. This would be a delay due to the taxpayer's conduct, unless the taxpayer could adequately explain the delay.

75. A decision not to remit because of the taxpayer's behaviour must be agreed to by a Senior Executive Service officer.

Taxpayer requests further time or delay

76. Taxpayers may request a deferment of action during an audit, for example, by requesting significant further time to supply information. Interest charges may be remitted to the base rate for the period where the taxpayer requests extra time where the gathering of the information with all due diligence by the taxpayer necessitates that extra time.

Example: The taxpayer needs 6 weeks additional time to gather and supply information. The auditor accepts this and allows the time requested. Interest charges would be remitted to the base rate for the period of delay.

77. However where, for example, at the request of the management of a taxpayer group, amended assessments are deferred until the completion of the audit of the group, interest charges would not normally be remitted for the period of that particular delay.

Taxpayer delay due to an associate's or agent's delay

78. As stated at paragraph 60, where a delay in establishing a shortfall is due to a third party, remission of interest charges to the base interest rate may be warranted for the period of delay. However where the third party is an associate of the taxpayer or not dealing at arms length with the taxpayer, remission under this ground will not usually be given unless the delay is reasonable and beyond anyone's control.

79. A delay caused by a taxpayer's tax agent or other representative will generally be considered to be a delay attributable to the taxpayer. It then needs to be considered whether the delay is reasonable and beyond anyone's control.

Example: A tax agent is unable to provide the information requested for several weeks due to their commitments under their tax agent lodgment program and other compliance obligations. This delay is attributable to the taxpayer. However if the delay is reasonable interest charges may be remitted to the base rate.

Claims for legal professional privilege or access to professional advisors' working papers

80. Taxpayers may seek advice from professional advisors on issues such as the application of legal professional privilege to certain documents or the right of access to professional accounting advisors' working papers. Such claims form part of the normal dealings of a taxpayer with the Tax Office. Should reasonable claims lead to the case being completed beyond the expected audit completion date, then interest charges would generally be remitted to the base rate for the period that goes beyond that completion date.

Unprompted voluntary disclosure

81. Where a taxpayer makes a voluntary disclosure of a shortfall (often referred to as a self-amendment), the disclosure itself is not a ground for routine remission.
82. A taxpayer who has self-assessed incorrectly, even if reasonable care was exercised, should not end up in a more beneficial position than a taxpayer who has self-assessed and paid correctly.
83. However, there may be some cases where the circumstances surrounding the voluntary disclosure will make it fair and reasonable to remit interest charges. Where remission on the basis of a voluntary disclosure is considered appropriate it will generally be to the base rate.
84. Any remission of interest charges on the basis of a voluntary disclosure should have regard to the following:
- the timeliness of the disclosure after the error was first detected
 - whether the disclosure was made before the commencement of an audit or before the notification or publication of a Tax Office initiative which may have led to the discovery of the shortfall by the Commissioner
 - whether the Commonwealth in any way contributed to the taxpayer taking their original position
 - the size of the shortfall, either in monetary terms or in relation to the totality of the taxpayer's affairs, and
 - the taxpayer's compliance history, including the number of times a taxpayer has had to disclose shortfalls following an initial self-assessment of liability.

Example: Big Co. Ltd. has an internal assurance practice of reviewing its previous income tax return in preparation for lodging their next return. As part of this process Big Co. Ltd identifies a shortfall and immediately lodges an amendment request. As no audit activity was being undertaken or planned by the Tax Office in respect of the issue or income year remission of interest charges to the base rate would be appropriate in this case.

85. The Tax Office may adopt specific interest rate remission incentives to encourage voluntary disclosure in particular compliance programs. This is dealt with further at paragraph 88.

Delay in processing requests for amendment by taxpayers

86. Where a taxpayer self-amends or makes a voluntary disclosure, that is, voluntarily seeks to correct an error in an earlier return or statement, the Tax Office has published service standards for processing amendments or adjustments.⁴
87. In order to amend the assessment the Tax Office may need further information to establish the correct tax file number, the correct amounts and some details of why the amendment is occurring. If this information is not supplied the taxpayer is generally contacted. Where or once the Tax Office has all information needed to process the amendment or adjustment, the Commissioner will generally remit in full the interest charges for any delay beyond the published standard.

Example: Raji lodges a 2004-05 amendment request on 1 August 2006. All the information is included in the request. This amendment is lodged in writing (not via ELS), and should be processed within 56 days of receipt, that is by 26 September 2006. Because of a backlog in work, the amended notice of assessment is not given to the taxpayer until 5 October 2006. Remission in full should occur for the period from 27 September 2006 to 4 October 2006.

Remission as an incentive for some compliance programs

88. Specific interest rate remission guidelines could be adopted by the Tax Office as part of particular compliance programs or to ensure consistency of treatment with similar situations that have already been determined and announced. However, this does not preclude other outcomes consistent with these guidelines having regard to the facts and circumstances of the particular case.

Advance payment of shortfall amount

89. Paying the shortfall amount before the issue of an amended assessment does not stop SIC accruing.⁵ That is, the SIC is calculated to the day before the amended assessment is given to the taxpayer and on the total shortfall regardless of whether the shortfall amount has been paid in full or in part before that date. However, any benefit a taxpayer may have because of non-payment ceases when full payment is made.
90. The SIC for the period after full payment will be remitted in full, subject to paragraph 91. Where a part payment of the shortfall has been made, a partial remission reflecting the portion of the shortfall paid will be given for the post-payment period.
91. To ensure a revenue neutral position for the period following payment the extent of any remission will take into account any interest the taxpayer may be entitled to under the *Taxation (Interest on Overpayments and Early Payments) Act 1983*, in particular, entitlement to interest on early payment (IEP) under Part IIA of that Act. For further information refer to the *ATO Receivables Policy* chapter 'Interest on Early Payments'.

⁴ These service standards are detailed in Taxpayers' Charter, Explanatory Booklet '03 – Our Service Standards' – <http://atogovau/content/downloads/N2585book3web.pdf>.

⁵ Where a shortfall amount is subject to shortfall GIC, GIC would stop accruing upon payment of the shortfall because the shortfall amount has a due and payable date that is in the past rather than the future.

92. SIC remission from the date of payment should be reduced by an amount equal to the IEP entitlement that accrues between the date of payment and the day before the amended notice of assessment is given to the taxpayer. Any IEP entitlement relating to the payment period from the date the notice is given to the taxpayer to the due date of the amended assessment does not affect the level of remission.

Example: After discovering a shortfall, on 1 July 2006 Compliant Pty Ltd lodges an amendment request and on the same date makes payment of \$1,000 – the tax payable on the shortfall. An amended assessment for the \$1,000 tax shortfall is given to the taxpayer on 1 August 2006 and is due for payment on 22 August 2006.

Under the law SIC on the \$1,000 shortfall is payable for the period from 1 December 2005, the due date of Compliant Pty Ltd's original assessment, to 31 July 2006, the day before the notice of amended assessment is given to the taxpayer.

However as payment of the shortfall was made on 1 July 2006, remission of SIC for the period 1 July 2006 to 31 July 2006 is justified.

As Compliant Pty Ltd is entitled to interest on early payment for the period from 1 July 2006 (the day the early payment was made) to 22 August 2006 (the due date of the amended assessment) the amount of the SIC remission would be determined as follows:

SIC for period 1 July 2006 to 31 July 2006 less interest on early payment entitlement for period 1 July 2006 to 31 July 2006.

Tax shortfall offset by a related credit

93. Where the tax shortfall on which the SIC was imposed is offset by a related credit or overpayment, for example on an associated taxpayer's account, it may be fair and reasonable to remit the interest charges to the base rate.

Income incorrectly apportioned between taxpayers

94. Where income has been incorrectly apportioned between taxpayers and one taxpayer has paid the tax on that income, some remission may be appropriate when the amendment to correct the error occurs.
95. Any remission will be for the period in which the revenue has not been disadvantaged. For instance, the period for which interest charges are to be remitted would only relate to the period since payment of that other liability was received and to the extent of the shortfall or payment. Some of the factors to take into consideration in deciding whether the revenue has not been disadvantaged include each taxpayer's marginal tax rate and any entitlement to interest under the *Taxation (Interest on Overpayments and Early Payments) Act 1983*. Remission in these cases would be to the extent of neutralising the disadvantage (if any) to the revenue.

Example: John and Mary have a joint bank account and in the 2006 income year receive \$5,200 interest. Initially John declared all the interest in his return. Both John and Mary's assessments are due on 21 November 2006. They have the same marginal rate of tax.

Subsequently both John and Mary sought to have their 2006 assessments amended; John by reducing his taxable income by \$2,600 and Mary by increasing hers by \$2,600. The amended notices of assessment issued on 1 September 2007. Mary's tax shortfall is \$819 ($\$2,600 \times 31.5\%$, 31.5% being Mary's marginal tax rate of 30% plus Medicare levy of 1.5%).

Mary would be liable to SIC on \$819 for the period from 21 November 2006, the due date of her original assessment, to 31 August 2007, the day before notice is given of the amended assessment. Assuming a SIC rate of 8.6% per annum during this period, SIC of \$56.67 will be imposed

If John had paid his original assessment on 21 November 2006 then some remission of Mary's SIC is warranted for the period from when John had made payment. John is entitled to interest for overpayment of \$36.47 which in this example would be at a rate of 5.6% per annum. He is entitled from the date of payment to the day before the notice is given to him. That is, from 21 November 2006 to 31 August 2007. Mary's SIC would be remitted by \$20.20 and SIC of \$36.47 would remain payable with the amended assessment.

If on the other hand John had not paid his original assessment then no remission of Mary's SIC is warranted as the Commonwealth will continue to bear the \$819 shortfall until Mary pays that amount.

Offset because of increase in pay as you go (PAYG) withholding or other credits in amendment

96. *Where an amended assessment is made SIC or shortfall GIC is calculated on the additional amount of income tax that is properly payable. In determining the additional amount of income tax payable certain credits, for example PAYG withholding credits, are excluded from the calculation as at law they are not an element of the assessment.*
97. *However where an entitlement to an additional amount of credit is also notified with the amended assessment full remission of SIC to the extent of the additional credit is appropriate.*

Example: After the issue of her 2006 assessment Betty received a payment summary from a former employer. The payment summary showed \$5,000 income and \$1,200 PAYG withholding credits. She had not declared this income or the credits in her 2006 return.

Betty requested an amendment of her assessment to reflect the additional income. The additional tax payable under the amended assessment was \$1,575 but after the PAYG withholding credit of \$1,200 was applied against this amount Betty was required to pay \$375.

As SIC is calculated on the additional tax payable (shortfall amount) of \$1,575 remission equivalent to the amount of SIC calculated on \$1,200 for the entire shortfall period will be given. That is, after remission only the SIC on \$375 will remain for the shortfall period.

Costs of administration

98. The Commissioner may remit amounts because the amount of the interest charge is minimal. For example, the imposition of an amount of SIC or GIC below a small threshold amount will result in remission as part of the Tax Office's automated processes.

Reliance on Tax Office advice or general administrative practice

99. A taxpayer will be protected under the law from the GIC or the SIC that relates to a shortfall if:
- the taxpayer relies in good faith on advice given to them or their agent by the Commissioner or a statement in a publication approved in writing by the Commissioner, unless the advice or the statement or publication is labelled as non-binding, or
 - the taxpayer relies in good faith on the Commissioner's general administrative practice.
100. This statutory protection applies:
- to interest charges under a relevant provision (listed below at paragraph 103), and
 - if, on or after 1 January 2006, the taxpayer relied upon the advice, statement or general administrative practice.
101. In these circumstances, interest charges are not imposed for the shortfall period (subsection 361-5(1) of Schedule 1 to the TAA).
102. The protection relating to the interest charges does not apply to amounts which accrue more than 21 days after the Commissioner notifies the taxpayer of the correct position (subsection 361-5(2) of Schedule 1 to the TAA).
103. A 'relevant provision' (section 357-55 of Schedule 1 to the TAA) is a provision about any of the following:
- income tax
 - Medicare levy
 - fringe benefits tax
 - franking tax
 - withholding tax
 - mining withholding tax
 - the administration or collection of those taxes, or
 - a grant or benefit mentioned in section 8 of the *Product Grants and Benefits Administration Act 2000*, or the administration or payment of such a grant or benefit.

104. A general administrative practice will usually be established by the Tax Office having communicated consistently to a wide range of taxpayers on a particular issue. A general administrative practice is usually adopted for the efficient administration of the taxation system and would generally be documented in products such as:
- Law Administration Practice Statements
 - General Administration Law Administration Practice Statements, and
 - Tax Office policy documents, such as the *ATO Receivables Policy*.
105. Not all precedential material (such as ATO Interpretative Decisions (ATO IDs) and draft public rulings) indicates a general administrative practice. An ATO ID or draft public ruling will only be accepted by the Tax Office as representing general administrative practice where the view contained therein is supported by other evidence of a long term and consistent pattern of active Tax Office treatment of the issue consistent with the view expressed in the precedential material.
106. Section 361-5 of Schedule 1 to the TAA does not apply where a shortfall arises under a provision that is not a relevant provision or a shortfall amount is caused by reliance before 1 January 2006 on non-ruling advice, a statement in a publication approved in writing by the Commissioner or a general administrative practice.
107. A shortfall that falls outside section 361-5 may arise as a result of a taxpayer having in good faith followed Tax Office advice, a statement in a publication approved in writing by the Commissioner or a general administrative practice. Where that advice, statement or practice is incorrect or misleading and the taxpayer makes a mistake as a result, any interest charges that apply in the period up until 21 days after the Commissioner notifies the correct position to the taxpayer will be remitted in full.

Reliance on ATO Interpretative Decisions (ATO IDs)

108. ATO IDs are published as precedential ATO views for tax officers. Although ATO IDs are publications approved in writing by the Commissioner, they are not published as a form of advice. They are made available to the public on the ATO Legal Database as a guide only, for purposes of transparency and to meet Freedom of Information requirements because they may be used by an officer in making another decision. Nevertheless, where a tax shortfall that falls within section 361-5 arises as a result of a taxpayer having reasonably relied in good faith on an ATO ID (a publication approved in writing by the Commissioner) by applying it to their own circumstances (which are not materially different from those described in the ATO ID) and that ATO ID is later found to be incorrect, interest charges are not imposed for the period up until 21 days after the Commissioner notifies the taxpayer of the correct position.
109. A shortfall amount that falls outside section 361-5 (for example, the ATO ID is about an indirect tax provision or reliance on the ATO ID was before 1 January 2006) may arise as a result of a taxpayer having reasonably relied in good faith on an ATO ID by applying it to their own circumstances (which are not materially different from those described in the ATO ID) and that ATO ID is later found to be incorrect. In these situations, interest charges for the period up until 21 days after the Commissioner notifies the taxpayer of the correct position will be remitted in full.

Reliance on subsequently overturned judicial interpretation

110. There will be situations where a taxpayer prepares a return or activity statement in a particular way, having regard to a decision of an independent tribunal or a court and, subsequent to lodgment of the return or activity statement, a court of higher authority overturns that decision, resulting in an unexpected tax shortfall.
111. Interest charges will be remitted in full in this situation, provided that:
- the court or tribunal decision relied upon in the preparation of the return clearly applied to the taxpayer's circumstances, and
 - appropriate amendment requests are lodged within a reasonable time after the date of the final court decision. (There may be some circumstances where the Tax Office will initiate amendments).
112. If the taxpayer did not lodge an amendment request within a reasonable time, then there would not generally be any remission of interest charges which accrue from the date of the final court decision.

Taxpayer could not have been aware of shortfall when lodging return

113. A tax shortfall may arise 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. This would occur where the return or activity statement is correct and it is only future events that trigger the need to adjust a liability. Examples of this include (this list is not exhaustive):
- Where a taxpayer becomes entitled to a receipt of compensation in a particular year, which may in some circumstances trigger an adjustment to capital proceeds and affect capital gains or losses in an earlier year's return, even though the taxpayer does not actually receive the compensation until a later date. Law Administration Practice Statement PS LA 2004/5(GA) gives an example of this situation.
 - Where member companies of a consolidated group are affected by the requirements of section 701-70 of the *Income Tax Assessment Act 1997*, when the head company makes an election to consolidate after the member company has already lodged its income tax return for the year.
114. Each case must be examined on its merits. In such situations it may be appropriate to grant full remission of interest charges related to the shortfall, usually on the condition that appropriate amendment requests are lodged within a reasonable time after the need to amend arises – this would be seen as fair and reasonable.
115. Remission on this basis only applies where the factual circumstances are such that the taxpayer could not have known about the shortfall when lodging their return. It does not apply to taxpayers who, for example, mistakenly believed the law operated in a way such that a shortfall would not arise.

Change or potential change in legislation with retrospective effect

Income tax

116. Where a tax shortfall arises as a result of a change in legislation which has retrospective effect, interest charges will be remitted in full for taxpayers who actively seek to amend their returns within a reasonable time after the enactment of the new law that increases their tax liability. If the taxpayer does not lodge an amendment request within a reasonable time, then interest charges will apply from 28 days after the amending law receives Royal Assent.
117. Where a proposed legislative change has been announced but not enacted and a taxpayer acts reasonably but still underestimates their income, interest would be remitted to the base rate provided the taxpayer lodges an amendment request within a reasonable time after the enactment of the new law.

GST amendments – effect of section 46A of the TAA

118. Amendments to GST liabilities (and other indirect tax liabilities) are affected by section 46A of the TAA. This section essentially provides that indirect tax amending Acts cannot impose penalties or late payment charges earlier than 28 days after Royal Assent is given to the amending Act. This means that if a retrospective amendment to an indirect tax law increases liability to indirect tax, GIC in respect of the increased liability may only apply from 28 days after the amending Act receives Royal Assent.

GST 'wash' transactions

119. A GST 'wash' transaction is an expression used to describe the situation where a GST-registered supplier wrongly treats a taxable GST supply as non-taxable, hence underpaying its GST. However, the supply in question is made to a recipient who is registered for GST and would have been entitled to claim back from the Tax Office a full input tax credit if the transaction had been correctly treated as taxable by the supplier. The term 'wash' refers to the fact that the effect on primary GST revenue is neutral.
120. Law Administration Practice Statement PS LA 2003/2 details the Tax Office policy on retrospective correction of 'wash' transactions and remission of GIC. That practice statement provides that all of the following conditions must be met for the GIC to be partially remitted to the base rate in a 'wash' situation:
 - the supplier must demonstrate that the recipient was registered for GST
 - the supplier must demonstrate that the recipient would have been entitled to claim a full input tax credit
 - the failure to remit GST must have been in circumstances that do not give rise to a liability for an administrative shortfall penalty under section 284-75 of Schedule 1 to the TAA
 - the supplier must not have made the same mistake previously, and must have a good compliance record, and
 - the supplier must have remedied the situation to ensure that GST is included in the price of future taxable supplies.

121. A good compliance record will generally require that all lodgement obligations, including activity statements and income tax returns, are up to date; all non-disputed debt is paid or under arrangement; and there is no recent history of the entity being subject to a shortfall penalty.

Cases involving the use of the Commissioner's discretion to treat a particular document as a tax invoice or adjustment note

122. Where a recipient of a taxable supply does not hold a valid tax invoice in relation to the input tax credits claimed for a particular period, (or a valid adjustment note in relation to a claimed decreasing adjustment), and this is subsequently disclosed by audit or otherwise, a shortfall may result from any subsequent adjustment to the relevant activity statements. The resultant shortfall may also lead to the imposition of GIC.
123. Law Administration Practice Statement PS LA 2004/11 provides details of the policy in relation to the Commissioner's discretions to treat a particular document as a tax invoice or adjustment note and the circumstances when remission of the shortfall GIC may be appropriate.

Legislation

124. This section provides some further information on some the legislative provisions for imposition, notification and remission of shortfall interest charge and general interest charge.

Shortfall interest charge

125. The SIC provisions are contained in Division 280 of Schedule 1 to the TAA.
126. A taxpayer is liable to pay SIC on any additional amount of income tax payable as a result of an amended assessment for an income year (subsection 280-100(1) of Schedule 1 to the TAA).
127. The liability to SIC is for each day in the period:
- (a) beginning at the start of the day on which income tax under the first assessment for that income year was due to be paid, or would have been due to be paid if there had been any, and
 - (b) ending at the end of the day before the day on which the Commissioner gave notice of the amended assessment (subsection 280-100(2) of Schedule 1 to the TAA).
128. However, if an amended assessment reinstates all, or part of, a particular item that had been reduced by an earlier amended assessment, the SIC calculation period for the reinstated liability starts from the due date of the earlier amended assessment. If the earlier amended assessment was a net credit, then the calculation starts from the day any tax would have been payable (subsection 280-100(3) of Schedule 1 to the TAA). This later start date is because the shortfall does not arise from an error in the original assessment, but from the taxpayer subsequently requesting an amendment that incorrectly reduces their liability.
129. The SIC rate for a day is worked out by adding three percentage points to the base interest rate for that day and dividing that total by the number of days in the calendar year (subsection 280-105(2) of Schedule 1 to the TAA). This has the effect of producing a SIC rate that reflects benchmark business borrowing rates.

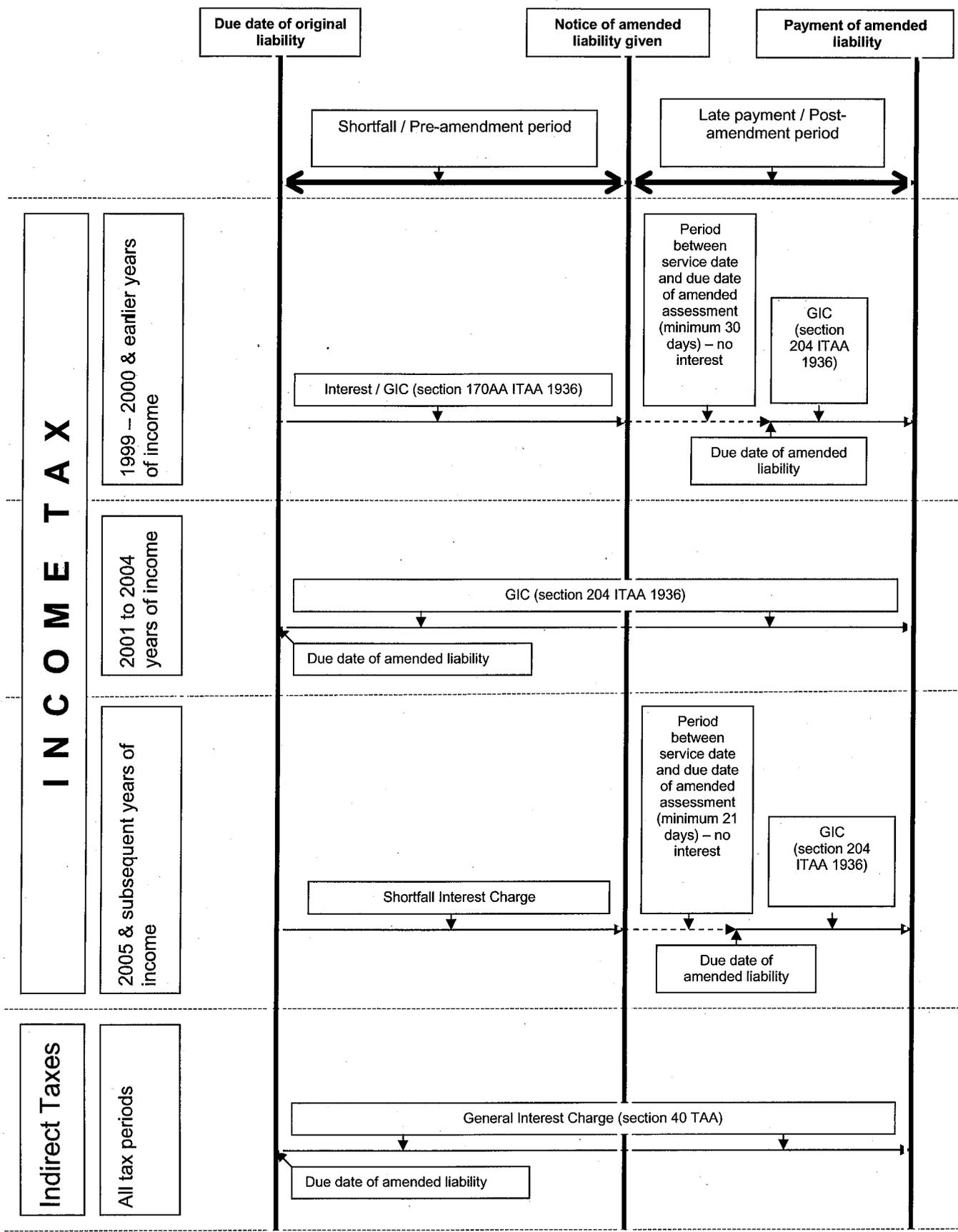
130. For each day in a particular quarter of the year, the base interest rate equals the monthly average yield of 90 day Bank Accepted Bills for a prescribed previous month. For example, for the quarter 1 January to 31 March, the base interest rate is the monthly average yield of 90 day Bank Accepted Bills for the preceding November (subsection 8AAD(2) of the TAA).
131. The SIC is worked out daily on a compounding basis (subsection 280-105(1) of Schedule 1 to the TAA).
132. The Commissioner must give the taxpayer a notice stating the amount of the SIC liability. This amount can be included in another notice that the Commissioner gives to the taxpayer, such as the notice of amended assessment (subsections 280-110(1) and (2) of Schedule 1 to the TAA).
133. The SIC is due and payable 21 days from when notice of the amount of the charge is given to the taxpayer (subsection 204(2A) of the ITAA 1936).
134. The Commissioner may remit all, or part of, an amount of SIC if the Commissioner considers it fair and reasonable to do so (subsection 280-160(1) of Schedule 1 to the TAA).
135. Without limiting the general remission power, in deciding whether to remit the Commissioner must have regard to:
- (i) the principle that remission should not occur just because the benefit received from the temporary use of the shortfall amount is less than the SIC, and
 - (ii) the principle that remission should occur where the circumstances justify the Commonwealth bearing part or all of the cost of delayed payments (subsection 280-160(2) of Schedule 1 to the TAA).
136. If a remission request is made in the approved form, the Commissioner must give a written statement of the reasons for a decision not to remit an amount of SIC (section 280-165 of Schedule 1 to the TAA).
137. However if a remission request is not made in the approved form, it does not prevent the Commissioner from considering the request. Where this happens, the Commissioner will provide written reasons of the decision.
138. The content of a statement of reasons for a decision is provided in section 25D of the *Acts Interpretation Act 1901*. That section states '... the instrument giving the reasons shall also set out the findings on material questions of fact and refer to the evidence or other material on which those findings were based'.
139. A taxpayer may object using the provisions in Part IVC of the TAA against a decision of the Commissioner not to remit an amount of SIC where the amount not remitted is more than 20% of the additional amount of income tax on which it is calculated (section 280-170 of Schedule 1 to the TAA).
- Example: SIC of \$2,000 is payable in respect of a shortfall of \$8,000. The Commissioner makes a decision not to remit any SIC. As the amount of SIC not remitted (\$2,000) exceeds 20% of the shortfall ($\$2,000/\$8,000 = 25\%$) then the taxpayer may object to the remission decision.*
- If the Commissioner had remitted \$500 SIC so that \$1,500 remained payable then the taxpayer would not be able to object to the decision as the SIC not remitted does not exceed 20% of the shortfall ($\$1,500/\$8,000 = 18.75\%$)*
140. The rights to a statement of reasons and the formal objection rights relating to decisions not to remit an amount of SIC are in addition to, and do not replace, existing rights under the *Administrative Decisions (Judicial Review) Act 1977* (ADJR).

General interest charge

141. The legislative scheme for late payment GIC is in two parts. Liability to GIC is dealt with in various provisions in the tax laws. For example liability to GIC in respect of late payment of an income tax liability is provided at subsection 204(3) of the ITAA 1936. The second part of the scheme, which describes the basis for calculation of GIC, is set out in Division 1 of Part IIA of the TAA.
142. The liability to GIC for late payment is for each day in the period:
 - (i) starting at the beginning of the day by which the tax was due to be paid, and
 - (ii) finishing at the end of the last day on which, at the end of the day, any of the tax (or GIC on that tax) remains unpaid.
143. The GIC rate for a day is currently worked out by adding seven percentage points to the base interest rate for that day and dividing that total by the number of days in the calendar year (subsection 8AAD(1) of the TAA). This has the effect of producing a GIC rate that may be high (compared with indicator rates for commercial borrowing) for many taxpayers to encourage prompt payment of tax liabilities.
144. The base interest rate is the same as that used for SIC (see paragraph 129).
145. GIC is worked out daily on a compounding basis (section 8AAC of the TAA).
146. There are no notification requirements for GIC, it being payable at the end of each day (section 8AAE of the TAA).
147. The Commissioner may remit all, or part of, GIC (section 8AAG of the TAA). However, remission can only be made if circumstances set out in the law are met (subsections 8AAG(2) to (5) of the TAA). These include special circumstances where it is fair and reasonable to remit.
148. When notifying a decision not to remit GIC, the Commissioner will provide the reasons for the decision.
149. While a taxpayer can, in some circumstances, object against a decision not to remit SIC, there are no objection rights under the taxation law against a remission decision relating to GIC. A taxpayer can seek formal review of remission decisions under the ADJR.
150. This practice statement only deals with remission of GIC that accrues during the shortfall period and needs to be read in conjunction with the chapter entitled 'General Interest Charge' in the ATO Receivables Policy, which details the policy for remission of GIC in other circumstances.

Diagram of interest charges and shortfall periods

151. Below is a diagram illustrating when interest charges accrue in shortfall periods.



subject references

general interest charge

Report on Aspects of Income Tax Self Assessment
(August 2004)

shortfall interest charge

legislative references

AD(JR) Act 1977

AIA 1901 25D

FBTAA 1986 93

ITAA 1936 170AA

ITAA 1936 204

ITAA 1936 204(2A)

ITAA 1936 204(3)

ITAA 1936 214A

ITAA 1997 701-70

PGBAA 2000 8

TAA 1953 Pt IIA Div 1

TAA 1953 8AAC

TAA 1953 8AAD(1)

TAA 1953 8AAD(2)

TAA 1953 8AAE

TAA 1953 8AAG

TAA 1953 8AAG(2)

TAA 1953 8AAG(3)

TAA 1953 8AAG(4)

TAA 1953 8AAG(5)

TAA 1953 Pt IVC

TAA 1953 40

TAA 1953 46A

TAA 1953 Sch 1 16-80

TAA 1953 Sch 1 Div 280

TAA 1953 Sch 1 280-105(1)

TAA 1953 Sch 1 280-105(2)

TAA 1953 Sch 1 280-100(1)

TAA 1953 Sch 1 280-100(2)

TAA 1953 Sch 1 280-100(3)

TAA 1953 Sch 1 280-110(1)

TAA 1953 Sch 1 280-110(2)

TAA 1953 Sch 1 280-160(1)

TAA 1953 Sch 1 280-160(2)

TAA 1953 Sch 1 280-160(2)(b)

TAA 1953 Sch 1 280-165

TAA 1953 Sch 1 280-170

TAA 1953 Sch 1 284-75

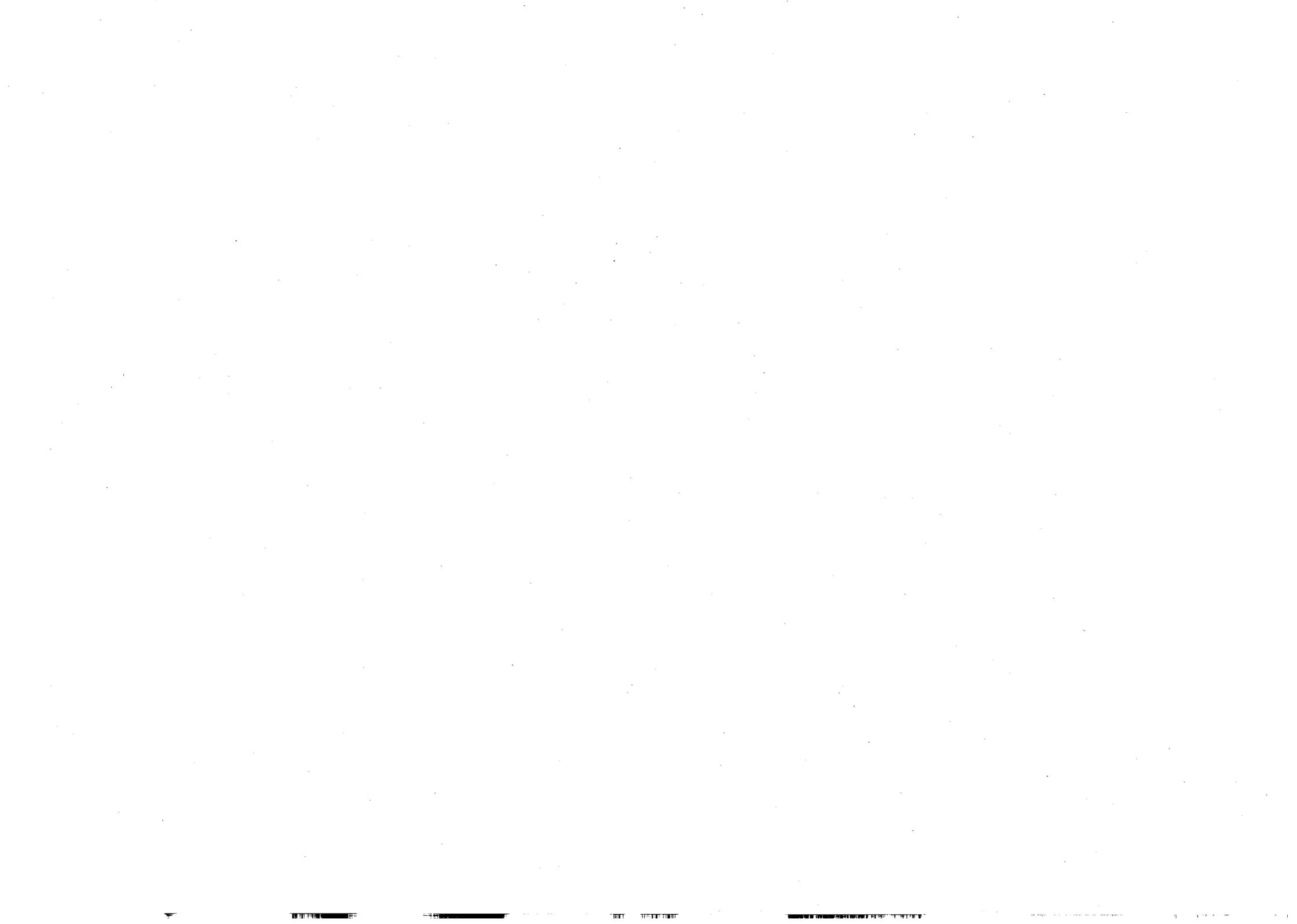
TAA 1953 Sch 1 357-55

TAA 1953 Sch 1 361-5

TAA 1953 Sch 1 361-5(1)

TAA 1953 Sch 1 361-5(2)

Taxation (Interest on Overpayments and Early
Payments) Act 1983 Pt IIA





McGRATHNICOL+Partners

Mr Tom Moloney
Partner
KPMG
Lvl 3, 20 Brindabella Circuit
Canberra Airport ACT 2609

18 May 2006

Dear Tom

**Financial, Accounting and Business Services
Independent Review of 97 Debt Management Cases**

1. Terms of reference

KPMG was invited by the Australian Taxation Office ("ATO") to submit a proposal for the provision of Financial, Accounting and Business Services on 27 October 2004 and was appointed, in April 2006, to conduct three (3) independent reviews of 97 debt management cases to be selected at random from a case list provided to KPMG by the ATO.

McGrathNicol+Partners ("McGrath Nicol") was subsequently appointed, by way of a sub-contract, to conduct the review on KPMG's behalf.

Accordingly, this report presents the findings of our first review based on the terms of reference set out in the Official Order number APCM 123.02.048.

The focus of the review is to provide a level of assurance that the collections processes of the ATO, in seeking payment of outstanding tax, do not prematurely lead to the insolvency of businesses that could reasonably be considered viable.

In this connection, KPMG was specifically requested to:

- Select at random a total of 97 cases from a case list provided by the ATO, where a business has had a liquidator, administrator or trustee appointed during the period 1 December 2005 to 31 March 2006 as a result of ATO legal recovery actions (see 2 below);
- Examine the ATO's legal recovery actions in relation to the management of each case and assess whether the taxpayer was provided with clear opportunity to meet their obligations and discuss alternative arrangements to avoid insolvency;

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Sydney • Canberra • Melbourne • Adelaide • Perth • Brisbane

Level 9, 10 Shelley Street, Sydney NSW 2000, Australia GPO Box 9986, Sydney NSW 2001

T +61 2 9338 2600 F +61 2 9338 2699 ABN 419 459 827 61

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- Assess whether the actions of the ATO, in seeking payment of the outstanding tax in each case, were too early and led to the premature insolvency of a business that could reasonably be considered viable based on the information provided by the taxpayer and available to the ATO; and

- Advise whether there were other practical options the ATO should have taken to avoid the business being declared insolvent, without putting the collection of tax at unreasonable risk.

2. Sample selection process

2.1 Case list population

The ATO established the criteria used to determine the files that will be available for review. This criteria is summarised below. We understand that approximately 325 cases satisfied the chosen criteria. From this McGrath Nicol staff were responsible for the random selection of the 97 files actually reviewed.

Files were required to meet the following criteria to be included in the case list population.

- The taxpayer had an insolvency administration that commenced between 1 December 2005 and 31 March 2006 (but excluding those with Schemes of Arrangements or where Receivers and Managers had been appointed); and
- Where legal recovery action (e.g. Garnishee notices, S459E notices, applications for judgement, Bankruptcy notices, winding-up actions, bankruptcy proceedings) had been commenced by the ATO prior to the insolvency administration.

The following types of taxpayers were then removed from the case list:

- Any Deed of Arrangement, Deed of Composition or Deed of Assignment cases where no Director Penalty Notice (“DPN”) had been issued;
- Any Voluntary Administration, Liquidation or Miscellaneous Administration cases where no winding-up petition or DPN was issued; or
- Where the cases were finalised before the commencement of insolvency.

We understand that there were no geographical limiters used in the selection of the cases for review. As a result, the files reviewed had been managed by a variety of ATO offices around Australia.

2.2 Rationale for selection of 97 random cases

The decision on the number of files to review was also the responsibility of the ATO. We have been informed that 97 sample cases had been determined by the ATO to be an appropriate sample size as it would correspond to a relative standard error (“RSE”) of less than 10%.

The reliability of various RSEs, as provided by the ATO, is as follows:

| Relative Standard Error | Description |
|-------------------------|---|
| Less than 10% | Reliable |
| Between 10% and 15% | Exercise some caution in interpreting results |
| Greater than 15% | Broad level, indicative information only |

2.3 Sampling of population

The cases were numbered from 1 to 325 at the time of sampling. No other details were supplied when the 97 cases were selected to ensure that the selection was totally random. We were informed that the ATO had separately identified the Case ID corresponding to each of the individual numbers. These details were provided after the selection was completed.

A McGrath Nicol staff member then randomly selected 150 cases using the Sampling function in Microsoft Excel. It is noted that 53 additional cases were selected as alternates in the event that any of the first 97 taxpayers were found to be unsuitable or conflicts of interest arose. It was agreed that conflicts of interest would arise where KPMG was either the tax agent or auditor of the taxpayer, or where a relationship exists between KPMG and a taxpayer that could be interpreted as an actual or perceived conflict. It is noted that in some cases, KPMG or McGrath Nicol might have been appointed in an insolvency capacity (i.e. as Liquidator) but this does not represent a conflict of interest. Checks were performed to determine the extent of any conflicts.

3. Methodology and sources of information

3.1 Sources of information

We understand that the ATO currently employs “paperless” systems wherever possible. Given this, the information utilised in the review was extracted from the computerised systems used by the ATO and included, but was not limited to, the following:

- Notes made by the ATO officers in communicating with the taxpayer;
- Transcripts of various demand letters sent to the taxpayer requesting payment; and
- Details of payment arrangements made with taxpayers.

The information was extracted by ATO staff and provided for review in file form.

In conducting the review, reference was also made to the ATO’s Receivables Policy, which is available on its website. This policy was used only to gain an understanding of the ATO’s general procedures in dealing with taxpayers for the collection of outstanding taxes.

3.2 Methodology of review

Each case selected was reviewed by a McGrath Nicol staff member in accordance with the terms of reference. The information available for the individual cases differed to the extent of the circumstances surrounding each case.

The methodology adopted was as follows:

- Review all notes and files, where available, made by ATO officers in dealing with the taxpayer, i.e. documentation of conversations / contact with the taxpayer;
- Determine the chronology of contact with the taxpayer, including demand letters sent by the ATO as well as letters and proposals received from the taxpayer;
- Review the compliance history of the taxpayer;
- Determine the circumstances surrounding the case and information available to the ATO at those material points in time; and
- Prepare an Individual Case Review Form for each taxpayer documenting our comments and conclusions from the file review.

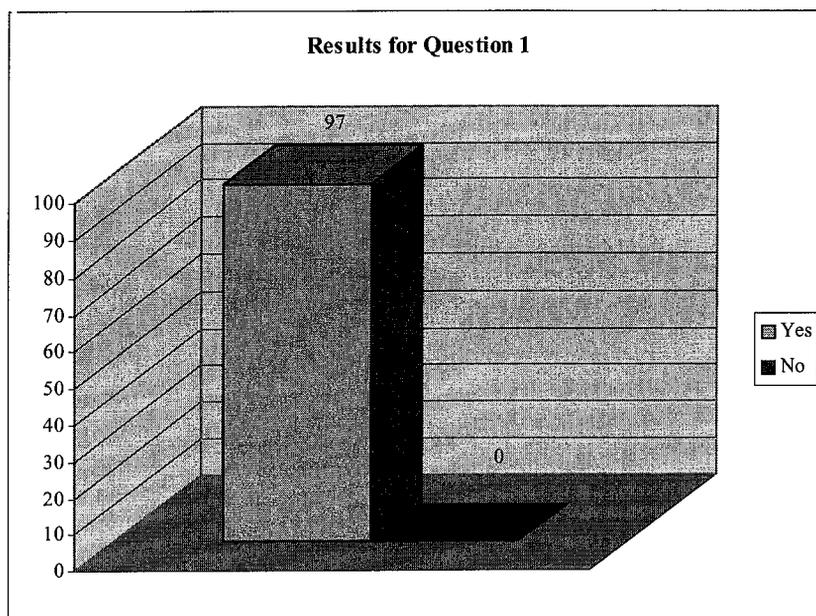
All cases were reviewed by Mike Hill, the Partner responsible for the review to ensure there was a consistency in approach to each review.

4. Results of review and comments

The Individual Case Review Form sets out the three questions where McGrath Nicol's comments were required. The questions were:

- Question 1 : Did the ATO provide the taxpayer with the opportunity to meet their obligations and discuss alternative arrangements to avoid insolvency?
- Question 2 : Were the actions of the ATO, in seeking payment of outstanding tax in this case, too early and did this lead to the premature insolvency of a business that could reasonably be considered viable based on the information provided by the taxpayer and available to the ATO?
- Question 3 : Were there other practical options available to the ATO that should have been taken to avoid the business being declared insolvent, without putting the collection of tax at unreasonable risk?

4.1 Results and comments for Question 1

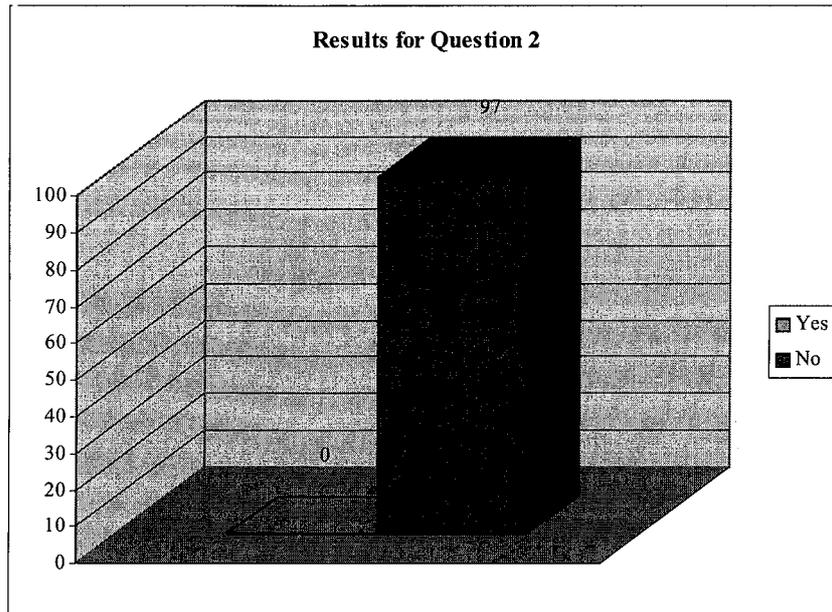


Our review indicates that the ATO had, in all of the cases reviewed, provided sufficient opportunity to the taxpayers to meet their obligations and discuss alternative arrangements to avoid insolvency.

We make the following comments:

- Letters from the ATO requesting or demanding payment invite the taxpayer to contact the ATO case officer if they are unable to meet the payment obligations. Similarly, other demand letters, such as Notice of Intended Legal Action provide the option for the taxpayer to contact the ATO;
- Verbal contact with the taxpayer, tax agent or accountant was made or attempted prior to instituting legal action;
- In the majority of cases, payment arrangements had been agreed although there were subsequent defaults;
- Where legal action was commenced, it was often due to a lack of response or co-operation or where attempts by the taxpayer to settle the debts (via arrangements or otherwise) had failed; and
- In most cases a considerable period of time elapsed between the debt arising and the instigation of legal action to recover the debt.

4.2 Results and comments for Question 2



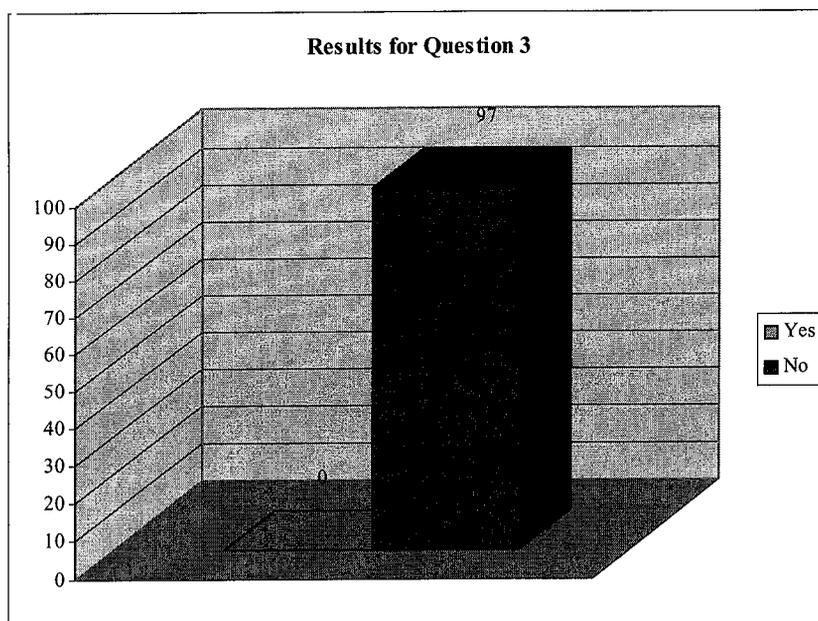
Our review indicates that, in all of the cases reviewed, the actions of the ATO, in seeking payment of outstanding tax, were not too early nor did it lead to the premature insolvency of the business.

We make the following comments:

- As indicated in Question 1, the ATO had generally provided ample time and opportunity to the taxpayers to settle their outstanding taxes and hence the ATO's actions could not be deemed to be too early;
- The ATO had agreed to payment arrangements with the taxpayers in the majority of the cases or had at least requested for the taxpayer to put in payment proposals for the ATO to consider. However, in most cases, the taxpayers had not made any meaningful attempts to address their debt with the ATO or had defaulted on payment arrangements;
- The outstanding debt had generally escalated (due to imposition of penalties, interest or additional lodgements) over the time where the ATO had attempted to seek a settlement of the debt;
- In a number of cases the taxpayer was responsible for the entering into of an insolvency administration themselves, confirming that the taxpayer was insolvent; and

- In the vast majority of cases where the dividend from the insolvency appointment was known, the return was minimal or the whole debt was written off. This confirms the insolvency of the taxpayer in those circumstances.

4.3 Results and comments for Question 3



Our review indicates that, in all of the cases reviewed, there were no other practical options available to the ATO to avoid the taxpayer being declared insolvent without putting the collection of tax at unreasonable risk.

We make the following comments:

- The ATO had generally sought to contact the taxpayer, tax agent or accountant and in most cases such actions were successful in establishing contact. The files indicate that in most cases, considerable efforts were made to contact the taxpayer prior to proceeding to enforcement;
- The period between the time when demand letters, DPNs, S459E or bankruptcy notices were sent and commencement of legal actions had generally provided the taxpayers with sufficient opportunity to respond. In addition, the various demands and notices invited the taxpayer to contact the ATO if they had difficulties in meeting the payments;
- In cases where payment arrangements were agreed to, the taxpayers had defaulted on the instalment payments, sometimes on numerous

occasions. In a number of cases, the ATO had agreed to more than one instalment payment although the agreements invariably defaulted;

- There were a number of instances where garnishee notices had been issued to banks and other parties; and
- The failure of the taxpayer to either put forward an arrangement proposal or to comply with such a proposal, left the ATO with very limited options for the pursuit of the debt.

5. Overall assessment

Our review of the 97 cases indicates that the ATO had provided the taxpayer with ample opportunity and time to settle the outstanding debts owing. This was achieved through a combination of demand letters and attempts to contact the taxpayer over a period of time (usually greater than 12 months).

The timing of legal actions by the ATO did not appear to be premature. As indicated above, this was due to the length of time and opportunities provided to the taxpayer to settle the outstanding debt.

In respect of the practical options available at the time of legal actions, we believe that, in the cases reviewed, the ATO had no other practical options at the time, which would have avoided the taxpayer being declared insolvent.

In summary, our review indicates that, in all the 97 cases reviewed, the actions of the ATO, in seeking payment of outstanding taxes, did not prematurely lead to insolvency of a business that could reasonably be considered viable.

6. ATO's comments

Our draft report was provided to the ATO for their review prior to the finalisation of the report, which suggested amendments included as appropriate.

7. Limiting conditions

This report has been prepared at the request of KPMG in accordance with Official Order number APCM 123.02.048. An independent review of 97 debt management cases was conducted to provide a level of assurance that the actions of the ATO, in seeking payment of outstanding tax, do not prematurely lead to insolvency of a business that could reasonably be considered viable.

McGrath Nicol has prepared this report solely for use by KPMG and the ATO. In accordance with our firm policy, we advise that neither the firm nor any member or employee of the firm undertakes responsibility arising in any way whatsoever, including by way of errors or omissions arising through negligence or otherwise however caused, to any persons other than to KPMG or the ATO.

We have considered and relied upon information that we believe to be reliable, complete and not misleading. We have no reason to believe that any material facts have been withheld from us but do not warrant that our enquiries have revealed all

of the matters which an audit or extensive examination might disclose. Statements and opinions included in this report are given in good faith and in the belief that such statements and opinions are not false or misleading.

Our opinion is based solely on the information and methodology set out in sections 2 and 3 above. We reserve the right to amend any conclusions, if necessary, should any further information become available. Nothing in this report should be taken to imply that McGrath Nicol has verified any information supplied to us, or has in any way carried out an audit of any information supplied to us other than as expressly stated in this report.

Yours sincerely



Mike Hill

Partner