

ATO RECEIVABLES POLICY

PART G Penalties and Interest Relating to Receivables Activity

Chapter 93 GENERAL INTEREST CHARGE

The policy in this chapter is to be followed by Tax Office staff. We have made every effort to ensure it is technically accurate, but in the interests of clarity it has been written in 'plain English' and should not be read or interpreted like legislation. If you feel that something in the chapter is wrong or misleading, please advise the Tax Office.

Date of effect: 24 July 2008 (This version replaces the 2006 version.)

Key legislation: Section 8AAG of the *Tax Administration Act 1953*

PURPOSE

1. This chapter deals with:
 - the Commissioner's powers to remit the general interest charge (GIC), and
 - the circumstances when the GIC for late payment will be remitted.
2. The chapter covers the remission of GIC, and in particular GIC imposed as a result of late payment (that is, GIC that accrues once a taxpayer has been notified of their original or amended tax liability).
3. The Tax Office has released Law Administration Practice Statement PS LA 2006/8 which outlines the Commissioner's remission guidelines in relation to interest charges which may arise where a tax liability is amended or revised. This practice statement deals with interest charges that accrue in the period prior to the amendment or revision of a tax liability, including general interest charge and the shortfall interest charge that applies interest whenever an income tax assessment is amended increasing tax payable. The shortfall interest charge applies to amendments of income tax assessments relating to the 2004-05 year of income and later years.

INTRODUCTION

Explanation of the general interest charge

4. From 1 July 1999, GIC replaced the various existing additional charges for late payment in the taxation laws. (See archived Chapter 92 'Additional charges for late payment' regarding late payment charges that were incurred prior to the introduction of the general interest charge).
5. The GIC applies to primary tax debts, as well as running balance account (RBA) deficit debts. (See Chapter 33 'Running balance accounts').

(Note: GIC does not apply to excise duty debts payable under the *Excise Act 1901*.)
6. The GIC applies in a wide range of situations. These include the following:
 - where an amount of tax, charge, levy or penalty remains unpaid

- where an administrative overpayment is not repaid by the due date and appropriate notice requiring repayment has been given to the taxpayer
 - as an underestimation penalty for an incorrectly varied goods and services tax (GST) instalment, or where there is an excessive shortfall in a quarterly or annual income tax instalment. (Remission of these penalties is discussed in Chapter 95 'Variation and underestimation penalties')
 - where there is late lodgment of individual income tax returns (for years of income up to and including the 2000 year - remission of these penalties is discussed in Chapter 98 'Lodgment penalty'), and
 - where there is an underpayment of tax following an amendment of an assessment.
7. As mentioned, this chapter deals primarily with situations where a taxpayer is aware of their liability and fails to pay by the due date.
 8. GIC for late payment is imposed on the balance of a taxpayer's account (that is, the primary tax and accrued additional charges for late payment) as at 1 July 1999.
 9. Where a pay as you earn (PAYE), prescribed payment system (PPS), reportable payment system (RPS) or sales tax debt was owing prior to 1 July 1999, but has not been established and brought to account until after 1 July 1999 (for example, a PPS debt for February 1999, that was not notified or established till after 1 July 1999), then the GIC applies from the original due date of that liability.

Imposition

10. The calculation of the GIC is provided for in Division 1 of Part IIA of the *Taxation Administration Act 1953* (TAA). For days prior to 1 July 2001, the GIC rate for a day is worked out by adding 8 percentage points (the uplift factor) to the Treasury Note yield rate for that day, and dividing that total by the number of days in the calendar year.
11. From 1 July 2001, the GIC rate for a day is worked out by adding an uplift factor of 7 percentage points to the base interest rate for that day, and dividing that total by the number of days in the calendar year.
12. The GIC is worked out daily on a compounding basis, that is, it accrues each day on the balance of the account which will consist of any unpaid tax and any unpaid GIC.
13. From 1 July 1999 to 30 June 2000, the GIC on a compounding basis applied only to PAYE, PPS, RPS and sales tax debts (these four types of liability were the only types of tax liability able to be recorded on an RBA during that year). During that time, the Commissioner exercised his discretion to partially remit the GIC on other types of debts (for example, income tax, fringe benefits tax) to an amount equivalent to a calculation using the Treasury Note yield rate plus 8% on a simple interest basis.
14. GIC is a tax deduction in the year that it is incurred. If the GIC is subsequently remitted then the taxpayer is taken to have received the remitted amount as recoupment of that expenditure and that recoupment then becomes assessable. (A more detailed discussion of this matter is contained below under the heading 'Deductibility and assessability of GIC and other interest charges').

General considerations

15. Taxpayers have a responsibility to meet their payment obligations as and when their taxation debts fall due for payment. The various taxation laws provide for the automatic imposition of GIC when a debt is paid late. The GIC is calculated daily from the beginning of the day by which tax is due to be paid, until the end of the last day on which, at the end of the day, any tax and accrued GIC remains unpaid.
16. The GIC automatically imposed by legislation is intended to encourage the payment of tax liabilities when due. It denies late payers an advantage over those who do pay on time. The knowledge that GIC is accruing should encourage debtors to organise their affairs in such a way as to enable them to pay on time. The uplift factor is intended to make the GIC rate sufficiently high to discourage the use of tax debts as a source of business or private finance. However, the uplift factor is not intended to serve as a 'culpability penalty' that is, it is not a penalty for having engaged in blameworthy conduct.
17. The GIC also serves to compensate the Commonwealth for the impact of late payments, as delays in tax receipts mean that government borrowing and interest costs are higher than otherwise need be.

Remission

18. The Commissioner may remit part or all of the GIC for late payment (section 8AAG of the TAA).
19. Where debtors seek a remission of GIC, the debtor's request should be considered having regard to:
 - the facts of the particular case, including the taxpayer's own situation and individual circumstances
 - Chapter 1 'Principles underlying the receivables policy of the ATO', and
 - the policy guidelines contained in this chapter.
20. It would be inappropriate to exercise the discretion to remit GIC for the following reasons:
 - as an inducement to finalise a disputed debt although, depending on the circumstances, remission may form a component of a settlement, or
 - to finalise a case where the Tax Office has not attempted to collect GIC.

POLICY

21. The law imposes GIC in all cases and steps will be taken to recover those charges, even after a primary debt is finalised. However, the legislation acknowledges that situations exist where it would be fair and reasonable for the GIC to be remitted. The Commissioner has the discretion to remit the GIC in part or in full depending on the circumstances that led to the late payment.
22. A debtor has a right to request a remission of general interest charges. Where the Commissioner is satisfied that a remission of the GIC is warranted, it will be remitted, either in full or in part. The onus is generally on the debtor to demonstrate remission is warranted. However, where circumstances justifying remission are readily apparent, the Commissioner may initiate remission.
23. A decision on the request for remission will be made based upon information provided by the debtor as part of the request for remission and from any other information available to the Tax Office, including information on any other tax debt

types owed and other amounts paid after the due date. There will be no remission of any GIC if there is insufficient relevant information to make a decision.

24. The Tax Office will consider a request in accordance with the relevant remission provision and the Commissioner's guiding principles.

Reasons for remission of general interest charge

25. Remission always depends on consideration of the factors relevant to the late payment. All of the factors put forward by a debtor in the request for remission, their effect upon late payment and the steps taken to alleviate the delay in payment will be considered. Any other relevant factors that are readily apparent to the Commissioner will also be considered.

Factors beyond the control of the debtor

26. A debtor may be able to demonstrate that the difficulties they are experiencing in making payment are due to factors beyond their control and clearly could not be predicted. In considering any remission of GIC, it is also necessary to consider what steps were taken, if any, to relieve the effects of the circumstances causing the late payment. Such circumstances may include (but are not limited to) natural disasters such as fire, flood or drought; industrial action; the unforeseen collapse of a major debtor or the sudden ill health of key personnel in sole trader or small business situations.
27. General statements such as adverse business conditions affecting an industry, general economic downturn or fluctuations of currency exchange rates would not be an acceptable basis for remission under this heading as these factors are more likely to prevail across the whole community. Debtors would need to demonstrate that such factors had specific impacts on their ability to pay before they could be considered as reasons for remission.

Acts or omissions of the debtor

28. Acts or omissions of the debtor which prevent payment by the due date will vary. In considering remission of GIC, it is necessary to determine whether the delay in payment was caused by the debtor's direct involvement or otherwise and what steps were taken, if any, to relieve the effects of the circumstances causing the late payment.
29. Debtors who have an extended credit policy to maintain business, which will adversely affect their cash flow and impact the ability to pay on time, will not qualify for remission. To remit the GIC in these situations would, in effect, be financing the business at the expense of revenue.
30. A soundly advised or well considered decision which results in unforeseen severe consequences affecting a debtor's ability to pay might otherwise gain some remission. This would assume that the debtor could demonstrate that plans were in place to ensure the payment of tax on time, but that as a result of the unforeseen circumstances, payment on time was not possible.
31. In contrast, debtors who choose not to pay a taxation liability or use available funds to acquire assets or to pay other creditors basically delay payment of the tax debt by their own action. Steps a debtor has, or could have, taken to realise assets, seek finance to meet taxation debts or to direct funds from income or cash flow are all relevant considerations in deciding whether a debtor deserves remission of GIC.

Relieving the circumstances or effects of circumstances

32. The Commissioner must consider the debtor's efforts to relieve all of the circumstances that led to late payment or the effect of those circumstances causing the delay, irrespective of whether the circumstances were subject to, or beyond, the debtor's control. To be eligible for remission, the debtor would be expected to have taken all reasonable action possible, promptly, in an attempt to lessen the severity of the circumstances as they affected the inability to pay by the due date and beyond.

Fair and reasonable

33. The words 'fair and reasonable' are to be given their ordinary meaning in deciding whether it is fair and reasonable to remit the GIC. However, in considering what makes it fair and reasonable to remit, the following factors need to be borne in mind:
- (i) The GIC is intended to encourage payment of taxes on time and to discourage the use of tax debts as a source of business or private finance, as well as compensating the Commonwealth for the delay in receipt of payment. It is therefore legislative policy that debtors should be liable to additional charges if they pay late.
 - (ii) Not only must the exercise of the power to remit be fair to the debtor concerned, it must be fair to the whole community. In other words a debtor who pays late should not be given any advantage over those taxpayers who organise their affairs to ensure they can pay on time. Debtors will need to demonstrate that it is fair and reasonable to remit the GIC, having regard to the nature of the specific event or decision.
34. Therefore, in considering whether it is fair and reasonable to remit in any particular case, it is valid to ask whether ordinary and reasonable members of the community who pay their taxes on time would see the circumstances as ones where it is fair and reasonable to remit.
35. There are obviously a very wide range of circumstances that taxpayers may put forward for consideration. The specific examples of remission discussed later in this chapter are ones where it would be considered fair and reasonable to remit.
36. For example, it may be considered fair and reasonable to grant a remission of GIC where a taxpayer is misled by information in *TaxPack*, and becomes liable to pay interest on a resulting tax shortfall. In these circumstances, it is seen as fair and reasonable that the individual taxpayer should not have to bear the cost of the delay in payment. This is discussed in more detail under the heading 'TaxPack, other Tax Office Publications and Tax Office advice' later in this chapter and in the Law Administration Practice Statement PS LA 2006/8 dealing with remission of GIC incurred during the shortfall period and the shortfall interest charge.
37. It may also be fair and reasonable to grant a partial or full remission of GIC in cases where payment of that amount would cause the taxpayer serious hardship. If a taxpayer meets their primary tax liability, but is unable to pay the full amount of GIC without incurring serious hardship, the community may view it as fair and reasonable that partial or full remission be granted. This is also discussed later in this chapter.
38. However, if a taxpayer in business was unable to pay on time simply because of generally adverse economic conditions, and required time to pay by instalments, then the community would generally perceive it to be fair and reasonable that the

statutory interest charges were paid, especially considering that many other businesses will take steps to ensure that they pay their taxes on time.

Partial remission

39. Partial remission should be considered when the debtor has experienced the types of factors outlined in this chapter, and would otherwise qualify for full remission; however their recent payment record has been unsatisfactory. It may be unfair to taxpayers who consistently do the right thing if those who choose not to comply are given the same level of remission. Partial remission may also be the appropriate response in cases where the circumstances that led to the non-payment were caused directly or indirectly by an act or omission of the debtor and the debtor meets the other criteria for remission.

Other appropriate circumstances

40. As stated previously, GIC is imposed in all cases of late payment and is only to be remitted where the circumstances of the case warrant such remission. However, in addition to the circumstances set out above, paragraph 8AAG(5)(b) of the TAA gives the Commissioner a discretion to remit the GIC for late payment in circumstances 'where it is otherwise appropriate to do so'.
41. This provision gives the Commissioner a much broader discretion to remit the GIC for late payment than the preceding sub-sections in section 8AAG of the TAA. It is obviously not possible to lay down an exhaustive list of those circumstances which might warrant remission under this provision. However, this provision gives the Commissioner a degree of flexibility. It means that the Commissioner can adapt to changing circumstances, and consider unusual factors, or future issues, on their merits and make decisions accordingly.
42. Such decisions may be concerned with the circumstances of a particular taxpayer. In practice, however, they are more likely to extend to a particular group of tax debtors, or to the general body of tax debtors, and may involve consideration of issues of administrative efficiency and fairness.
43. An example of this type of decision is the announcement by the Commissioner on 30 June 2004 of a small business debt assistance initiative. Under this initiative, individuals and small business taxpayers, with income tax and activity statement debts of less than \$25,000, could enter into extended repayment arrangements. Provided they agreed to pay their debts by direct debit, these eligible taxpayers could also receive partial or full GIC remission for the period of the payment arrangement.
44. As a matter of policy, decisions to grant remission under this provision are restricted to senior Tax Office staff.

POLICY – SOME SPECIFIC SITUATIONS

A Particular examples of special circumstances where remission may be granted

45. Taxpayers may present a wide variety of 'special circumstances' by reason of which it is fair and reasonable to partly or fully remit GIC. Each case must be considered on its own merits. The following paragraphs are in no way restrictive – they merely describe some particular examples of such situations.

Hardship

46. Where the recovery of GIC would cause serious hardship, remission may be granted. This would include offers that approximate the limit of the financial capacity which the debtor controls or has access to. Debtors who may satisfy these criteria could include social security recipients who have no recourse to assets and who do not have the means to pay the GIC by way of instalments over time.

Good payment history

47. A debtor with a consistently good payment record may be late in making a payment on an isolated occasion. In deciding whether to remit the GIC in whole or in part, the good payment history and any other relevant factors of the debtor will be taken into account.

B Disputed debt and amended assessments

48. The legislative regime provides that tax is both payable and recoverable notwithstanding that there is a formal review under Part IVC of the TAA. Accordingly, as a general rule, if the review does not result in a reduction of a liability, any GIC that applies will accrue from the original due date until payment. Where a liability is reduced by way of amendment, any GIC that applies will be calculated on the amended balance from the original due date of the liability until the date of payment. (Refer to 'Terms used' at the end of this chapter for a definition of 'tax in dispute').
49. However, in certain circumstances where a dispute exists, part of the GIC may be remitted.
50. If the debtor pays all tax not in dispute and a minimum of 50% of the disputed tax, generally, subject to those circumstances where the Commissioner validly issues two or more assessments relating to the same transaction against different taxpayers, or against the same taxpayer under different taxing provisions as described in a later paragraph under this heading, relevant GIC will be partially remitted so the debtor will be liable for the GIC as follows:
 - (i) On any debts not in dispute, GIC will accrue at the full rate from the due date(s) until the date of payment
 - (ii) On the full amount of the debts in dispute, GIC will accrue at the full rate from the due date(s) for payment until, but not including, the date the debtor pays a minimum of 50% of the tax in dispute
 - (iii) On the remaining balance of the debts in dispute, the debtor will be liable for 50% of the applicable GIC calculated from the date of payment of a minimum of 50% of the tax in dispute until fourteen days after the date of the decision (that is, 50% of the GIC accrued during this period will be remitted), and
 - (iv) from fourteen days after the decision, the full amount of GIC will be applied on the remaining balance finally found to be payable until that balance is paid in full.
51. However, such remission may not be available, even where the above conditions are met, in a case where the objection is determined to be frivolous, or where the Tax Office considers that there is a significant risk to the revenue. In such cases, the Tax Office may proceed to recover all tax outstanding, including GIC, notwithstanding the presence of a dispute. The circumstances in which the Tax

Office may take such action are set out in more detail in Chapter 28 'Recovering disputed debts'.

52. In a particular income year, two or more assessments relating to the same transaction against different taxpayers, or against the same taxpayer under different taxing provisions, may be validly issued. In those cases, the payment by one of these entities of 50% of its disputed liability relating to that transaction, may provide benefits to all entities which have been assessed in relation to that transaction.
53. The benefits available to the other entity/entities would be a remission of the GIC imposed on its disputed debt relating to that transaction. The amount of the benefit would be limited to a maximum of:
 - the amount of GIC that would be remitted as a result of the payment if the payment had been made by the entity itself and not the paying entity, plus
 - an amount equal to the GIC remitted on the paying entity's debt as a result of its 50/50 arrangement.
54. The income of a discretionary trust or similar entity could be adjusted as one of the adjustments or assessments resulting from the transaction. The benefits outlined in the previous paragraph and this paragraph are only available to the other entities assessed (excluding the other beneficiaries) if all of the beneficiaries of the trust pay 50 % of the disputed debt relating to the transaction. Despite any non-payment by other beneficiaries, any beneficiary that pays 50 % of its disputed debt will be entitled to the benefits normally available other than those outlined in this and the previous paragraph.
55. The prospect of remission of GIC is not to be used as an inducement to achieve finalisation of a dispute although, depending on the circumstances, remission may form a component of a settlement.

C Bankruptcy/liquidation

56. The Tax Office may include claims for GIC in proofs of debt. Requests may be received from a trustee or liquidator for remission of GIC, on the basis that these charges ought to be directed at debtors who fail to pay their tax debts on time, and not to adversely affect other creditors in insolvency situations. In this situation, GIC will not be remitted as a general rule. However, if all other creditors, secured and unsecured, are prepared to forego all their claims to interest on amounts owed to them (for the same length of time the taxation debts have been outstanding, if applicable), consideration will be given to remitting the GIC.

D Judgment

57. The question of whether court allowed interest, judgment interest or GIC can be claimed depends on the court rules and practices in each jurisdiction. In general, where GIC can be claimed in lieu of court allowed interest, the GIC should be claimed.
58. The Tax Office's practice in this regard is as follows:
 - (i) with one exception (see below), the Commissioner will claim GIC for the period from the due date to the date of issue of the proceeding.
 - (ii) with one exception, the Commissioner will claim GIC for the period from the date of issue of a proceeding to the date of judgment or earlier payment.

- (iii) the Commissioner will claim judgment interest for the period from the date of judgment to the date of bankruptcy or liquidation, or earlier payment. In most circumstances the so-called 'top-up amount' of GIC will also be claimed.
59. It should be noted that the general interest charges payable under taxation legislation are considered to be sufficient to compensate the Commonwealth for the loss of use of the funds. In some jurisdictions, the rules of the relevant court may permit court allowed interest to accrue at the same time GIC under taxation legislation is accruing (for example, section 58 of the *Supreme Court Act (Victoria) 1986*). The Commissioner will claim only the GIC for such periods.
60. The Tax Office's policy of claiming the 'top-up amount' of GIC is based on the fact that judgment interest rates can vary considerably between the state jurisdictions. The Tax Office's practice is generally to seek judgment interest and then to also claim the 'top-up amount' of GIC. This approach is considered appropriate because it means that there will be equitable treatment of judgment debtors regardless of where that judgment is obtained.
61. The exception mentioned above concerns directors' liabilities under Division 9 of Part VI of the ITAA 1936. These liabilities are not subject to GIC under taxation law. It is therefore appropriate that interest be sought from the court when pursuing judgment for these claims.

E Estimates of remittance provisions

62. GIC is imposed both on estimates made under Division 8 of Part VI of the ITAA 1936 and the underlying liabilities arising under the remittance provisions. Should the estimate be adjusted or revoked, the GIC will be calculated on the adjusted amount, if any, from the due date of the underlying liability. Any request for remission made by the debtor will be considered on the same basis as requests for remission of other additional charges. If GIC on an estimate is paid or remitted, then GIC on the parallel underlying liability is discharged or remitted to the same extent.

F Superannuation guarantee charge

63. The provisions that give the Commissioner a discretion to remit the GIC include GIC imposed for the late payment of a superannuation guarantee charge (SGC). (Prior to the introduction of GIC, the Commissioner had no discretion to remit additional charges for late payment of SGC). The administration and nominal interest components of SGC are not included in the GIC calculation.
64. SGC is an amount collected by the Tax Office on behalf of employees. It is payable by employers who have failed to provide the prescribed minimum level of superannuation support to their employees.
65. GIC imposed on unpaid SGC forms part of the amount collected by the Tax Office, and is payable to a complying superannuation fund on behalf of employee(s). Along with the nominal interest component of the SGC, it effectively compensates the employee for the loss of earnings that results when superannuation or SGC is unpaid.
66. In considering any application for remission of GIC on SGC, the Tax Office will bear in mind the particular nature of SGC, being an amount collected on behalf of employees. The Tax Office will also have regard to the fact that SGC is payable by employers who have failed to provide the prescribed minimum level of superannuation support.

67. The Commissioner may grant remission of GIC on SGC in circumstances where
- the late payment arose from factors beyond the debtor's control, and
 - the debtor has taken reasonable action to relieve, or relieve the effects of, those circumstances.
68. However, in cases where the late payment was caused directly or indirectly by an act or omission of the debtor, or by special circumstances, the Commissioner would have to believe that it is fair and reasonable to remit in light of the circumstances of the particular case. Debtors may still request remission in these circumstances but, given the considerations mentioned above in this subsection, the Commissioner is generally unlikely to consider that it would be fair and reasonable to remit the GIC on SGC in such cases.
69. One situation where remission may be granted is where an employer has not made the minimum required superannuation contributions for an individual who is engaged under a contract that is wholly or principally for their labour, and the employer faces a superannuation guarantee charge assessment as a result. The specific policy relating to this situation is provided in Law Administration Practice Statement PS LA 2006/14.

G Excess contributions taxes

70. As part of its reforms to superannuation, the Government has introduced an annual limit to superannuation contributions that receive concessional tax treatment. If concessional contributions or non-concessional contributions exceed an indexed cap, the individual concerned is taxed on the excess.
71. Excess contributions tax will be due for payment 21 days after an assessment is given. If the individual fails to pay the liability within 21 days, they may incur GIC for late payment.
72. Where an excess concessional contributions tax liability is notified, the individual has the option to withdraw an amount equal to all, or part of their tax liability from their superannuation fund. The individual may give the release authority for their excess concessional contributions tax liability to their fund within 90 days after the date of the release authority. Where an excess non-concessional contributions tax liability is notified, the individual must withdraw an amount equal to their tax liability from their superannuation fund. The law requires the individual to give to their fund a release authority for an excess non-concessional contributions tax liability within 21 days after the date of the release authority or they may be liable to an administrative penalty. In all cases, the superannuation fund must release the money to the member or the Commissioner within 30 days after receiving the release authority.
73. The Tax Office recognises the resultant timing issue and regards these as potentially giving rise to circumstances which warrant remission of GIC.

H PAYG instalments (this system applies for the 2000–01 income years and later years)

74. GIC on PAYG instalments is calculated from the due date of the instalment until the date that the instalment is paid, regardless of the issue of the income tax assessment for the year in question.
75. Taxation officers may receive requests for remission of GIC because the income tax subsequently assessed is less than the instalments that are payable. Such requests

should be declined. In these circumstances GIC should be raised on the amount of the instalment until the date the instalment is paid. This approach acknowledges that GIC is payable where the instalment is not paid by the specified date, and that the legislation specifically authorises the Commissioner to recover that tax in any Court of competent jurisdiction. The lodgment of the return disclosing a lower than expected taxable income does not constitute a special circumstance, as mentioned earlier in this chapter. Debtors can choose to vary their instalment rate (and claim a credit on using the varied rate) under subdivision 45-F of Schedule 1 to the TAA. Where appropriate, debtors can choose to vary their instalment on the basis of their estimate of benchmark tax (and claim a credit) under subdivision 45-M of Schedule 1 to the TAA. The same principle will apply to those taxpayers who are eligible to pay an annual instalment. GIC will accrue if the instalment is paid late, and lodgment of the return, showing a lower than expected income, will not, of itself, justify remission of GIC.

I Where a taxpayer chooses a varied instalment rate

76. When a quarterly payer who pays on the basis of instalment income believes that the instalment rate notified by the Tax Office, or an instalment rate that it has chosen for an earlier quarter, is not appropriate, it may choose a different instalment rate for the current quarter. Where this occurs, the amount of the instalment for the current quarter is calculated accordingly. An entity that chooses a varied instalment rate that is lower than the rate previously used may be eligible for a credit in respect of earlier instalments. Any such credit is applied to the entity's RBA. However, subsection 45-215(3) of the TAA provides that any credit entitlement does not affect the liability to pay an instalment. This means that if an earlier instalment is left unpaid, GIC will be imposed on the unpaid amount of that instalment, even if a credit subsequently arises because the taxpayer chooses a different instalment rate for a later quarter. Any remission of GIC in these circumstances will only be granted if it is justified on other grounds mentioned in this chapter. The same principle will apply to taxpayers who pay instalments on the basis of GDP-adjusted notional tax, (whether 2 or 4 instalments) and who leave an earlier instalment unpaid, and then claim a credit for a later instalment on the basis of their estimate of their benchmark tax.

J Deceased estates

77. The trustee of a deceased estate under administration would need to demonstrate that assets were realised promptly and funds were not available at an earlier date to enable payment when making a request for remission of the GIC that accrued during the period of the administration.
78. Remission of any GIC that accrued during the period prior to the date of death of the debtor would be considered in accordance with the general guidelines.

K TaxPack, other Tax Office publications and Tax Office advice

79. The introductory pages to *TaxPack* contain a statement from the Commissioner concerning a taxpayer's liability to penalties where:
- they lodge a return after making an honest mistake following *TaxPack* or they lodge an incorrect return as a result of being misled by *TaxPack*, and

- the reduced taxable income is corrected by the subsequent issue of an amended assessment.
80. In these circumstances, a taxpayer who makes an honest mistake will not be subject to penalties but may be asked to pay interest on the underpaid tax. Taxpayers who are misled by *TaxPack* will not be subject to penalties or interest charges in respect of the underpaid tax. For full details, refer to *TaxPack*.
 81. The statement in *TaxPack* refers to the tax shortfall penalty which applies to false and misleading statements, and to interest charges (which may be either GIC or shortfall interest charge, depending upon the year of income involved) accrued between the due date of the original assessment and the issue date of the amended assessment.
 82. Therefore, a taxpayer who makes an honest mistake may be asked to pay interest from the due date of the original assessment. A taxpayer who is misled by *TaxPack* would only face GIC accruing from either the issue date of the amended assessment (in the case of the 2001 to 2004 income years, when a statutory due date regime applied) or from the due date of the amended assessment (in the case of amended assessments relating to years 2000 and prior, or 2005 and later). Any such GIC for late payment on these debts can be remitted in whole or in part applying the policy outlined elsewhere in this chapter, depending on the facts of the case.
 83. Similarly, a taxpayer who makes a mistake while following advice in any other Tax Office publication will not be charged a penalty on any unpaid tax, but may have to pay interest, depending on the circumstances of the case. If that advice is incorrect or misleading, interest would only be applied from the dates explained in the preceding paragraph.
 84. Amendments to the TAA introduced by the *Tax Laws Amendment (Improvements to Self Assessment) Act (No 2) 2005* ensure that taxpayers obtain protection from interest charges (similar to current penalty protection) where they rely on Tax Office advice that is not a ruling, or on the Tax Office's general administrative practice. For more detailed policy in respect of the shortfall period, reference should be made to Practice Statement PS LA 2006/8 dealing with remission of GIC incurred during the shortfall period and the shortfall interest charge.
 85. Taxpayers are protected under GST law if they act on any GST information in a Tax Office publication. If they rely on GST advice in a Tax Office publication and that advice is later changed, they will not have to pay any extra GST or give back an overpaid GST credit for the period up to the date of the change. Accordingly, they will not have to pay any penalty or GIC in relation to the extra GST or overpaid GST credit.

L Competent Authority issues/Mutual agreement procedures

86. In cases where the Tax Office makes a transfer pricing or profit re-allocation adjustment, the debtor may seek Competent Authority assistance, under the Mutual Agreement Procedure (MAP) article contained in Australia's double tax agreements, to attempt to have the matter resolved with the other tax jurisdiction involved. It is recognised that the collection of tax during MAP cases will, in some instances, impose temporary double taxation on the taxpayer whilst the MAP is in progress because the same profits have been subject to tax in both jurisdictions. Where the possibility of such double taxation arises, the Tax Office will agree to defer recovery action under section 255-5 of the TAA, including the recovery of any GIC, until an

agreed future date (which will usually be the date that the MAP process is concluded), unless:

- there is a risk to the revenue
- the taxpayer has other liabilities unpaid after the due date, or
- the taxpayer has failed to meet other tax obligations when required.

87. This revised policy applies to cases where:

- the decision on the remission of the GIC incurred for non-payment of a taxation debt that is subject to the Mutual Agreement Procedure adjustment has not been made, or
- a Tax Office view in relation to remission or non-remission (for example, in a position paper) has not been provided to the taxpayer

at the 4 July 2006 (the date of effect of the previous version of the ATO Receivables Policy). Decisions in respect of individual adjustments and in respect of individual years of income are separate decisions.

88. This policy relates to any section 170AA (ITAA 1936) interest and/or any GIC incurred in relation to tax that is the subject of a Mutual Agreement Procedure whether the interest was incurred prior to, or after the taxpayer is served with the notice of assessment or amended assessment.
89. The taxpayer may be entitled to a limited remission of the GIC incurred prior to the Mutual Agreement Procedure.
90. The amount of remission depends on the Australian-dollar equivalent of the tax actually paid (net of any entitlements to refunds or offsets) in the foreign jurisdiction where that tax is directly related to the particular amount of profits the subject of the Mutual Agreement Procedure. The 'Australian-dollar equivalent' would be determined by the prevailing exchange rates at the date/s of payment/s of tax in the foreign jurisdiction.
91. A reduction in losses brought forward or incurred (as shown on the foreign jurisdiction tax documents) would not be grounds for remission. In order to be eligible for remission, the taxpayer must have made an actual payment of tax directly in respect of the year to which the particular amount of profits the subject of the Mutual Agreement Procedure relates.
92. Generally, and subject to other considerations in this chapter, the maximum remission allowable would be to the base rate.
93. The remission of GIC is limited so that the remission does not result in a windfall gain to the taxpayer or any associated entity in the treaty partner country. An example of a windfall gain would be where any interest paid by a foreign revenue authority in cases where correlative relief is granted would exceed the base rate in Australia.
94. Taxpayers should refer to Taxation Ruling TR 2000/16 for the remission policy in respect of the GIC incurred during the Mutual Agreement Procedure. (The policy in TR 2000/16 differs from this policy relating to remission of interest or GIC incurred before the case has been formally accepted into Mutual Agreement Procedure).
95. The decision on any remission is to be made after the Mutual Agreement Procedure is completed and is dependent on the taxpayer providing evidence to the Tax Office of the taxes paid in the foreign jurisdiction that are directly related to the particular amount of profits the subject of the Mutual Agreement Procedure, plus detail of any

interest or gain paid to it or its associated entities by the foreign jurisdiction in respect of those taxes paid.

96. Normal GIC remission policy as outlined in this chapter would apply from the date the Mutual Agreement Procedure is finalised.

M Deferred company instalments for the 1999–2000 year

97. Special transitional rules for company instalment (COIN) taxpayers were introduced to overcome the possible cash flow burden that may be imposed on these entities with the transition to the PAYG instalment system. These rules are known as 'deferred COIN' and they apply only to the 1999-2000 income year. Essentially, these rules allow companies to defer all or some of their final instalment, depending on the amount of their assessed tax payable.
98. An instalment taxpayer that has deferred all or some of their final instalment for the 1999–2000 income year may incur an unwarranted level of GIC imposition where the assessment for that year is subsequently debit amended.
99. Under deferred COIN, section 221AZKEA of the ITAA 1936 provides that the amended assessed tax payable for the 1999–2000 income year is treated as if it had always been the assessed tax payable. The effect of this on an instalment taxpayer, that has deferred all or some of their final instalment, is that both their quarterly payments of deferred COIN and their final instalment will be retrospectively increased if an amended assessment increases the liability to tax for that income year.
100. Where an amended assessment issues increasing the liability to tax, late payment GIC will apply to the retrospective increase in the quarterly payments of deferred COIN that are payable, as well as to the retrospective increase in the amount of the final instalment that cannot be deferred, from their original due dates for payment. The application of late payment GIC in this manner will effectively overlap a period that is already covered by the imposition of GIC under section 170AA of the ITAA 1936. This is because section 170AA will apply a GIC against the increase in the liability to tax, commencing from the prescribed date for payment of the final instalment, irrespective of the amount deferred. Therefore, to some extent, it could be said that there is a duplication of GIC on these amounts.
101. Accordingly, where an instalment taxpayer has deferred all or some of their final instalment and a debit amendment subsequently issues for the 1999–2000 income year:
 - the section 170AA GIC will be remitted in full on the amount of the increase in tax that is deferred
 - the late payment GIC will be maintained on the retrospective increase in quarterly payments that are due for payment
 - the section 170AA GIC will be maintained on the amount of the increase in tax that is not deferred, and
 - the late payment GIC will be remitted in full on the increased amount of the final instalment that is not deferred from the due date of the final instalment until the day before the due date for payment of the debit amended assessment.

DEDUCTIBILITY & ASSESSABILITY OF GIC & OTHER INTEREST CHARGES

Deductibility of GIC on income tax debts

102. The GIC as well as some of its predecessors - namely penalty by way of interest imposed under sections 163C, 170AA and 207A of the ITAA 1936 - can be claimed as a tax deduction by the debtor as expenditure incurred in the year of income.
103. The deductibility of interest imposed under sections 163C, 170AA or 207A for income years 1992–93 to 1996–97 inclusive is provided for under subsection 51(5) of the ITAA 1936. For income years 1997–98 to 1998–99 inclusive, deductions can be claimed under section 25-5 of the ITAA 1997.
104. The deductibility of the GIC is also provided for in section 25-5 of the ITAA 1997. A tax deduction for GIC incurred can be claimed in income tax returns for the years ended 30 June 2000 onwards.
105. The word 'incurred' in the relevant legislation has the same meaning given by the Courts in decided cases. The cases establish that a loss or outgoing is incurred where the taxpayer has 'completely subjected itself' to the loss or outgoing (*FC of T v. James Flood* (1953) 88 CLR 492) that is, the taxpayer has a 'presently existing liability' (*Nilsen Development Laboratories Pty Ltd* (1981) 144 CLR 616) not an 'impending, threatened or expected liability' (*New Zealand Flax Investments Ltd v. FC of T* (1938) 61 CLR 179).
106. Further case law establishes that a liability may have been 'incurred':
 - even if payment had not been made (*W Nevill & Co Ltd v. FC of T* (1937) 56 CLR 290)
 - even though the loss or outgoing might not be able to be precisely determined (*Commercial Union Assurance Co of Australia Ltd v. FC of T* 77 ATC 4186), and
 - even though a creditor might not yet have a right to demand payment (*FC of T v. Australian Guarantee Corporation Ltd* (1984) 2 FCR 483).
107. GIC for late payment accrues on a daily basis. Hence the relevant expense is incurred daily. What this means in practice is that a debtor is entitled to claim a deduction for the total amount of the GIC for late payment accrued during any particular financial year from the 1999–2000 year onwards, notwithstanding that the GIC may not have in fact been paid. This is so whether a taxpayer accounts for expenses on a 'cash basis' or 'accruals basis'.
108. With regard to interest accrued under former section 207A of the ITAA 1936, the same principle applies. A taxpayer is entitled to claim a tax deduction in respect of the total amount accrued during any particular income year from the 1992-93 income year to the 1998–99 income year inclusive. This is so notwithstanding that the interest may not have in fact been paid.
109. It should be noted that additional tax for late payment imposed under the former section 207 of the ITAA 1936 was not deductible. Similarly, additional tax for late lodgment imposed prior to 1 July 1999 under section 163B of the ITAA 1936 was also not deductible.
110. However, there are some qualifications to the rule about when expenses for GIC are said to be incurred. Different rules apply for taxpayers who enter the simplified tax system and these rules are discussed in the following subsection.
111. In addition, the situation may be different in relation to GIC imposed as a result of an assessment of income tax being amended, or where GIC is imposed as a result of the late lodgment of an income tax return.

112. In relation to the GIC or interest imposed under section 170AA of the ITAA 1936 in a notice of amended assessment, taxpayers are entitled to claim a tax deduction for the amount imposed during the year in which the notice of amended assessment was served, that is when the taxpayer became 'definitively committed' to the payment or 'has completely subjected itself to the liability' (*FCT v. James Flood Pty Ltd* (1953) 88 CLR 492 at p 506). This is so notwithstanding that the liability may not have in fact been paid.
113. For the 2000–01 income year to the 2003–04 income year inclusive, changes were made to the way that the due date for payment of an assessment is determined. Where an assessment of income tax is amended, the amended assessment carries the same due date for payment as the original assessment. GIC for late payment of the amended assessment applies from the due date for payment of the original assessment. In these circumstances, the GIC which accrues from the due date for payment of the original assessment to the issue date of the amended assessment is incurred on the day that the amended assessment is issued. GIC accruing after the issue date of the amended assessment is incurred on a daily basis.
114. From the 2004–05 income year onwards, amended assessments of income tax will carry a prospective due date, and the shortfall interest charge (SIC) will apply between the due date of the original assessment and the day before the issue date of the amended assessment (replacing the GIC in this period). The SIC is imposed at a lower rate and is also tax deductible. The SIC would be incurred on the day the notice of assessment is served upon the taxpayer.
115. In relation to GIC or interest imposed for late lodgment of an income tax return under section 163C of the ITAA 1936, taxpayers are entitled to claim a tax deduction for the GIC amount imposed during the year in which the notice of late lodgment penalty was served.
116. With regard to the late lodgment of an income tax return for the 2000–01 or later years of income, the GIC which accrues under section 204 of the ITAA 1936 from the statutory due date of the original assessment to the issue date of the assessment is incurred on the day that the assessment is issued. GIC accruing after the issue date of the assessment is incurred on a daily basis.

Deductibility of GIC on other revenue types

117. FBT and indirect tax (which includes GST and net fuel amount) liabilities are not dependent on or affected by an assessment. As stated in Taxation Determination TD 2004/20:

...a fringe benefits tax liability for a fringe benefits tax year, assessed under an assessment made by the Commissioner, is incurred for the purposes of section 8-1 of the *Income Tax Assessment Act 1997* (ITAA 1997) at the end of that fringe benefits tax year. This recognises that the conclusions drawn in paragraphs 5 and 20 to 28 of Taxation Ruling TR 95/24 ... about when fringe benefits tax is incurred for the purposes of subsection 51(1) of the *Income Tax Assessment Act 1936* (ITAA 1936) apply regardless of how fringe benefits tax is assessed.

Section 105-15 of Schedule 1 to the TAA similarly has the effect that liability for GST becomes due and payable on the dates prescribed in sections 33-3 and 33-5 of the GST legislation independently of any assessment being made.

118. GIC on an unpaid fringe benefits tax liability accrues from the date prescribed in subsection 90(1) of the *Fringe Benefits Tax Assessment Act 1986* and is incurred for the purposes of section 8-1 of the ITAA 1997 as and when it accrues. GIC on an unpaid GST liability accrues from the dates prescribed in sections 33-3 and 33-5 of the GST legislation and is incurred for the purposes of section 8-1 of the ITAA 1997 as and when it accrues.

Deductibility – STS taxpayers

119. For the years of income 1 July 2001 to 30 June 2007, eligible small business taxpayers could choose to enter the simplified tax system (STS) which introduced special accounting arrangements for STS taxpayers including a simplified trading stock regime and a simplified depreciation regime.
120. For any taxpayer who was not an STS taxpayer, the rules relating to deductibility as set out under the preceding subsection applied and continue to apply.
121. For years of income up to and including the year ended 30 June 2005, (former) paragraph 328-105(1)(b) of the ITAA 1997 provided that, for STS taxpayers, an amount that can be deducted under section 8-1 (general deductions), section 25-5 (tax-related expenses, including the GIC) or section 25-10 (about repairs) was to be treated as if it were incurred only when paid. Hence, for these years of income, STS taxpayers were taken to have incurred the GIC only when they actually paid it, and so GIC was deductible in the year in which it was paid.
122. The *Tax Laws Amendment (2004 Measures No. 7) Act 2005* introduced changes to the simplified tax system which took effect from the first income year commencing on or after 1 July 2005.
123. This amending Act removed the requirement for small businesses to use the 'STS accounting method' in order to be eligible to enter the simplified tax system. The provisions enable businesses to utilise the most appropriate method of determining taxable income for them and still qualify for the simplified tax system. Removing the requirement to use the STS accounting method extended the concession to a broader range of small businesses.
124. Specifically, the amending Act allowed businesses to calculate their taxable income using an accruals system. Assessable income is recognised when it is derived and allowable deductions are recognised when they are incurred.
125. However, transitional provisions enabled businesses that were STS taxpayers for their first income year that started before 1 July 2005, to continue to recognise most business income and deductions only when they were received or paid (section 328-120 of the *Income Tax (Transitional Provisions) Act 1997*). This allowed businesses who calculated their taxable income under the cash accounting method contained in the STS to continue to use that method, if they wished to do so.
126. Transitional provisions also allowed STS taxpayers to cease to use the cash accounting method (section 328-115 of the *Income Tax (Transitional Provisions) Act 1997*). These provisions ensured that business income and expenses (that had not been recognised under the cash accounting method because they had not been received or paid) were recognised in the first year that a business, which was in the STS, ceased to use the cash accounting method.
127. For the 2007-08 and later income years, the STS no longer operates and has been replaced by the small business entity provisions.
128. Taxpayers can continue to use the STS accounting method for the 2007-08 income year and for any later income year for which they are a small business entity (but only if they used the STS accounting method for the income year before that later year) if they:
 - were an STS taxpayer for the most recent income year that started before 1 July 2005; and
 - continued to be an STS taxpayer until the end of the 2006–07 income year; and

- used the STS accounting method for the 2005–06 and 2006–07 income years; and
- are a small business entity for the 2007–08 income year.

129. This means that, for income years commencing on or after 1 July 2005, depending on which accounting method is being used, GIC could be deductible either:

- when it is incurred, regardless of whether the GIC has been paid, or
- when it is paid.

Assessability

130. To preserve the equity of the deductibility provisions outlined above, the law requires taxpayers who have claimed a deduction for GIC, sections 163C, 170AA or 207A of the ITAA 1936 amounts to include as income any part thereof which is subsequently remitted. Amounts remitted should be included as income in the financial year that the remission occurs.

131. Division 20 of the ITAA 1997 includes amounts in assessable income that reverse the effect of certain kinds of deductions. Section 20-20 sets out the circumstances in which an amount received by a taxpayer as ‘recoupment’ of a loss or outgoing qualifies as an ‘assessable recoupment.’ Section 20-25 states that remission of the GIC is an assessable recoupment. Where a deduction has been allowed, or is allowable, under section 25-5 for tax-related expenditure, any recoupment of the expenditure is assessable under sections 20-35 or 20-40 of Subdivision 20-A in the year remitted. This means that

- where a taxpayer has claimed a deduction in respect of an amount of GIC accrued in a particular financial year, and
- that amount or any part thereof is subsequently remitted,
- the taxpayer would be required to include the amount of the GIC remitted as assessable income in his/her income tax return for the financial year in which the GIC was remitted.

132. The rules relating to assessability apply equally to STS taxpayers. If an STS taxpayer has claimed a deduction in respect of GIC which has been incurred, and that GIC is subsequently remitted, then the STS taxpayer is required to include the amount of the GIC remitted as assessable income in his/her income tax return for the financial year in which the GIC was remitted.

TERMS USED

Due date for payment – means the date by which a taxation liability must be paid to the Commissioner.

Disputed debt (or Tax in dispute) – are terms used for the purposes of this chapter to describe a tax-related liability, which is the subject of an objection, a Tribunal review, a Mutual Agreement Procedure or an appeal. In this context, ‘disputed debt’ or ‘tax in dispute’ also includes other related components that may arise from the making of an assessment increasing the liability of the taxpayer to tax. These related components include tax shortfall penalty and the GIC calculated from the date the correct amount of tax should have been paid up until the date the assessment is made.

MAP – is an abbreviation for the Mutual Agreement Procedure contained in Australia’s double tax agreements which provides a process for resolving disputes pertaining to tax also assessed under other tax jurisdictions.

RBA deficit debt – means a balance on an Running Balance Account (RBA) in favour of the Commissioner, where the total amount of due and payable primary tax debts allocated to the RBA are greater than the payments and credits allocated to that RBA

Simplified Tax System – or STS is an alternative method of determining taxable income for eligible small businesses with straightforward financial affairs. It began on 1 July 2001. The 2006–07 income year was the last year of operation for the STS. However eligible small business entities can continue to use the concessions that were in the former STS.

Small business entity – is an entity that carries on business with aggregated turnover less than \$2 million.

Chapter 93 - Archived version

Version 4 – July 2006 (will link to chapter 93 pdf)
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