TD 2012/2EC - Compendium

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The edited version of the Compendium of Comments is a Australian Taxation Office (ATO) communication that is not intended to be relied upon as it provides no protection from primary tax, penalties, interest or sanctions for non-compliance with the law. In accordance with PS LA 2008/3 it only affords level 3 protection.

Ruling Compendium – TD 2012/2

This is a compendium of responses to the issues raised by external parties to draft TD 2011/D11 – Income tax: when is the shortfall interest charge incurred for the purposes of paragraph 25-5(1)(c) of the *Income Tax Assessment Act 1997*?

This compendium of comments has been edited to maintain the anonymity of entities that commented on the draft ruling.

Summary of issues raised and responses

Issue No.	Issue raised	ATO Response/Action taken
1.	The comments in relation to the general interest charge (GIC) seem inconsistent with previous ATO announcements (for example, ATO ID 2002/757 and (withdrawn) ATO ID 2004/508). These make clear that GIC is deductible on a daily basis rather than when an assessment is issued.	No change required; paragraph 2 of the Determination makes clear the view taken is for cases of GIC on amended assessments. The GIC in the ATO IDs noted arises in a different context – running balance account (RBA) deficit debts. Having regard to the source of the liability for the GIC on an RBA deficit debt (section 8AAZF of the *Taxation Administration Act 1953* (TAA)), the GIC in that scenario is incurred on a daily basis. Our view in these ATO IDs has not changed.
2.	The draft Determination takes it as given that the shortfall interest charge (SIC) is deductible as subsection 25-5(1) of the *Income Tax Assessment Act 1997* allows taxpayers a deduction for expenditure they incur for SIC or GIC. The only exception would relate to Simplified Tax System (STS) taxpayers using the cash basis of accounting. A footnote alerting such taxpayers that this Determination has no application whilst they remain under the STS is recommended.	Change made. Footnote inserted to paragraph 20 of the Determination.

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3.	Query whether all of the steps referred to in paragraph 18 of the draft Determination have occurred for the SIC liability to crystallise. Once the amended assessment is given or at the time the amended assessment is given, the Commissioner decides whether to impose the SIC and, if so, the quantum of the SIC. Inherent in this process is the further and last step under section 280-110 of Schedule 1 to the TAA that the Commissioner must give the taxpayer a notice stating the amount of SIC. Without this notice, since the Commissioner has not made the decision to impose SIC, the liability to pay the SIC is no more than 'impending or threatened'.	No change required. The liability to SIC arises through operation of the law directly when an amended assessment results in an increased amount of tax payable, not by discretion of the Commissioner. Paragraph 13 of the Determination describes the relevant sources of this liability. The requirement to notify the liability is a separate obligation on the Commissioner to the liability in the first instance. Whether the SIC is 'impending or threatened' requires regard to the source of the liability and is not dependent on the separate notification requirement of the liability. This position is noted in paragraphs 1 and 20 of the Determination.
4.	A situation not addressed in the draft Determination that would be useful is how SIC should be accounted for if a taxpayer objects to an assessment. What happens in the event that an objection is allowed in full or in part; resulting in a reduced amount of tax payable? If there is a genuine dispute about the amended assessment does this affect the conclusion?	This scenario is out of scope for this Determination as it does not concern when the SIC is *incurred.* The ATO will separately consider publishing a view on reductions in SIC following subsequent amended assessments. We note this issue could apply more broadly than only objection decisions, for example it could also arise in the case of settlements.