TR 95/4A - Addendum - Fringe benefits tax: guidelines for the remission of penalty taxes arising from audit action

Addendum

Fringe benefits tax: guidelines for the remission of penalty taxes arising from audit action

1. This Addendum amends Taxation Ruling TR 95/4 because of changes made by the introduction of the General Interest Charge (GIC).

2. From 1 July 1999, the penalty arrangements for late payment have been rationalised and simplified. They are replaced with a uniform, tax deductible GIC, which will be aligned with market rates.

3. The law provides for remission of all or part of the GIC in limited circumstances. This Ruling does not provide guidelines on the remission of the GIC.

4. The former section 93 of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA) was repealed by *Taxation Laws Amendment Act (No 3) 1999*; No 11 of 1999, and replaced with a new section 93. The new section 93 introduces the GIC, which is imposed on outstanding tax debts from 1 July 1999.

5. TR 95/4 addressed situations involving an underpayment of tax by including a per annum component (by remission of the section 115 or 114 penalty) instead of imposing the former section 93 late payment penalty. Where section 115 or 114 did not apply, the former section 93 late payment penalty was levied. This method of remission and application of penalties remains unchanged for amounts of tax unpaid to 30 June 1999 but does not apply after that date. The Ruling has been amended to reflect this change.

6. From 1 July 1999, the section 93 GIC applies to outstanding tax debts. The Ruling has been amended to reflect this change.

7. TR 95/4 also included a culpability component (again, by remission of the section 115 or 114 component). In this respect, the Ruling remains unchanged.

8. This Ruling refers to former section 93 of the FBTAA, and former sections 170AA and 214A of the *Income Tax Assessment Act 1936* (ITAA 1936) (or parts of those sections). References to these former sections are to those sections as they operated on 30 June 1999 and before that date.

Changes to Taxation Ruling TR 95/4

9. Other than in the changes made by this addendum, all references to section 93 of the FBTAA, and sections 170AA and 214A of the ITAA 1936 (or parts of those sections) are to be read as former sections (or parts of those sections). For example, in paragraph 2, '…section 93…' now reads '…the former section 93…'.

What this Ruling is about

10. The following sentence is added to the end of paragraph 2:

> 'The former section 93 continues to apply to amounts of unpaid tax to 30 June 1999.'

11. The following paragraph is added after paragraph 2:

> '2.1 The new section 93 applies from 1 July 1999. It creates the liability to the general interest charge (GIC) on outstanding tax debts. This Ruling does not provide guidelines on the remission of the GIC under section 8AAG of the *Taxation Administration Act 1953* (TAA 1953).'

Legislative framework

12. The following paragraphs are added after paragraph 7:

> '7.1 The former section 93 was repealed (and replaced with a new section 93) by *Taxation Laws Amendment Act (No 3) 1999*; No 11 of 1999, date of effect 1 July 1999. The former section 93 continues to apply to amounts of unpaid tax to 30 June 1999.
>
> 7.2 The former subsection 93(2) imposed a concessional rate of additional tax for government bodies, as discussed in paragraph 51.'

13. The following paragraphs are added after paragraph 8:

> '8.1 The new section 93 applies to amounts of unpaid tax (or additional tax under Part VIII) from 1 July 1999. In section 93, additional tax also includes the amount of the GIC. Section 93 imposes a liability to pay the GIC on the unpaid amounts for each day those amounts remain unpaid.
>
> 8.2 Division 1 of Part IIA of the TAA 1953 contains the GIC provisions. The GIC is a tax deductible interest charge calculated daily on outstanding amounts. The rate of interest is calculated by adding 8% to the Treasury Note yield rate for

that day and dividing that total by the number of days in that calendar.

8.3 The GIC does not apply to the Commonwealth or an authority of the Commonwealth, see subsection 8AAB(3) of the TAA 1953. The GIC may be imposed on a State or Territory government body or an authority of a State or Territory.'

Ruling

14. Add the following information to the table at paragraph 16:

Years affected	Period interest rate applies	Interest rate
For year ended 31 March 1996 to year ended 31 March 1999	1 July 1995 to 30 December 1995	12.0%
	1 January 1996 to 30 June 1996	11.5%
	1 July 1996 to 30 December 1996	11.5%
	1 January 1997 to 30 June 1997	10.5%
	1 July 1997 to 30 December 1997	9.8%
	1 January 1998 to 30 June 1998	8.8%
	1 July 1998 to 30 December 1998	8.8%
	1 January 1999 to 30 June 1999	8.8%

15. The following paragraphs are added after paragraph 18:

'Special rules - assessments issuing from 1 July 1999

18.1 The GIC, from 1 July 1999, now applies in lieu of the per annum component as described in paragraphs 14 to 18.

18.2 Paragraphs 18.1 to 18.6 apply where a notice of assessment (including amended assessment) issues from 1 July 1999 and as a result of an audit action. Paragraphs 11 to 18 continue to apply, subject to these special rules.

18.3 Where a notice of assessment issues from 1 July 1999, as a result of an audit action, the employer is liable for:

- tax assessed;
- section 114 or 115 penalty;
- former section 93 additional tax applicable for the period to 30 June 1999; and

- section 93 GIC applicable for the period from 1 July 1999,

18.4 The per annum component of the section 114 or 115 penalty is used to compensate the revenue for the full amount of tax not having being paid by the due date. This per annum component is calculated from the due date payable, stated in paragraph 17, to the day when the position is reached where a correct assessment is to be made. In determining this latter date, the per annum component is not be calculated beyond 30 June 1999, because, from 1 July 1999, the GIC applies. Paragraphs 13 and 48 continue to apply, in these circumstances, to remit additional tax under the former section 93 in full.

18.5 The GIC applies to the outstanding tax debt from 1 July 1999 or the from the due date payable (if this is after 1 July 1999) and continues to apply until the tax is paid.

18.6 The culpability component of the section 114 or 115 penalty continues to apply, as provided for in this Ruling.'

16. At the end of the last sentence in paragraph 23 add:

'subject to paragraphs 18.1 to 18.6.'

17. The following paragraph is added after paragraph 48:

'Special rules - assessments issuing from 1 July 1999

48.1 The GIC, from 1 July 1999, now applies in lieu of the per annum component, as described in paragraphs 46 to 48. On the same basis, as discussed in paragraph 47, remission of the penalty under section 114 should continue to be made with reference to the guidelines applicable to the remission of the section 115 penalty and shown at paragraphs 18.1 to 18.6.'

18. The following paragraph is added after paragraph 50:

'50.1. Where primary tax or additional tax is unpaid from 1 July 1999, the GIC applies under section 93. The GIC also applies to amounts of the GIC unpaid.'

19. Add the following information to the table at paragraph 51:

Years affected	Period interest rate applies	Interest rate
For year ended 31 March 1995 to year ended 31 March 1999.	1 July 1995 to 31 December 1995	8.0%
	1 January 1996 to 30 June 1996	7.5%
	1 July 1996 to 31 December 1996	7.5%
	1 January 1997 to 30 June 1997	6.5%
	1 July 1997 to 31 December 1997	5.8%
	1 January 1998 to 30 June 1998	4.8%
	1 July 1998 to 31 December 1998	4.8%
	1 January 1999 to 30 June 1999	4.8%

20. The following paragraphs are added after paragraph 51:

‘51.1 The penalties for unpaid tax described in paragraph 51 only apply where tax is unpaid to 30 June 1999. From 1 July 1999 the GIC applies under section 93, refer paragraph 50.1.

51.2 Refer paragraph 8.3, the GIC does not apply to the Commonwealth or an authority of the Commonwealth.’

21. The following sentence is added to the end of paragraph 53:

‘The GIC is tax deductible under section 25-5(1)(c) of the *Income Tax Assessment Act 1997* (ITAA 1997).’

22. The following paragraphs are added after paragraph 81:

‘Example 5

Facts

82. During a taxation audit it was found that an employer had understated the fringe benefits returned in its FBT return for the year ended 31 March 1999. As a result, a notice of amended assessment issued on 15 September 1999 and in respect of the FBT year ended 31 March 1999.

Matters considered

83. In this example:

- it is assumed the employer’s omission was due to carelessness and there were no other factors present; and
- the tax assessed on the understated fringe benefits was unpaid from the due date, 28 April

1999, and remained unpaid as at 15 September 1999.

Decision on remission

84. The tax assessed would be due and payable on 28 April 1999 under subsection 90(1). After remission of penalties, the following were applied:

- section 115 - a culpability component of 25% being the appropriate penalty for carelessness. There were no other factors present which would suggest either an increase or decrease of the additional tax;
- section 115 - a per annum component for the period 28 April 1999 to 30 June 1999; and
- the GIC for the period 1 July 1999 to 15 September 1999.

Note 1

85. If this employer were a government body then the section 115 penalty would not apply. The employer would be liable for the former subsection 93(2) additional tax for late payment up to 30 June 1999 and the GIC (subject to paragraphs 8.3 and 51.2), from 1 July 1999 to 15 September 1999.

Note 2

86. The GIC is also applicable if the outstanding debt remains unpaid after 15 September 1999.'

Date of effect

23. This Addendum applies from its date of issue.

Commissioner of Taxation
25 August 1999

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