





# **Tax Laws Amendment (Improvements to Self Assessment) Act (No. 1) 2005**

**No. 75, 2005**

**An Act to amend the law relating to taxation, and for related purposes**

Note: An electronic version of this Act is available in SCALEplus  
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)



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## **An Act to amend the law relating to taxation, and for related purposes**

[Assented to 29 June 2005]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Tax Laws Amendment (Improvements to Self Assessment) Act (No. 1) 2005*.

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## **2 Commencement**

This Act commences on the day on which it receives the Royal Assent.

## **3 Schedule(s)**

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Shortfall interest charge**

### **Part 1—Shortfall interest charge**

#### *Taxation Administration Act 1953*

#### **1 Before Division 284 in Schedule 1**

Insert:

### **Division 280—Shortfall interest charge**

#### **Table of Subdivisions**

	Guide to Division 280
280-A	Object of Division
280-B	Shortfall interest charge
280-C	Remitting shortfall interest charge

#### **Guide to Division 280**

##### **280-1 Guide to Division 280**

The shortfall interest charge applies to shortfalls of income tax that are revealed when the Commissioner amends your assessment.

The charge is applied at a uniform rate that is lower than the general interest charge rate.

The Commissioner has a discretion to remit shortfall interest charge.

#### **Subdivision 280-A—Object of Division**

##### **Table of sections**

280-50	Object of Division
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## **280-50 Object of Division**

The object of this Division is to neutralise benefits that taxpayers could otherwise receive from shortfalls of income tax, so that they do not receive an advantage in the form of a free loan over those who assess correctly.

## **Subdivision 280-B—Shortfall interest charge**

### **Table of sections**

280-100	Liability to shortfall interest charge
280-105	Amount of shortfall interest charge
280-110	Notification by Commissioner

### **280-100 Liability to shortfall interest charge**

- (1) You are liable to pay \*shortfall interest charge on an additional amount of income tax that you are liable to pay because the Commissioner amends your assessment for an income year.
- (2) The liability is for each day in the period:
  - (a) beginning at the start of the day on which income tax under your 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 you notice of the amended assessment.
- (3) However, if an amended assessment reinstates all or part of a liability in relation to a particular that had been reduced by an earlier amended assessment, the period for the reinstated liability begins at the start of the day on which income tax under the earlier amended assessment was due to be paid, or would have been due to be paid if there had been any.

Note: See section 204 of the *Income Tax Assessment Act 1936* for when the amount of income tax and shortfall interest charge becomes due and payable. That section also provides for general interest charge on any part of the additional amount (plus any shortfall interest charge) that remains unpaid after the additional amount is due and payable.

- (4) Your liability to pay \*shortfall interest charge exists whether or not you are liable to any penalty under this Act.

- (5) Neither the Commonwealth nor an authority of the Commonwealth is liable to pay \*shortfall interest charge.

### **280-105 Amount of shortfall interest charge**

- (1) The \*shortfall interest charge for a day is worked out by multiplying the rate worked out under subsection (2) for that day by the sum of these amounts:
- (a) the additional amount of income tax; and
  - (b) the shortfall interest charge on that amount from previous days.
- (2) The rate is:

$$\frac{\text{*Base interest rate for the day} + 3 \text{ percentage points}}{\text{Number of days in the calendar year}}$$

### **280-110 Notification by Commissioner**

- (1) The Commissioner must give you a notice stating the amount of the \*shortfall interest charge you are liable to pay for the period applicable under section 280-100.
- (2) The notice may be included in any other notice given to you by the Commissioner.
- (3) A notice given by the Commissioner under this section is prima facie evidence of the matters stated in the notice.

### **Subdivision 280-C—Remitting shortfall interest charge**

#### **Table of sections**

280-160	Remitting shortfall interest charge
280-165	Commissioner must give reasons for not remitting in certain cases
280-170	Objecting against remission decision

### **280-160 Remitting shortfall interest charge**

- (1) The Commissioner may remit all or a part of an amount of \*shortfall interest charge you are liable to pay if the Commissioner considers it fair and reasonable to do so.
- (2) Without limiting subsection (1), in deciding whether to remit, the Commissioner must have regard to:
  - (a) the principle that remission should not occur just because the benefit you received from the temporary use of the shortfall amount is less than the \*shortfall interest charge; and
  - (b) the principle that remission should occur where the circumstances justify the Commonwealth bearing part or all of the cost of delayed payments.

### **280-165 Commissioner must give reasons for not remitting in certain cases**

The Commissioner must give you a written statement of the reasons for a decision not to remit an amount of \*shortfall interest charge you are liable to pay if you requested the Commissioner, in the \*approved form, to remit the amount.

Note: Section 25D of the *Acts Interpretation Act 1901* sets out rules about the contents of a statement of reasons.

### **280-170 Objecting against remission decision**

You may object, in the manner set out in Part IVC, against a decision of the Commissioner not to remit an amount of \*shortfall interest charge you are liable to pay on an additional amount of income tax if the amount of the charge that was not remitted is more than 20% of the additional amount of income tax.

## **Part 2—Consequential amendments**

### ***Income Tax Assessment Act 1936***

#### **2 Subsection 6(1)**

Insert:

*shortfall interest charge* means the charge worked out under Division 280 in Schedule 1 to the *Taxation Administration Act 1953*.

#### **3 Subsection 172(1)**

After “liability to tax”, insert “(the *earlier liability*)”.

#### **4 Paragraph 172(1)(a)**

Repeal the paragraph, substitute:

- (a) the amount by which the tax is so reduced is taken never to have been payable for the purposes of:
  - (i) provisions of this Act that apply the general interest charge; and
  - (ii) Division 280 in Schedule 1 to the *Taxation Administration Act 1953* (which applies the shortfall interest charge); and

#### **5 After subsection 172(1)**

Insert:

- (1A) However, if a later amendment of an assessment is made and all or some of the person’s earlier liability in relation to a particular is reinstated, paragraph (1)(a) is taken not to have applied, or not to have applied to the extent that the earlier liability is reinstated.

#### **6 Subsection 172(2)**

Omit “and additional tax under Part VII”, substitute “, additional tax under Part VII and shortfall interest charge”.

#### **7 Subsection 204(3)**

Repeal the subsection (including the notes), substitute:

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- (2) An amount of tax that a taxpayer is liable to pay because the Commissioner amends the taxpayer's assessment is due and payable on the 21st day after the day on which the Commissioner gives the taxpayer notice of the amended assessment.
- (2A) An amount of shortfall interest charge that a taxpayer is liable to pay is due and payable on the 21st day after the day on which the Commissioner gives the taxpayer notice of the amount of the charge.
- (3) If any of the tax or shortfall interest charge which a person is liable to pay remains unpaid after the time by which the tax or charge is due to be paid, the person is liable to pay the general interest charge on the unpaid amount for each day in the period that:
- (a) started at the beginning of the day by which the tax or shortfall interest charge was due to be paid; and
  - (b) finishes at the end of the last day on which, at the end of the day, any of the following remains unpaid:
    - (i) the tax or shortfall interest charge;
    - (ii) general interest charge on any of the tax or shortfall interest charge.

Note 1: The general interest charge is worked out under Division 1 of Part IIA of the *Taxation Administration Act 1953*, and the shortfall interest charge is worked out under Division 280 in Schedule 1 to that Act.

Note 2: For provisions about collection and recovery of income tax and related amounts, see Part 4-15 in Schedule 1 to the *Taxation Administration Act 1953*.

## **8 Subsection 251M(1)**

After "provision of this Act", insert ", or to pay shortfall interest charge".

## **9 Subsection 251M(1)**

Omit "or general interest charge", substitute ", general interest charge or shortfall interest charge".

## **10 Subsection 251M(1) (at the end of note 1)**

Add "and shortfall interest charge is worked out under Division 280 in Schedule 1 to that Act".

## **11 Subsection 251M(1) (note 2)**

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Before “charge”, insert “general interest”.

**12 Subsection 254(2)**

Omit “and additional tax under Part VII”, substitute “, additional tax under Part VII and shortfall interest charge”.

**13 Subsection 254(2) (at the end of note 1)**

Add “and shortfall interest charge is worked out under Division 280 in Schedule 1 to that Act”.

**14 Subsection 254(2) (note 2)**

Before “charge”, insert “general interest”.

**15 Subsection 255(4)**

Omit “and additional tax under Part VII”, substitute “, additional tax under Part VII and shortfall interest charge”.

**16 Subsection 255(4) (at the end of note 1)**

Add “and shortfall interest charge is worked out under Division 280 in Schedule 1 to that Act”.

**17 Subsection 255(4) (note 2)**

Before “charge”, insert “general interest”.

***Income Tax Assessment Act 1997***

**18 Subsection 20-25(2A) (heading)**

Repeal the heading, substitute:

*Remission of general interest charge or shortfall interest charge*

**19 Paragraph 20-25(2A)(a)**

Repeal the paragraph, substitute:

- (a) you have incurred expenditure that consists of \*general interest charge or \*shortfall interest charge; and

**20 Paragraph 25-5(1)(c)**

Repeal the paragraph, substitute:

(c) the \*general interest charge or the \*shortfall interest charge;  
or

**21 Subsection 721-10(2) (at the end of the table)**

Add:

70	Division 280 in Schedule 1 to the <i>Taxation Administration Act 1953</i> (shortfall interest charge)	the income year to which the shortfall interest charge relates
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**22 Subsection 995-1(1)**

Insert:

*base interest rate* has the meaning given by section 8AAD of the  
*Taxation Administration Act 1953*.

**23 Subsection 995-1(1)**

Insert:

*shortfall interest charge* means the charge worked out under  
Division 280 in Schedule 1 to the *Taxation Administration Act*  
*1953*.

***Taxation Administration Act 1953***

**24 Subsection 8AAB(4) (table item 9)**

After “tax assessed”, insert “and shortfall interest charge on that tax”.

**25 Subsection 250-10(2) in Schedule 1 (after table item 70)**

Insert:

73	shortfall interest charge	Division 280 in Schedule 1	<i>Taxation Administration Act 1953</i>
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**26 Subsection 340-10(2) in Schedule 1 (after table item 3)**

Insert:

3A	shortfall interest charge	Division 280 in this Schedule
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***Taxation (Interest on Overpayments and Early Payments) Act***  
***1983***

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**27 Subsection 3(1) (after subparagraph (a)(iii) of the definition of *relevant tax*)**

Insert:

- (iia) shortfall interest charge under Division 280 in Schedule 1 to the *Taxation Administration Act 1953*;

**28 Subsection 3(1) (subparagraph (a)(iv) of the definition of *relevant tax*)**

Omit “that Act”, substitute “the Tax Act”.

**29 After subparagraph 8A(1)(a)(i)**

Insert:

- (ia) shortfall interest charge under Division 280 in Schedule 1 to the *Taxation Administration Act 1953*; or

**30 After subparagraph 12A(1)(a)(i)**

Insert:

- (ia) remits, under section 280-160 in Schedule 1 to the *Taxation Administration Act 1953*, the whole or part of an amount that has been paid to the Commissioner in respect of shortfall interest charge payable under Division 280 in that Schedule; or

## **Part 3—Application**

### **31 Application**

The amendments made by this Schedule apply to amendments of assessments for the 2004-05 income year and later income years.

## Schedule 2—Penalties

### *Taxation Administration Act 1953*

**1 Paragraph 284-10(d) in Schedule 1**

Omit “and”.

**2 Paragraph 284-10(e) in Schedule 1**

Repeal the paragraph.

**3 Subsection 284-15(1) in Schedule 1**

After “argued for is”, insert “about”.

**4 Subsection 284-15(2) in Schedule 1**

After “court would be”, insert “about”.

**5 Paragraph 284-70(c) in Schedule 1**

Omit “or”.

**6 Paragraph 284-70(d) in Schedule 1**

Repeal the paragraph.

**7 Subsection 284-75(4) in Schedule 1**

Repeal the subsection.

**8 Subsection 284-80(1) in Schedule 1 (table items 5 and 6)**

Repeal the items.

**9 Subsection 284-90(1) in Schedule 1 (table item 8)**

Repeal the item.

**10 Subsection 284-215(3) in Schedule 1**

Repeal the subsection.

**11 Paragraph 284-220(1)(d) in Schedule 1**

Omit “5, 6 or 8”, substitute “5 or 6”.

**12 Section 298-10 in Schedule 1**

Omit “penalty. The notice may be included in any other notice the Commissioner gives to the entity.”, substitute “penalty and of the reasons why the entity is liable to pay the penalty. The Commissioner may do so in any other notice he or she gives to the entity. The Commissioner is not required to give reasons if he or she decides to remit all of the penalty.”.

**13 At the end of section 298-10 in Schedule 1**

Add:

Note: Section 25D of the *Acts Interpretation Act 1901* sets out rules about the contents of a statement of reasons.

**14 Subsection 298-20(2) in Schedule 1**

After “decision”, insert “and the reasons for the decision”.

**15 At the end of subsection 298-20(2) in Schedule 1**

Add:

Note: Section 25D of the *Acts Interpretation Act 1901* sets out rules about the contents of a statement of reasons.

**16 Application**

- (1) The amendments made by items 1 and 2 and 5 to 11 apply in relation to:
  - (a) for income tax—the 2004-2005 income year or a later income year; or
  - (b) for fringe benefits tax—the year of tax starting on 1 April 2004 or a later year of tax; or
  - (c) for other taxes—the year starting on 1 July 2004 or a later year.
  
- (2) The amendments made by items 12 to 15 apply in relation to notices given, and decisions made, after the commencement of those items in relation to:
  - (a) for income tax—the 2004-2005 income year or a later income year; or
  - (b) for fringe benefits tax—the year of tax starting on 1 April 2004 or a later year of tax; or
  - (c) for other taxes—the year starting on 1 July 2004 or a later year.

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*[Minister's second reading speech made in—  
House of Representatives on 17 March 2005  
Senate on 12 May 2005]*

(45/05)

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*Tax Laws Amendment (Improvements to Self Assessment) Act (No. 1) 2005*    *No. 75, 2005*

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