# *PS LA 2005/9 (Withdrawn) - Consolidated groups putting their affairs in order following enactment of legislation or release of public rulings and determinations.*

This cover sheet is provided for information only. It does not form part of *PS LA 2005/9 (Withdrawn) - Consolidated groups putting their affairs in order following enactment of legislation or release of public rulings and determinations.*

The scope of PS LA 2005/9 was limited to apply solely to measures announced by Government on 4 December 2003 and a range of public rulings that were being progressed by the ATO at that time. All the announced measures have now been legislated and the public rulings have been finalised. All matters in PS LA 2005/9 are covered in other LAPS, namely PS LA 2006/8, PS LA 2007/11 and PS LA 2011/12.

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# Practice Statement Law Administration

**PS LA 2005/9**

**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 ATO staff unless doing so creates unintended consequences. Where this occurs ATO staff must follow their Business Line's escalation process.*

**SUBJECT:** **Consolidated groups putting their affairs in order following enactment of legislation or release of public rulings and determinations.**

**PURPOSE:** **To set out policy and approaches to be applied by Tax Officers when considering remission of General Interest Charge and penalties where a consolidated group seeks an amendment to its 2002-03 or later income tax assessments.**

## BACKGROUND

1. During 2003 the Government announced a series of proposed amendments to the income tax laws to improve certainty for consolidated groups. On 4 December 2003 the Treasury released a set of papers providing further details about proposed law changes. Legislation to give effect to these Government announcements has been enacted progressively throughout 2003 and 2004 and will continue to be enacted progressively in respect of the measures outlined in those papers.

2. The Commissioner also issued a Press Release on 4 December 2003 (Media Release – Nat 03/117) advising consolidated groups about penalty and General Interest Charge (GIC) arrangements that would apply where a group acted reasonably in reliance on announced but not yet enacted law change proposals.

3. In that Press Release, the Commissioner acknowledged that:

   - with a major new measure like consolidation, mistakes will be made and it will take some time for the rules to bed down
   - during the transitional period (1 July 2002 to 30 June 2004) the ATO would adopt an approach to the remission of penalties consistent with that outlined in *Law Administration Practice Statement PS LA 2002/8 Administration of penalties under the new tax system*.

4. The Commissioner added that taxpayers who made a genuine attempt to meet their obligations would have any shortfall penalties remitted in full, unless there was clear evidence to the contrary. Taxpayers would be liable for the GIC except where it was remitted in accordance with the *Law Administration Practice Statement PS LA 2011/12 Administration of general interest charge (GIC) imposed for late payment or under estimation of liability*.

5. The Commissioner also stated that groups who act reasonably in accordance with the Treasury papers released on 4 December 2003 will not be subject to shortfall penalties should it transpire following passage of the relevant legislation that an amended assessment increasing their liability is required because of the final form of the legislation. Further, any GIC that may be attracted because of an amendment in this circumstance would be remitted to the base interest rate component only, provided the group lodges an amended return within a reasonable time of the law being passed.

6. Of course, if an amended assessment decreased their liability, a group would generally be entitled to interest on overpayment.

7. The ATO initiated a comprehensive public rulings and determinations program in April 2004 to provide binding ATO views on the interpretation and application of the consolidation-related legislation. Those rulings and determinations are being released progressively following the public consultation processes.

8. In addition, the *Consolidation Reference Manual* and other information products have been made available to taxpayers to help them better understand the consolidation regime and to provide them with guidance when making consolidation-related choices, decisions, and calculations. The manual is based on enacted law. This means that the proposed changes to the consolidation rules announced by the Government are not incorporated in the manual until such time as they become law.

## STATEMENT

9. This Practice Statement applies solely to the measures announced by Government on 4 December 2003 and the range of public rulings that are currently being progressed by the ATO.

10. The head company of a consolidated group may need to review its 2002-03 income tax affairs following the enactment of legislation or the release of final public rulings and determinations. It may also need to review later year income tax returns if legislation is enacted after the relevant returns have been lodged but the legislation retrospectively affects those years. In these circumstances, the time that the relevant legislation is enacted is the date that it receives Royal Assent and after that date a head company will be expected to seek an amendment.

11. A range of scenarios may arise that would cause the head company of a consolidated group to seek an amendment to its 2002-03 or later year income tax assessments. However, it is recognised that excessive compliance costs could be incurred if multiple reviews are undertaken because legislation is enacted progressively, or final public rulings and determinations are progressively released.

12. This Practice Statement therefore sets out the approach the Commissioner will take to the imposition of penalties and GIC, and what is to be considered a ‘reasonable time’ for lodging amendment requests.

## Application of penalties and General Interest Charge

13. Amended assessments arising from the final form of legislation or publication of the Commissioner's view of the law in public rulings and determinations will be subject to the application of penalties and GIC in accordance with the decisions by the ATO's Policy Implementation Forum on the administration of the consolidation measure during the period of legislative uncertainty; the terms of the Commissioner's 4 December 2003 Media release; Law Administration Practice Statements PS LA 2002/8 and PS LA 2011/12.

14. For convenience, the penalty and GIC arrangements which will apply to those amended assessments are set out below.

### *Matters where the taxpayer incorrectly applies law that was enacted by the time of lodgment of the 2002-03 return or is enacted prior to the lodgment of a relevant return in later years*

15. In relation to matters where the law was enacted at the time the head company lodged the 2002-03 income tax return, and the taxpayer incorrectly applied that existing law, tax shortfall penalties could apply (for example, where reasonable care was not exercised) but may be remitted in accordance with published ATO policy.

16. In these circumstances, taxpayers will be liable for the GIC at the normal statutory rates. This does not prevent a head company requesting remission of GIC. Any such application will be considered in accordance with the remission guidelines set out in PS LA 2011/12.

17. The same policies will apply in later years where relevant legislation is enacted prior to the return being lodged, and the taxpayer incorrectly applies that law.

### *Matters where a taxpayer relied upon announced but unenacted changes when lodging their 2002-03 return*

18. These circumstances apply, where, at the time when the head company lodged its 2002-03 return, there was limited information available in relation to the Government's announcements of 4 December 2003.

19. Where a head company lodged its 2002-03 income tax return and made a reasonable effort to anticipate the form and intent of the legislative enactments, and it becomes necessary to request an amendment because of the final form of the legislation then:

- tax shortfall penalties will not apply
- any GIC accrued in respect of the debit amendment will be remitted to the base interest rate up to the date of enactment of the new legislative measure, and
- provided the amendment request is lodged within a reasonable time, GIC will also be remitted to the base interest rate for the period up to lodgment of the amendment request. (If the taxpayer does not lodge an amendment request within a reasonable time, GIC will revert to the full statutory rate from the date of enactment of the new legislative measure.)

### *Matters where a taxpayer followed an ATO view provided in the Consolidation Reference Manual or similar product*

20. Situations may arise in relation to a particular matter where the Commissioner has published a clear view in the *Consolidation Reference Manual* (or similar product), the taxpayer has followed that view and:

- the Commissioner's view is altered by legislative change, or
- the Commissioner's view is altered by a subsequent public ruling or determination.

21. In such instances, if it becomes necessary for a head company to amend its assessment, then:

- tax shortfall penalties will not apply
- any GIC accrued in respect of the debit amendment will be remitted to NIL up to the date of enactment of the new legislative measure or publication of the final ATO public ruling or determination, and
- provided the amendment request is lodged within a reasonable period, GIC will also be remitted to NIL for the period up to lodgment of the amendment request.

### *Matters where a ruling or determination had issued*

22. Taxpayers already receive considerable protection under law if the matter is directly covered by a private ruling, public ruling or taxation determination at the time they lodge their income tax return.

### *Matters where a taxpayer waited for a public ruling*

23. Situations may arise where, even though the relevant law was in place at the time the consolidated group lodged its 2002-03 or later return, a taxpayer awaited the issue of a final public ruling or determination before lodging an amendment request. An example of such a situation is the application of section 104-530 of the *Income Tax Assessment Act 1997* (ITAA 1997) - CGT event L7. This section is the subject of a number of different determinations upon which taxpayers may need to rely in order to appropriately apply the legislative provisions.

24. Such situations will need to be considered in light of:

- the clarity of the legislative provisions and accompanying explanatory memorandum
- the materiality of the public ruling or determination to the matters subject to the amendment request
- the extent of guidance provided by the ATO prior to the issue of the ruling or determination (whether in the *Consolidations Reference Manual* or elsewhere) in relation to those matters, and
- the scheduled date of a public ruling or determination.

25. However, in the context of consolidation, provided it was reasonable to wait a short time for the ruling or determination, then:

- tax shortfall penalties may apply but may be remitted in accordance with published ATO policy
- any GIC accrued in respect of the debit amendment will be remitted to the base interest rate up to the date of publication of the ATO public ruling or determination, and
- provided an amendment request is lodged within a reasonable period GIC will also be remitted to the base interest rate for the period up to lodgment of the amendment request.

## Reasonable period for seeking amended assessments

26. For the purposes of any of the scenarios set out in this Practice Statement, a consolidated group will be taken to have sought an amendment within a reasonable period if it lodges a request for amendment to its 2002-03 or later year income tax assessment by the due date for lodgment of its next income tax return. This approach applies to amended assessments arising from changes to legislation that give effect to Government policy announcements made during 2003 and later years, and final ATO views expressed in rulings and determinations. Further explanation is provided below.

## EXPLANATION

## Defining a reasonable time – allowing consolidation annual amendments.

27. The underlying purpose of allowing consolidation annual amendments is to reduce the administrative burdens and compliance costs that would otherwise arise for taxpayers from having to undertake multiple reviews of the tax calculations and, if necessary, to apply for multiple amendments following the passage of tranches of legislation giving effect to the Government's announcements made on 4 December 2003 (and announcements made earlier in 2003). A similar situation will be faced by taxpayers in considering the extent to which the many public rulings and determinations to be issued this year also require a re-examination of positions taken in 2002-03 and later year assessments.

28. Taking a head company's 2002-03 income tax assessment as an example, the proposal would mean that any law changes or public rulings and determinations affecting that assessment may be dealt with by way of a request for amended assessment made by the due date for lodgment of the head company's 2003-04 income tax return. Similarly any further law changes or public rulings or determinations affecting the head company's 2002-03 income tax assessment, made or issued after lodgment of the 2003-04 return, would be dealt with by a request for amended assessment lodged by the due date of the head company's 2004-05 income tax return. A similar process would be followed for 2003-04 income tax assessments. This would reduce the compliance burden and cost of undertaking multiple assessment reviews.

29. It is recognised that it may be difficult for taxpayers to adequately assess the impact of legislative changes made or rulings released shortly before the consolidation annual amendment request is due to be lodged. A 'cut off' date will therefore be allowed where a head company is preparing to lodge an amendment for a prior year return at the same time as it lodges the current return.

30. Under this approach, when formulating the consolidation annual amendment request, a head company that lodges in January may lodge on the basis of their understanding of the law as at 30 November. Head companies that have different lodgment due dates may lodge on the basis of their understanding of the law up to six weeks prior to their due date for lodgment. Of course, any law impacting on their returns in the intervening period will need to be taken into account in the next annual amendment. Head companies may at this time also want to take into account any ATO views that were published during the intervening period.

## Administrative penalties

31. Subsection 284-75(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA) imposes a penalty on an entity where:

- a statement is made to the Commissioner
- the statement is false or misleading in a material particular, and
- there is a shortfall amount as a result of the statement.

32. Subsection 284-215(2) of Schedule 1 to the TAA reduces the shortfall amount, and therefore the penalty, to the extent that the entity has taken reasonable care in making the statement. All or part of the penalty can be remitted under section 298-20 of that Schedule.

33. The Commissioner has publicly stated that during the transitional period for consolidation (1 July 2002 to 30 June 2004), the ATO will adopt an approach to the remission of penalties consistent with that outlined in Law Administration Practice Statement PS LA 2002/8. A head company that has made a genuine attempt to comply with its income tax obligations will generally have any shortfall penalties remitted in full. The Commissioner's media release of 4 December 2003 explained that this approach would also extend to groups who acted reasonably in accordance with the Treasury papers released on that date. Law Administration Practice Statement PS LA 2004/5 outlines the Commissioner's remission policy for the years after the 'transitional' phase ends.

## General Interest Charge

34. Section 8AAB of the TAA lists the various provisions and taxation laws under which a taxpayer may be liable to pay the GIC. The GIC is commonly imposed when a taxpayer fails to pay a tax debt by the due date.

35. The income tax of an entity affected by this practice statement becomes due and payable on the statutory due date provided in former subsection 204(1A) of the *Income Tax Assessment Act 1936* (ITAA 1936) or subsection 5-5(4) of the ITAA 1997. The statutory due date is usually the first day of the sixth month following the year of income, which for most entities is 1 December. If any income tax remains unpaid after the statutory due date, the entity is liable to pay the GIC on that unpaid amount: former subsection 204(3) of the ITAA 1936; section 5-15 of the ITAA 1997.

36. Section 8AAG of the TAA provides the Commissioner with a general power to remit all, or part of, any GIC payable by a taxpayer. A detailed explanation of the policy on GIC remissions is contained in PS LA 2011/12.

37. The Commissioner's media release of 4 December 2003 explained the ATO's approach to the remission of GIC in broad terms, allowing for remissions to the base interest rate where a taxpayer has made a reasonable effort to anticipate the measures announced by the Government on that date. This approach is consistent with the ATO's approach to the administrative treatment of retrospective legislation, more details of which are available on the ATO's website.

## Processing amendment requests and GIC remissions

38. In accordance with subsection 170(6A) of the ITAA 1936, an entity must apply for an amendment of its assessment in the approved form. Requests which contain the information and format outlined in paragraphs 39 and 40 will be in the approved form.

39. When a consolidated group lodges an amendment request, it should provide sufficient detail to make it clear whether any of the scenarios set out in this Practice Statement are applicable. In particular, it should set out as far as practicable the following information:

- the extent to which the total amendment request relates to the matters announced by the Government on 4 December 2003
- the relevant items to which each part of the amendment request relates
- whether any part of the request relates to items where the group contends that, at the time of lodging its 2002-03 return, it followed a clear ATO view in the *Consolidation Reference Manual* (or similar product) and in relation to which the ATO view has now changed (whether as a result of legislative change or the release of a Ruling or determination), and
- whether it is requesting remission of shortfall penalties and GIC, and what paragraph of this Practice Statement is relied upon in support of that request.

40. The request should be headed

*CONSOLIDATION ANNUAL AMENDMENT REQUEST*

*REQUEST FOR REMISSION OF GIC AND/OR SHORTFALL PENALTY*

41. To facilitate the processing of amendment requests and the remission of penalties and GIC, an entity should lodge their application with:

- the Key Client Manager (where one has been assigned) for the head company of a consolidated group, or
- in any other case, the Consolidation Unit in ATO Operations. The address is available on the ATO's Consolidation website.

42. As the processing of the amendment request will automatically generate a liability to GIC under the law, officers responsible for considering the amendment should ensure the simultaneous processing of GIC impositions and remissions, having regard to the principles outlined in this practice statement.

43. Under Part IIIA of the *Taxation (Interest on Overpayments and Early Payments) Act 1983*, the Commissioner may be liable to pay interest on the amount of GIC remitted to an entity where the remission is processed more than 30 days after a request for remission is made.

## Review Rights

44. Whenever the ATO makes a decision on whether or not to remit an amount of administrative penalty or GIC, officers will advise the head company of the decision and the reasons for the decision. Where a head company considers that the administrative penalty has been incorrectly assessed by the ATO, the taxpayer may object to the assessment in the manner set out in Part IVC of the TAA. Further, a head company that is aggrieved by the Commissioner's decision on the remission of GIC may seek judicial review of that decision under the *Administrative Decisions (Judicial Review) Act 1977.*

## Amendment history

| Date of amendment | Part | Comment |
|---|---|---|
| 16 August 2011 | Legislative & policy reference update | References to Chapter 93 and the ATO Receivables Policy changed to PS LA 2011/12; added in reference to new provisions: subsection 5-5(4) of the ITAA 1997; section 5-15 ITAA 1997. |
| 10 May 2011 | Contact details | Updated. |
| 9 November 2010 | Contact details & general style update | Contact details updated and reference to Tax Office changed to ATO. |

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|---|---|
| Subject references | administrative penalties<br>General Interest Charge<br>GIC<br>remission of penalty<br>remission of GIC |
| Legislative references | *Income Tax Assessment Act 1936* subsection 170(6A)<br>*Income Tax Assessment Act 1936* subsection 204(1A)<br>*Income Tax Assessment Act 1936* subsection 204(3)<br>*Income Tax Assessment Act 1997* subsection 5-5(4)<br>*Income Tax Assessment Act 1997* section 5-15<br>*Income Tax Assessment Act 1997* section 104-530<br>*Taxation Administration Act 1953* section 8AAB<br>*Taxation Administration Act 1953* section 8AAG<br>*Taxation Administration Act 1953* subsection 284-75(1) of Part 4-25 of Schedule 1<br>*Taxation Administration Act 1953* subsection 284-215(2) of Part 4-25 of Schedule 1<br>*Taxation Administration Act 1953* section 298-20 of Part 4-25 of Schedule 1<br>*Taxation (Interest on Overpayments and Early Payments) Act 1983* Part IIIA.<br>*Administrative Decisions (Judicial Review) Act 1977*. |
| Related public rulings | |
| Related practice statements | PS LA 2002/8 Administration of penalties under the new tax system<br>PS LA 2004/5 Administration of shortfall penalties under the new tax system<br>PS LA 2011/12 Administration of general interest charge (GIC) imposed for late payment or under estimation of liability |
| Other references | *ATO Receivables Policy*<br>*Consolidation Reference Manual* |
| File references | TRIM 05/3566 |
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| Other Business Lines consulted | OCTC; LB&I; OPS; OCOM; SB |