PS LA 2006/8 - Remission of shortfall interest charge and general interest charge for shortfall periods

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PS LA 2006/8
Remission of shortfall interest charge and general interest charge for shortfall periods

This Law Administration Practice Statement provides guidelines on the remission of shortfall interest charge and general interest charge accrued during shortfall periods.

This practice statement is an internal ATO document, and is an instruction to ATO staff.

Taxpayers can rely on this practice statement to provide them with protection from interest and penalties in the following way. If a statement turns out to be incorrect and taxpayers underpay their tax as a result, they will not have to pay a penalty. Nor will they have to pay interest on the underpayment provided they reasonably relied on this practice statement in good faith. However, even if they don't have to pay a penalty or interest, taxpayers will have to pay the correct amount of tax provided the time limits under the law allow it.

1. What this practice statement is about

1A. This practice statement sets out circumstances in which you should consider remitting interest charges that are imposed on shortfalls and accrue during the shortfall period.[1] Where this practice statement mentions 'interest charges' it is talking about:

- Shortfall interest charge (SIC)
- 'Shortfall' general interest charge (GIC) – that is, GIC accrued during the shortfall period on the shortfall amount, and
- Interest and GIC imposed under section 170AA of the *Income Tax Assessment Act 1936* (ITAA 1936).

1B. A summary of the relevant legislation and the main provisions relating to the imposition of interest charges is provided at the end of this practice statement.

Note: This practice statement does not apply to:

- Remission of GIC that is not shortfall GIC (generally GIC for late payment)
- Remission of shortfall GIC imposed on superannuation guarantee charge For guidelines on these, see PS LA 2011/12
- *Remission of General Interest Charge*.[2]

[1] A shortfall for the purposes of GIC will be the same as a shortfall amount for statement penalties as defined in section 284-90 of schedule 1 to the Taxation Administration Act 1953 (TAA). However, for SIC the amount a taxpayer is liable to pay because the Commissioner amends their assessment, which is used for SIC calculations, is not necessarily the same as a shortfall amount. Accordingly, the term shortfall rather than shortfall amount has been used in this practice statement.

[2] The SGC is an amount collected by the Commissioner on behalf of employees. GIC imposed on unpaid SGC is payable to the employees' superannuation funds to compensate the employees for loss of earnings that result when the SGC is paid late. Therefore it is not appropriate for the remission guidelines provided in this practice statement to apply to GIC imposed in respect of unpaid SGC.

2. Why do we have interest charges?

2A. Taxpayers have a responsibility to lodge, report correctly and pay their tax debts on time. GIC and SIC are intended to encourage the timely payment of tax. They also deny late payers, including people who have paid late because they have reported too little in tax or claimed too much, an advantage over those who pay on time. Taxpayers who have underpaid have had the use of those moneys.

2B. Interest charges also serve to compensate the Australian Government and the community for the impact of late payments.

3. What is the shortfall period?

3A. The shortfall period starts on the day the tax debt was due for payment (or would have been due for payment had the shortfall been correctly reported) and ends on the day before the Commissioner gives the taxpayer a notice of assessment which includes the shortfall amount (or an equivalent notification for taxes other than income tax).

3B. *Example: Taxpayer has an income tax liability for the 2004-05 income tax assessment of $500 due for payment on 21 November 2005. The taxpayer requests amendment of the assessment on 1 March 2006. An amended notice of assessment is given to the taxpayer on 20 March 2006 increasing the tax payable by $125 to $625. The shortfall amount is $125 and the shortfall period is from 21 November 2005 to 19 March 2006.*

4. What is the relationship between shortfall interest charges and penalties?

4A. Interest charges are intended to restore a fair balance between taxpayers, as mentioned above. They apply regardless of whether or not the taxpayer is liable to any administrative penalty, and do not depend upon, nor imply, culpability on the part of the taxpayer.

4B. Shortfall penalties, however, relate to the taxpayer's behaviour leading up to and making a statement that results in a shortfall amount. Imposition of a shortfall penalty or reduced or remitted shortfall penalty does not mean a reduction or remission of the shortfall interest charge will be given.

5. Can we consider remitting shortfall interest charges?

5A. Yes, the Commissioner may remit all or part of the shortfall interest charges where the Commissioner considers it fair and reasonable to do so. The legislation for SIC says that when we do so however, we must have regard to the principle that remission should occur where the circumstances justify the Commonwealth bearing part or all of the cost of delayed payments.[3]

5B. The extent of any remission must take into account the individual circumstances of a case and the extent to which factors beyond the taxpayer's control were responsible for the size and duration of the shortfall.

6. Who can initiate the possible remission of shortfall interest charges?

Audit cases

6A. The Commissioner will make a GIC or SIC remission decision in audit cases where there is a shortfall period regardless of whether the taxpayer requests remission or supplies information to the ATO, except for fully automated data matching audit cases. Taxpayers can supply information to support a remission request or request remission at any time during the audit.

6B. Automatic amendment and fully automated data matching cases are not reviewed by a case officer and the ATO is generally not in a position to consider remission. However, a taxpayer may request remission once they receive the amended notice of assessment, which includes the SIC amount or an equivalent notification. At this point consideration will be given to the circumstances relevant to remission and remission may be granted.

Amendment requests

6C. Where the taxpayer has requested an amendment and a shortfall occurs because of the amendment, the Commissioner may remit in limited circumstances to address processing delays or certain offsetting credits without the taxpayer providing any information.

6D. Taxpayers are required to contact the ATO and provide information relevant to remission for further remission. They can request remission at any time. The taxpayer can request remission or provide information for the Commissioner to consider remission by calling or writing to the ATO.

6E. If a remission decision has been made during an audit, the taxpayer will need to write to the ATO requesting a review of the remission decision.[4]

7. When should shortfall interest charges be remitted?

7A. Examples of particular circumstances in which remission may or may not be appropriate are provided in this practice statement. These are not exhaustive, and are not intended to limit the discretion to otherwise remit shortfall interest charges when it is fair and reasonable to do so.

7B. Also, you should note that more than one circumstance might apply to an individual case.

8. What is the base rate?

8A. GIC and SIC accrue each day on a daily compounding basis. The interest charge rates are set by law and are reviewed and generally change every three months. The law uses an established bank rate calculation as the **base rate** for interest charges. A further 3 percentage points is added to the base rate for SIC rate, and 7 percentage points for GIC. See section 34 for more details.

8B. Remission to base rate is the recommended outcome in some situations in this practice statement..

9. *Partial remission for 2003-04 and earlier income years*

9A. SIC only applies to income shortfalls for the 2004-05 and later income years. GIC applies to income shortfalls for earlier years. This can have the effect of being inequitable to those taxpayers whose assessments were amended before the introduction of the SIC, and at odds with Parliament's decision that the GIC rate was excessive during a shortfall period.

9B. Therefore, it is considered fair and reasonable that shortfall GIC (for income tax shortfalls only) generally be remitted to the SIC rate for the period from 1 July 2005 to the day before the amended assessment is issued.

[3] Paragraph 280-160(2)(b) of Schedule 1 TAA.

[4] Where a remission decision has been made in writing to the taxpayer, full remission has not been given, and there are no objection rights, the taxpayer may request an informal review of the decision.

9C. *Example: An amendment to Service Pty Ltd's 2002-03 income tax assessment issues on 15 March 2006. Shortfall GIC accrues from 1 December 2003.*

9D. *The GIC would be remitted to the SIC rate for the period from 1 July 2005 to 14 March 2006. Further remission during the shortfall period may occur if some other circumstance exists which would warrant further remission in accordance with the guidelines contained in this practice statement.*

9E. GIC applies to most other taxes for the shortfall period. Remission to the SIC rate does not apply for these taxes.

10. *Where there is a delay in commencing an audit*

10A. The timeframe for commencing an audit after self-assessment by a taxpayer depends on the allocation of ATO resources.

10B. As a rule of thumb, it could be expected that an audit will commence by halfway through the relevant period of review. However, audits may commence later, for example, where information is provided to the ATO at a later time.

10C. Where there has been an unreasonable delay in the ATO allocating a case for audit, it may be appropriate for you to remit shortfall interest charges to the base rate for the period of the delay, that is, usually from 50% of the period of review to the day prior to the commencement of the audit. If the audit only commenced because of new information received after halfway through the period of review, remission to base rate may be more appropriate from the later date.

Note: If an unlimited period of review applies, you should adopt the standard period of review applicable to the year being adjusted. For Pay as you go withholding, you should use a nominal period of review of four years.

11. *Where the expected audit completion date was exceeded*[5]

11A. When notifying a taxpayer of an intention to audit, the ATO will generally provide an expected audit completion date in that notice.[6] This date is based on cycle timeframes we have set for specific types of audit activity, or a shorter time having regard to the circumstances of the case.

11B. Providing the scope of the audit remains much the same throughout the course of the audit, you may remit shortfall interest charges to the base rate for the period the audit goes beyond the expected completion date.

11C. This will not apply, however, if the taxpayer has caused the delay unreasonably, or obstructs the progress of the audit, for example, by repeatedly failing to:

- keep appointments or supply information, or
- respond adequately to reasonable requests for information. This will include excessive or repeated delays in responding, not replying to the request for information, giving information that is not relevant or does not address all the issues in the request or supplying inadequate information.

11D. *Example: The GST record keeping audit cycle timeframe is 30 days. If the GST audit takes 40 days, remission to base rate for the 10 days exceeding the cycle time may be appropriate.*

11E. *Example: A specific GST audit of a taxpayer's business is commenced by a GST case office on 23 June 2014. The audit cycle timeframe is 90 days. However, on 26 July 2014, 33 days into the audit, it becomes apparent to the auditor that there are several risks involved in the case and that the work is more appropriately considered a GST comprehensive audit with a 240 days cycle timeframe. On 28 August 2014 the case is transferred to a GST field auditor for completion. The cycle timeframe will extend to 240 days from 23 June 2014. Any remission for exceeding the expected audit completion date will be from 18 February 2015, 240 days after the audit commenced.*

11F. *Example: An audit commenced on 10 February 2015 with a cycle time of 180 days. After initial discussions, the auditor concludes that a further risk has been identified and needs to be examined, the taxpayer has advised they will need some time to obtain some of the records, and the factual situation for some transactions are quite complicated. After discussions with the taxpayer regarding the information needed, it is agreed that the audit cycle time will be extended from 9 August 2015 to 13 October 2015. The extended audit completion date or cycle time, while agreed to by the taxpayer, does not change the remission principle, and remission to base rate will generally be given from 9 August 2015*

[5] This ground generally applies after 1 July 2006, when cycle times for audits were first published. See paragraph 14 below in relation to audits on large corporates.

[6] There will be some circumstances when notification will not be appropriate, for example, where it is suspected a case involves fraud or evasion or other criminal activity.

11G. *Example: A tax audit for PAYG withholding amounts and superannuation commenced. It has an audit cycle timeframe of 120 days. The taxpayer is notified of the liability for the PAYG amounts on day 110 and of superannuation guarantee liability on day 135. Although the audit continued to day 135, the shortfall period for the PAYG withholding amounts ceased on day 110, and so the expected audit completion date is not exceeded, and it is not necessary to consider remission of GIC on this ground. However, the GIC that accrued on the shortfall amount for the superannuation guarantee liabilities would be remitted to base rate from day 121 to day 135 for exceeding the expected audit completion date.*

11H. It may still be appropriate for you to remit shortfall interest charges for periods during the cycle timeframe if there are other grounds for remission. But if you do so, you may need to take defer remission for the period beyond the expected completion date.

11I. *Example: An audit commences on 1 February 2012 and has an expected audit completion date of 30 June 2012. The audit is not completed until 30 September 2012. Due to an unreasonable ATO delay (see section 12 for further explanation of this ground), full remission is granted for the period 1 April 2012 to 31 May 2012. Normally remission to the base rate would be applicable for the three month period which exceeded the expected audit completion date – 1 July 2012 to 30 September 2012. However, as full remission has already been granted for a period of two months, remission to the base rate is only appropriate for one month – 1 September 2012 to 30 September 2012.*

11J. *Example: Company 1 Pty Ltd claimed losses in its 2009-10 income tax return. The auditor asked for a copy of the loss schedule and other information, which should have been prepared in order to lodge the return, to be provided within 28 days. On the 30th day following the request, Company 1 Pty Ltd advised that it had overlooked the enquiry, and would deal with it quickly. Fourteen days later the auditor contacted the company and was unable to speak with anyone who knew about the request. The auditor then sent a further request for information to the company. At the end of the 28 day period after the second request, the auditor received a copy of the profit and loss statement for the 2009-10 year but not the loss schedule and the remaining information was only partially provided. This would be a delay due to the taxpayer's conduct. Remission under this section would not be warranted unless the taxpayer could adequately explain the delay and lack of information being provided.*

11K. If you are a case authorising officer for an audit case that is completed after the expected audit completion date, you must undertake a full review of the reasons for the delay to determine whether further remission grounds apply.

12. *Unreasonable delay by ATO*

12A. Even if an audit is completed before the audit completion date, remission of interest charges might still be appropriate if there have been unreasonable delays or periods of inactivity during the audit that were outside the control of the taxpayer.

12B. As a general rule, where there has been no action on a case for 30 days or more and it was possible for the case to progress during that time, you should remit the shortfall interest charges for the period of unreasonable delay (the number of days exceeding 30 consecutive days).

12C. *Example: An audit of John's 2011-12 income tax return commences on 1 July 2013 with an expected audit completion date of 27 November 2013.*

12D. *On 2 September 2013 the auditor seeks more information from the taxpayer, which requires a response by 30 September 2013.*

12E. *By 30 September 2013, all the necessary information to determine a shortfall has been received and interviews have occurred.*

12F. *On 2 October 2013 the auditor submits his final audit report to his team leader to authorise the case result. The team leader does not review the submission until 15 November 2013 and then authorises the result without change. The amendment issues on 20 November 2013.*

12G. *Assuming there are no other circumstances relevant to the remission of interest charges, full remission of the SIC will be appropriate from 2 November 2013 to 15 November 2013 (the total period of inactivity which exceeds 30 days).*

12H. The cycle timeframe is set to enable ATO auditors to complete the audit as well as carry out other appropriate duties that may occur concurrently in the majority of cases. Therefore, provided the audit completion date is met, ordinary delays of up to 30 days where the auditor did not work on the audit would not, of themselves, warrant remission.

13. *Delay in obtaining information from a third party*

13A. Where either the ATO or the taxpayer experiences delay when actively seeking information from a third party and this information is not otherwise available to the taxpayer, you may remit interest charges to the base rate for any excessive period of the delay.

13B. However, you should generally not grant remission if the third party is an associate of the taxpayer or is not dealing at arms-length with the taxpayer, unless the delay is reasonable and beyond anyone's control.

13C. *Example: A tax agent is unable to provide the information requested for several weeks due to their commitments under their tax agent lodgment program and other compliance obligations. This delay is attributable to the taxpayer. However if the delay is reasonable, interest charges may be remitted to the base rate for the period of delay.*

14. *Longer resolution times due to complexity of issues*

14A. Where the issues underlying a shortfall are complex, it may naturally take the ATO longer to come to a view as to the proper operation of the law.

14B. Resolution of the issues, including through referral to specialists, does not in itself constitute a delay that would warrant remission of interest charges. The cycle timeframes for the audit generally factor in issues of complexity and the time taken for their resolution.

14C. However, you should consider remission to the base rate where the resolution of the issue took longer than would be reasonably expected and resulted in the case exceeding the expected audit completion date.

15. *Large Corporate audits – delay based upon a reasonable time for completion of audit*

15A. For Large Corporate audits that commenced on or after 1 July 2005, you should remit shortfall GIC and SIC to the base interest rate for the period that the audit extends beyond two years.[7]

15B. The only exceptions will be cases involving blatant obstruction, delays or obfuscation.

16. *Cases involving fraud or evasion*

16A. Where a case involves fraud or evasion, you should not normally remit the shortfall interest charges. This is so notwithstanding that there may have been some delay attributable to the ATO or that the expected audit completion date is exceeded.

16B. Remission in these cases would still be considered on a case by case basis, but having due regard to the circumstances giving rise to the shortfall. In such cases, the taxpayer would have been aware of the potential shortfall and could have taken steps to reduce their exposure to interest charges.

[7] With the exception of transfer pricing audits subject to a Mutual Agreement Procedure that are covered by other arrangements in Law Administration Practice Statements PS LA 2011/1 *ATO's Advance Pricing Arrangement Program*, PS LA 2011/4 *Recovering disputed debts*, PS LA 2011/12 *Remission of General Interest Charge* and Taxation Ruling TR 2000/16.

17. *Where the delay is outside the taxpayer's control*

17A. It may be appropriate for you to grant full remission for the period of a delay where the taxpayer can demonstrate the delay in supplying information or documents for the audit was directly attributable to:

- natural disasters (such as flood, fire, drought, and earthquake)
- other disasters that may have, or have had, a significant impact on the taxpayer or region, or
- the serious illness of the taxpayer or key personnel where there is no other person that could have mitigated the length of the delay.

17B. However, it would not be appropriate to remit the interest charges where the reasons for the delay are within the taxpayer's control – for example, where the taxpayer takes an extended vacation after the commencement of the audit. In that example though, if the taxpayer had booked the vacation prior to the commencement of the audit or needed to travel overseas for business purposes, you could take those circumstances into account in considering remission to the base rate.

18. *Where the taxpayer requires further time*

18A. Taxpayers may request a deferment of action during an audit, for example, by requesting significant further time to supply information. If the circumstances indicate that the extra time is necessary, you may remit the shortfall interest charges to the base rate for the period of extra time.

18B. However, where the ATO experiences delay in obtaining information because the taxpayer has been unwilling or unable to supply information that they should have, or that they are readily able to obtain, you should generally not grant remission.

18C. Where, for example, at the request of the management of a taxpayer group, amended assessments are deferred until the completion of the audit of the group, interest charges would not normally be remitted for the period of that particular delay.

19. *Claims for legal professional privilege or access to professional advisors' working papers*

19A. Taxpayers may seek advice from professional advisors on issues such as the application of legal professional privilege to certain documents or the right of access to professional accounting advisors' working papers. Such claims form part of the normal dealings of a taxpayer with the ATO. Should reasonable claims lead to the case being completed beyond the expected audit completion date, then interest charges would generally be remitted to the base rate for the period beyond the expected completion date attributable to obtaining that advice.

20. *'Unprompted' voluntary disclosure*

20A. Where a taxpayer makes a voluntary disclosure of a shortfall amount prior to being told that an audit or review is commencing (often referred to as a self-amendment request), the disclosure itself is not a ground for remission.

20B. A taxpayer, who has self-assessed incorrectly, even if reasonable care was exercised, should not end up in a more beneficial position than a taxpayer who has self-assessed and reported and paid correctly.

20C. However, there may be some cases where the circumstances surrounding the voluntary disclosure will make it fair and reasonable to remit interest charges. Where remission on the basis of a voluntary disclosure is considered appropriate, it will generally be to the base rate.

20D. When considering any remission of shortfall interest charges on the basis of a voluntary disclosure, you should have regard to the following:

- the timeliness of the disclosure after the error was first detected
- whether the disclosure was made before being told of the commencement of an examination, or publication of a ATO initiative which may have led to the discovery of the shortfall by the Commissioner (remission is more unlikely if such notification or publication had occurred)
- whether the Commonwealth in any way contributed to the taxpayer taking their original position
- the size of the shortfall, either in monetary terms or in relation to the whole of the taxpayer's affairs, and
- the taxpayer's compliance history, including the number of times a taxpayer has had to disclose shortfalls following an initial self-assessment of liability.

20E. *Example: Big Co. Ltd. has an internal assurance practice of reviewing its previous income tax return in preparation for lodging its next return. As part of this process Big Co. Ltd identifies a shortfall and immediately lodges an amendment request. The ATO was not conducting an audit. Remission of interest charges to the base rate would be appropriate in this case.*

21. *Delay in processing requests for amendment by taxpayers*

21A. The ATO has published service commitments for processing amendments or adjustments (where the taxpayer voluntarily seeks to correct an error in an earlier return or statement).[8]

21B. Once the ATO has all information needed to process the amendment or adjustment, the Commissioner will generally remit in full the shortfall interest charges for any delay beyond the published standard.

21C. *Example: Raji lodges a 2013-14 amendment request on 2 January 2015. All the information is included in the request. This amendment is lodged in writing, and should be processed within 50 business days of receipt, that is by 13 March 2015. Because of a backlog in work, the amended notice of assessment is not given to the taxpayer until 31 March 2015. Remission in full should occur for the period from 14 March 2015 to 30 March 2015.*

21D. This does not apply to a voluntary disclosure that is made after the taxpayer has been told a review or audit has started or will start for that period.

22. *Advance payment of shortfall amount*

22A. Paying the shortfall amount before the issue of an amended assessment does not stop SIC accruing.[9] That is, the SIC is calculated to the day before the amended assessment is given to the taxpayer and on the total shortfall, regardless of whether the shortfall amount has been paid in full or in part before that date.

22B. However, any benefit a taxpayer may have from not paying the shortfall amount ceases when full payment is made.

22C. Therefore, you should remit the SIC for the period after payment in full, reduced by the amount of any interest on early payment (IEP)[10] that accrues to the taxpayer between the date of payment and the day before the notice of amended assessment is given to the taxpayer. Where a part payment of the shortfall has been made, a partial remission reflecting the portion of the shortfall paid will be given for the post-payment period.

22D. *Example: After discovering a shortfall, on 1 July 2006 Compliant Pty Ltd lodged an amendment request and on the same date made payment of $1,000 – the tax payable on the shortfall. An amended assessment for the $1,000 shortfall is given to the taxpayer on 1 August 2006 and is due for payment on 22 August 2006.*

[8] These service standards are published on our external website, under 'Our commitments to service'.

[9] Where a shortfall amount is subject to shortfall GIC, making a payment will stop the accruing of GIC to the extent of the payment. The shortfall amount has a due and payable date that is in the past rather than the future, and GIC accrues on a daily basis.

[10] See the *Taxation (Interest on Overpayments and Early Payments) Act 1983.* For further information refer to Law Administration Practice Statement PS LA 2011/23 *Credit interest*, which discusses the credit interest regime administered by the Commissioner and details when interest is payable.

22E. *Under the law SIC on the $1,000 shortfall is payable for the period from 1 December 2005, the due date of Compliant Pty Ltd's original assessment, to 31 July 2006, the day before the notice of amended assessment is given to the taxpayer.*

22F. *However, as payment of the shortfall was made on 1 July 2006, remission of SIC for the period 1 July 2006 to 31 July 2006 is justified.*

22G. As Compliant Pty Ltd is entitled to interest on early payment for the period from 1 July 2006 (the day the early payment was made) to 22 August 2006 (the due date of the amended assessment) the amount of the SIC remission would be determined as follows:

> *SIC for period 1 July 2006 to 31 July 2006 less interest on early payment entitlement for period 1 July 2006 to 31 July 2006.*

23. *Income incorrectly apportioned between taxpayers*

23A. Where income has been incorrectly apportioned between taxpayers and one taxpayer has paid the tax on that income, some remission may be appropriate when the amendment to correct the error occurs.

23B. Having regard to the principles behind the imposition of interest charges though, any remission would be to the extent of offsetting the disadvantage (if any) to the revenue, and take into account the timing of the payment, any entitlement to interest on overpayment, and the extent of the shortfall.

23C. *Example: John and Mary have a joint bank account and in the 2012 income year receive $5,200 interest. Initially John declared all the interest in his return. Both John's and Mary's assessments are due on 21 November 2012. They have the same marginal rate of tax.*

23D. *Subsequently both John and Mary sought to have their 2012 assessments amended; John by reducing his taxable income by $2,600 and Mary by increasing hers by $2,600. The amended notices of assessment issued on 1 September 2013. Mary's shortfall is $819 ($2,600 × 31.5%, 31.5% being Mary's marginal tax rate of 30% plus Medicare levy of 1.5%).*

23E. *Mary would be liable to SIC on $819 for the period from 21 November 2012, the due date of her original assessment, to 31 August 2013, the day before notice is given of the amended assessment. Assuming a SIC rate of 6.6% per annum during this period, SIC of $56.67 will be imposed.*

23F. If John had paid his original assessment on 21 November 2012, then some remission of Mary's SIC is warranted for the period from when John had made payment. John is entitled to interest on overpayment of $36.47, which in this example would be at a rate of 3.6% per annum. He is entitled from the date of payment to the day before the notice is given to him. That is, from 21 November 2012 to 31 August 2013. Mary's SIC would be remitted by $20.20 and SIC of $36.47 would remain payable with the amended assessment.

23G. If on the other hand John had not paid his original assessment, then no remission of Mary's SIC is warranted as the Commonwealth will continue to bear the $819 shortfall until Mary pays that amount.

24. *Offset because of increase in pay as you go (PAYG) withholding or other credits in amendment*

24A. SIC or shortfall GIC on income tax shortfalls is calculated on the additional amount of income tax that is properly payable, and doesn't take into account certain credits such as PAYG withholding credits.[11]

24B. However, where an additional amount of credit is also included on the amended assessment but does not form part of the assessment, it would be appropriate for you to grant full remission of SIC to the extent of the additional credit.

24C. *Example: After the issue of her 2012 assessment Betty received a payment summary from a former employer. The payment summary showed $5,000 income and $1,200 PAYG withholding credits. She had not declared this income or the credits in her 2012 return.*

24D. *Betty requested an amendment of her assessment to reflect the additional income. The additional tax payable under the amended assessment was $1,575 but after the PAYG withholding credit of $1,200 was applied against this amount Betty was required to pay $375.*

24E. *As SIC is calculated on the additional tax payable because of the assessment (shortfall) of $1,575, remission equivalent to the amount of SIC calculated on $1,200 for the entire shortfall period will be given. That is, after remission only the SIC on $375 will remain for the shortfall period.*

[11] PAYG withholding amounts and similar items do not form part of the assessment although they are included on the notice of assessment. They are simply part of the statement of account for the period. See *Cassaniti v Commissioner of Taxation* [2010] FCA 641; (2010) 186 FCR 480

25. *Remission as an incentive for some compliance programs*

25A. The Commissioner sometimes may remit interest charges according to specific interest rate remission guidelines adopted as part of particular compliance programs or to ensure consistency of treatment with similar situations that have already been determined and announced.

25B. However, this does not rule out other remission grounds consistent with these guidelines having regard to the facts and circumstances of the particular case.

26. *Costs of administration*

26A. The Commissioner may remit amounts because the amount of the interest charge is minimal. For example, the imposition of an amount of SIC or GIC below a small threshold amount will result in remission as part of the ATO's automated processes.

27. *Reliance on ATO advice or general administrative practice*

27A. Under the law[12] a taxpayer will be protected from the interest charges that relates to a shortfall if:

- the taxpayer relies in good faith on advice given to them or their agent by the Commissioner or a statement in a publication approved in writing by the Commissioner, unless the advice or the statement or publication is labelled as non-binding, or
- the taxpayer relies in good faith on the Commissioner's general administrative practice.

27B. A general administrative practice is a practice which is applied by the Commissioner generally as a matter of administration and which consists of the repeated adoption of a view in multiple cases. Taxation Determination TD 2011/19 *Tax administration: what is a general administrative practice for the purposes of protection from administrative penalties and interest charges* provides our view on what we will consider to be a general administrative practice.

27C. This statutory protection applies to interest charges under most of the tax laws,[13] including income tax, Medicare levy, fringe benefits tax, indirect taxes and Petroleum resource rent tax (PRRT). However, even where the shortfall technically is not afforded protection from the shortfall interest charges under the law (for example, because it is about a tax law that is not covered), provided the taxpayer has in good faith relied on ATO advice, a statement in a publication approved in writing by the Commissioner or a general administrative practice, you should remit the shortfall interest charges in full.

28. *Reliance on subsequently overturned judicial interpretation*

28A. There will be situations where a taxpayer prepares a return or activity statement in a particular way, having regard to a decision of an independent tribunal or a court and, subsequent to lodgment of the return or activity statement, a court of higher authority overturns that decision, resulting in an unexpected shortfall.

28B. You should remit shortfall interest charges in full in this situation, provided that:

- the court or tribunal decision relied upon in the preparation of the return clearly applied to the taxpayer's circumstances, and
- appropriate amendment requests are lodged within a reasonable time after the date of the final court decision. (There may be some circumstances where the ATO will initiate amendments after the date of the final court decision.)

28C. If the taxpayer did not lodge an amendment request within a reasonable time, then you should generally not remit any interest charges that accrue from the date of the final court decision.

29. *Taxpayer could not have been aware of shortfall when lodging return*

29A. A shortfall amount may arise in situations where the taxpayer did not know and could not have known that a shortfall would arise when they lodged their original return or activity statement. This would occur where the return or activity statement is correct, and it is only future events that trigger the need to adjust a liability. Examples of this include:

- Where a taxpayer becomes entitled to a receipt of compensation in a particular year, which may in some circumstances trigger an adjustment to capital proceeds and affect capital gains or losses in an earlier year's return

[12] Subsection 361-5(1) of Schedule 1 to the TAA, applicable from 1 January 2006.

[13] See section 357-55 of Schedule 1 to the TAA for the complete list of relevant provisions.

- Where member companies of a consolidated group are affected by the requirements of section 701-70 of the *Income Tax Assessment Act 1997* (ITAA 1997), when the head company makes an election to consolidate after the member company has already lodged its income tax return for the year
- Where the Commissioner makes an amended assessment of Division 293 tax for an individual, after a superannuation provider amended their Member contribution statement (MCS) or self-managed super fund annual report and the fund's reporting is outside the control of the individual. (Remission will not be warranted if the fund is a self-managed superannuation fund and the individual is a trustee, as it would be considered that the individual should have been aware of the potential shortfall.)

29B. Each case must be examined on its merits. In the above examples, it may be appropriate for you to grant full remission of interest charges related to the shortfall, usually on the condition that appropriate amendment requests are lodged within a reasonable time after the need to amend arises, if required.

29C. Remission does not apply to taxpayers who, for example, mistakenly believed the law operated in a way such that a shortfall would not arise.

30. *Change or potential change in legislation with retrospective effect*

Income tax

30A. If a change in legislation has retrospective effect and results in a shortfall, you should remit the shortfall interest charges in full, provided the taxpayer seeks to amend their returns within a reasonable time after the enactment of the new legislation. If they do not, then interest charges will apply from 28 days after the amending law receives Royal Assent.

30B. Where a proposed legislative change has been announced but not enacted and a taxpayer acts reasonably but still underestimates their income, you should remit interest to the base rate, provided the taxpayer seeks to amend their returns within a reasonable time after the enactment of the new law.

Indirect taxes

30C. Amending Acts to indirect taxes cannot impose penalties or general interest charge earlier than 28 days after Royal Assent is given to the particular Act.[14]

30D. Therefore if an indirect tax law has retrospective effect, GIC in respect of the increased liability will only apply from 28 days after the amending Act receives Royal Assent.

31. *GST 'revenue neutral' corrections*

31A. Because of the nature of GST, some corrections to reporting errors will be revenue neutral. This occurs where a correction increasing GST for one party also gives rise to an entitlement to an input tax credit equal to that increased GST, or where the correction involves equal and offsetting GST or input tax credits for the same transaction.

31B. Law Administration Practice Statement PS LA 2008/9 *GST 'revenue neutral' corrections* provides details of the policy on remission of the shortfall GIC for GST 'revenue neutral' corrections.

32. More information

32A. For more information on:

- The relevant SIC rate for a period – see https://www.ato.gov.au/Rates/Shortfall-interest-charge-(SIC)-rates/
- The relevant GIC rate for a period – see https://www.ato.gov.au/Rates/General-interest-charge-(GIC)-rates/
- What constitutes a general administrative practice – see Taxation Determination TD 2011/19 *Tax administration: what is a general administrative practice for the purposes of protection from administrative penalties and interest charges*
- Law Administration Practice Statement PS LA 2008/9 *GST 'revenue neutral' corrections*
- Our commitments to service (or service standards) – see Our commitments to service

[14] Section 105-85 of Schedule 1 to the TAA

IMPOSITION OF INTEREST CHARGES

33. What interest charges apply to shortfalls?

33A. The SIC was introduced for shortfall amounts for income tax[15] amendments for the **2004-05 and later income years**. It is charged at a lower rate, for the reason that taxpayers who are genuinely unaware of the shortfall may be unable to take any steps to reduce their exposure to GIC.

33B. Shortfalls in respect of other taxes, and shortfalls that relate to income tax liabilities for the income years 2000-01 to 2003-04 will attract GIC from the original due date for payment.

33C. Income tax amendments for the 1999-2000 and earlier years attract interest in the shortfall period under section 170AA of the ITAA 1936. Although, for shortfall periods from 1 July 1999 this interest is imposed as GIC.

33D. The following table details the main provisions relating to the imposition of interest charges during the shortfall period.

Type of shortfall	**Period to which shortfall relates:**	**Interest type**	**Legislative references**
Income tax	1999-2000 and earlier income years:		
	i. periods up to and including 30 June 1999	***interest***	Sections 170AA and 214A of the ITAA 1936
	ii. periods after 30 June 1999	***general interest charge***	Section 170AA of the ITAA 1936 and Part IIA of the TAA
	2000-01 to 2003-04 income years	***general interest charge***	Section 5-1 of the ITAA 1997 and Part IIA of the TAA
	2004-05 and later income years	***shortfall interest charge***	Division 280 of Schedule 1 to the TAA
Excess non-concessional contributions tax	2007-08 and later income years	***shortfall interest charge***	Section 280-102A of Schedule 1 to the TAA
Division 293 tax	2012-13 and later income years	***shortfall interest charge***	Section 280-102B of Schedule 1 to the TAA
Petroleum resource rent tax (PRRT)	2006-07 and later financial years	***shortfall interest charge***	Section 280-102 of Schedule 1 to the TAA
Minerals resource rent tax (MRRT)	2012-13 and later MRRT years	***shortfall interest charge***	Former section 280-101 of Schedule 1 to the TAA
Fringe benefits tax	amounts that are due to be paid on or after 1 July 1999	***general interest charge***	Section 93 of the *Fringe Benefits Tax Assessment Act 1986* and Division 1 of Part IIA of the TAA
Indirect taxes – goods and services taxes (GST), wine equalisation tax (WET) and luxury car tax (LCT)	all periods	***general interest charge***	Subdivision 105-D of Part IIA of the TAA
Pay as you go withholding (PAYG(W))	all periods	***general interest charge***	Section 16-80 of Schedule 1 and Division 1 of Part IIA of the TAA

[15] Note that a reference to income tax will apply to the MRRT and PRRT as well.

RELEVANT LEGISLATIVE PROVISIONS

This section provides some further information on some of the legislative provisions for imposition, notification and remission of SIC and GIC.

34. Shortfall interest charge

34A. The SIC provisions are contained in Division 280 of Schedule 1 to the TAA.

34B. A taxpayer is liable to pay SIC on any additional amount of income tax payable as a result of an amended assessment for an income year (subsection 280-100(1) of Schedule 1 to the TAA).

34C. The liability to SIC is for each day in the period:

(a) beginning at the start of the day on which income tax under the 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 notice of the amended assessment (subsection 280-100(2) of Schedule 1 to the TAA).

34D. However, if an amended assessment reinstates all, or part of, a particular item that had been reduced by an earlier amended assessment, the SIC calculation period for the reinstated liability starts from the due date of the earlier amended assessment. If the earlier amended assessment was a net credit, then the calculation starts from the day any tax would have been payable (subsection 280-100(3) of Schedule 1 to the TAA). This later start date is because the shortfall does not arise from an error in the original assessment, but from the taxpayer subsequently requesting an amendment that incorrectly reduces their liability.

34E. The SIC rate for a day is worked out by adding three percentage points to the base interest rate for that day and dividing that total by the number of days in the calendar year (subsection 280-105(2) of Schedule 1 to the TAA). This has the effect of producing a SIC rate that reflects benchmark business borrowing rates.

34F. For each day in a particular quarter of the year, the base interest rate equals the monthly average yield of 90 day Bank Accepted Bills for a prescribed previous month. For example, for the quarter 1 January to 31 March, the base interest rate is the monthly average yield of 90 day Bank Accepted Bills for the preceding November (subsection 8AAD(2) of the TAA).

34G. The SIC is worked out daily on a compounding basis (subsection 280-105(1) of Schedule 1 to the TAA).

34H. The Commissioner must give the taxpayer a notice stating the amount of the SIC liability. This amount can be included in another notice that the Commissioner gives to the taxpayer, such as the notice of amended assessment (subsections 280-110(1) and (2) of Schedule 1 to the TAA).

34I. The SIC is due and payable 21 days from when notice of the amount of the charge is given to the taxpayer (subsection 5-10 of the ITAA 1997).

34J. The Commissioner may remit all, or part of, an amount of SIC if the Commissioner considers it fair and reasonable to do so (subsection 280-160(1) of Schedule 1 to the TAA).

34K. Without limiting the general remission power, in deciding whether to remit the Commissioner must have regard to:

(i) the principle that remission should not occur just because the benefit received from the temporary use of the shortfall amount is less than the SIC, and

(ii) the principle that remission should occur where the circumstances justify the Commonwealth bearing part or all of the cost of delayed payments (subsection 280-160(2) of Schedule 1 to the TAA).

34L. If a remission request is made in the approved form, the Commissioner must give a written statement of the reasons for a decision not to remit an amount of SIC (section 280-165 of Schedule 1 to the TAA).

34M. However if a remission request is not made in the approved form, it does not prevent the Commissioner from considering the request. Where this happens, the Commissioner will generally provide written reasons of the decision.

34N. The content of a statement of reasons for a decision is provided in section 25D of the *Acts Interpretation Act 1901*. That section states '… the instrument giving the reasons shall also set out the findings on material questions of fact and refer to the evidence or other material on which those findings were based'.

34O. A taxpayer may object using the provisions in Part IVC of the TAA against a decision of the Commissioner not to remit an amount of SIC where the amount not remitted is more than 20% of the additional amount of income tax on which it is calculated (section 280-170 of Schedule 1 to the TAA).

> *Example: SIC of $2,000 is payable in respect of a shortfall of $8,000. The Commissioner makes a decision not to remit any SIC. As the amount of SIC not remitted ($2,000) exceeds 20% of the shortfall ($2,000/$8,000 = 25%) then the taxpayer may object to the remission decision.*

If the Commissioner had remitted $500 SIC so that $1,500 remained payable then the taxpayer would not be able to object to the decision as the SIC not remitted does not exceed 20% of the shortfall ($1,500/$8,000 = 18.75%)

34P. The rights to a statement of reasons and the formal objection rights relating to decisions not to remit an amount of SIC are in addition to, and do not replace, existing rights under the *Administrative Decisions (Judicial Review) Act 1977* (ADJR).

35. General interest charge

35A. The legislative scheme for GIC is in two parts. Liability to GIC is dealt with in various provisions in the tax laws. For example liability to GIC in respect of late payment of an income tax liability is provided at section 5-15 of the ITAA 1997. The second part of the scheme, which describes the basis for calculation of GIC, is set out in Part IIA of the TAA.

35B. The liability to GIC for late payment is for each day in the period:

(i) starting at the beginning of the day by which the tax was due to be paid, and

(ii) finishing at the end of the last day on which, at the end of the day, any of the tax (or GIC on that tax) remains unpaid.

35C. The GIC rate for a day is currently worked out by adding seven percentage points to the base interest rate for that day and dividing that total by the number of days in the calendar year (subsection 8AAD(1) of the TAA). This has the effect of producing a GIC rate that may be high (compared with indicator rates for commercial borrowing) for many taxpayers to encourage prompt payment of tax liabilities.

35D. The base interest rate is the same as that used for SIC (see paragraph 34 of this practice statement).

35E. GIC is worked out daily on a compounding basis (section 8AAC of the TAA).

35F. There are no notification requirements for GIC; it is payable at the end of each day (section 8AAE of the TAA).

35G. The Commissioner may remit all, or part of, GIC (section 8AAG of the TAA). However, remission can only be made if circumstances set out in the law are met (subsections 8AAG(2) to (5) of the TAA). These include special circumstances where it is fair and reasonable to remit.

35H. When notifying a decision not to remit GIC, the Commissioner will provide the reasons for the decision.

35I. While a taxpayer can, in some circumstances, object against a decision not to remit SIC, there are no objection rights under the taxation law against a remission decision relating to GIC. A taxpayer can seek formal review of remission decisions under the ADJR.

35J. This practice statement only deals with remission of GIC that accrues during the shortfall period. PS LA 2011/12, details the policy for remission of GIC in other circumstances.

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