PS LA 2007/11 - Administrative treatment of taxpayers affected by announced but unenacted legislative measures which will apply retrospectively when enacted.

Australian Government
Australian Taxation Office

Practice Statement Law Administration

PS LA 2007/11

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This law administration 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. ATO personnel, including non ongoing staff and relevant contractors, must comply with this law administration practice statement, unless doing so creates unintended consequences or is considered incorrect. Where this occurs, ATO personnel must follow their business line's escalation process.

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SUBJECT:	**Administrative treatment of taxpayers affected by announced but unenacted legislative measures which will apply retrospectively when enacted**
PURPOSE:	**To provide direction to ATO personnel on the processes for deciding the administrative treatment of taxpayers affected by these kinds of measures**

TABLE OF CONTENTS **Paragraph**

STATEMENT

What this practice statement is about

1. Generally, changes that are made to the laws administered by the Commissioner of Taxation have a future application. That is, they only create rights and obligations after the changes are enacted by Parliament.

2. However, on occasions changes to the tax laws may retrospectively create rights and obligations that have an impact on people before the changes are enacted. This may occur, for example, where unintended consequences of an earlier change are being corrected, especially where the change is favourable to the persons affected. It may also occur if there is a delay in the preparation and passage of a Bill to give effect to a change.

3. When it becomes apparent that a change to the law will affect rights and obligations on a retrospective basis, the persons affected face a dilemma about how they should act pending the passage of the legislation: should they comply with the existing law, or is it permissible for them to anticipate the announced but unenacted changes? If they anticipate the changes and those changes are subsequently enacted differently to how they anticipated, or are not enacted at all, what does this then mean for them (for example, in relation to amendments, penalties and interest)?

4. It may also be necessary for persons affected by announced changes to alter their record keeping and other practices in advance of the changes being legislated, so that they will be able to exercise their rights or meet their obligations when the changes become law. In these cases it will be important for the Commissioner to consider what guidance should be provided in advance of the change being enacted, to help people understand whether they should consider keeping relevant records or taking some other action that will enable them to obtain their rights or meet their obligations if the announced change is ultimately made law.

5. This practice statement outlines the procedures that ATO personnel must follow in settling the approach the ATO will adopt in these kinds of cases. While many of the examples are expressed in terms of the income tax system, this practice statement applies to all changes to laws administered by the Commissioner that may have a retrospective impact.

6. This practice statement also sets out the ATO policy on penalties and interest in cases where taxpayers anticipate a change to the law in meeting their obligations and as a result are later found to have underpaid their tax.

Responsibilities

7. Decisions about the administrative approach the ATO will take in cases covered by this practice statement may only be made by the Policy Implementation Forum (PIF).

8. Project managers are responsible for making a recommendation to the PIF about the approach proposed to be taken. Project managers must have regard to the PIF endorsed document 'The ATO's approach to dealing with retrospective law changes', in making their recommendation. The Operations sub-plan must be consulted in relation to any operational impacts or risks likely to arise and any recommendations about penalty and interest remission. The recommendation must be endorsed by both the Project Sponsor and the Assistant Commissioner, Policy and Practice Management, Governance and Government Relations (AC(PPM)).

9. The AC(PPM) also ensures the submission meets the requirements of the PIF and arranges for the submission to be considered in a timely way.

10. Following a decision by the PIF, the project manager is responsible for ensuring persons affected are advised accordingly. Project managers are also responsible for monitoring progress and updating advices consistent with the terms of the PIF's decision.

11. A flowchart showing these steps is at Attachment A on page 12 of this practice statement.

When should a project manager make a recommendation on the ATO's approach?

12. In general, recommendations to the PIF should be provided at the earliest practicable time following announcement of the proposed retrospective change. Project managers should be cognisant of when relevant tax returns, activity statements or other documents are due to be lodged or submitted to the ATO, that may give rise to taxpayers or their intermediaries seeking guidance on how they should behave. Consideration should also be given to when it would be appropriate for taxpayers to get advice on the potential need to do something not required by the existing law, in order to obtain rights or meet obligations that will arise retrospectively if an announced change subsequently becomes law.

13. While an announced change to the law may not have an intended retrospective effect when announced, delays in the preparation and passage of the relevant legislation can result in the change operating retrospectively when enacted. Project managers need to monitor the progress of relevant legislation to ensure recommendations on the ATO's approach are made to the PIF at an appropriate time.

14. Where a measure is significantly delayed beyond its announced application date, the project manager must review any administrative approach previously approved by the PIF at appropriate intervals to ensure that approach remains valid. Where administrative risks or unintended consequences are likely to arise due to such a delay, the project manager should amend the administrative approach and resubmit it to the PIF for approval following the process detailed in paragraph 8 of this practice statement.

What factors should be taken into account in recommending the ATO's approach?

15. The PIF has endorsed a document, titled 'The ATO's approach to dealing with retrospective tax law changes', which sets out the factors taken into account in deciding the ATO's approach to retrospective amendments of the law. The document includes a decision tool which can be used by project officers in developing a mitigation strategy to deal with retrospective law.

16. The decision tool is primarily directed at helping to determine whether or not the ATO will advise that persons affected by a proposed retrospective change may anticipate the change when self-assessing a liability before the change is made law. The model does not provide guidance for determining what advice should be given to persons about changes to their record keeping or business systems in advance of the law being enacted (but see paragraphs 19 and 20 of this practice statement).

17. The tool is based on some key principles:

- The Federal Parliament makes the laws that the Commissioner administers and citizens are required to abide by those laws only when they have been enacted. It follows that in undertaking his duties the Commissioner is generally required to administer the existing law and will expect taxpayers and others to behave in accordance with those laws. This is true even where the government has announced proposed changes to the law which will apply retrospectively once enacted. For example, the Commissioner cannot insist on the application of a proposed law which has the effect of increasing a taxpayer's liability.
- However, self-assessment provisions in the tax laws generally allow the Commissioner of Taxation to accept taxpayers' self-assessments. Further, powers given to him under the *Financial Management and Accountability Act 1997* and powers of general administration under the tax laws generally allow the Commissioner to decide whether it would be an efficient, effective and ethical use of his limited resources to enforce compliance with the existing law where a taxpayer chooses to self-assess by anticipating an announced law change.
- But there is an exception to this general rule where allowing taxpayers to anticipate an announced change would be likely, at least in some cases, to result in refunds and the Commissioner could reasonably identify the affected taxpayers before the incorrect refunds were paid.
- In such cases the Commissioner must take all reasonable action to prevent payment of the incorrect refunds

18. Project managers also need to consider what advice should be provided to persons likely to be affected by a proposed retrospective change about how they should manage their affairs in advance of the change being enacted. For example, it may be appropriate to tell taxpayers and their intermediaries how the ATO proposes to administer the proposed change, and the records and business systems that taxpayers will require in order to comply with the change. This would in particular be appropriate where it could be expected that records of relevant current transactions would not ordinarily be maintained by the taxpayers likely to be affected by the change, or where it could be expected that taxpayers are starting to prepare for the change and would benefit from understanding how the ATO will approach its administration.

19. Where a project manager proposes a general communication to affected taxpayers in advance of the relevant legislation being enacted, the timing, content and strategy for the communication must be first approved by the PIF.

What is the ATO policy on penalties and Interest where taxpayers anticipate a proposed retrospective change?

Context

20. When a change to the law that has a retrospective effect is enacted, taxpayers affected can potentially find that they have either underpaid or overpaid the amount of tax now properly payable for an earlier period. For example, a taxpayer may choose to follow the existing law in lodging an income tax return pending the enactment of a law that will increase their liability for the period covered by the return. When the new law is subsequently passed the taxpayer will have underpaid their tax and an amendment to their assessment will be required.

21. Alternatively, a taxpayer may anticipate the effects of an announced retrospective change when lodging their return, but subsequently find that the change is enacted differently to how they anticipated, or perhaps not even enacted at all. Again, an amendment will be required.

22. Adjustments to change the tax payable for earlier periods will necessarily raise questions about penalties and interest (see Attachment C at page 14 for an explanation of penalties and interest). The policy outlined below addresses the broad scenarios that may arise:

- a taxpayer self assesses using the existing law, or
- a taxpayer self assesses by anticipating an unenacted change.

23. Recommendations to the PIF on the approach to be adopted by the ATO on announced but unenacted changes must include a recommendation on the approach to be taken on penalties and interest should adjustments to taxpayer liabilities become necessary.

Policy

24. Generally, for taxpayers who exercise reasonable care and decide to follow the existing law, (Scenario 1) there will be no tax shortfall penalties and nil general interest charge (GIC) or shortfall interest charge (SIC) up to the date of enactment for the legislative change. In addition, taxpayers will be given a 'reasonable time' to get their affairs in order, post enactment of the measure, without incurring any GIC or SIC.

25. The 'reasonable time' will need to be determined on a measure by measure basis, having regard to the measure and a taxpayer's circumstances.

26. If taxpayers lodge on the basis of the existing law (Scenario 1 – see paragraph 31 of this practice statement) they will not be subject to tax shortfall penalties or to the GIC or SIC (up to the date of enactment of the proposed legislative measure), whether or not the proposed measure is later enacted. In addition, taxpayers will be given a reasonable time to get their affairs in order from the date of enactment of the measure, without incurring any GIC or SIC.

27. Full self-assessment taxpayers would usually be expected to make payment when lodging their amendment request. Taxpayers that are not full self-assessment taxpayers – individuals and trusts – would expect a notice of amended assessment to be served before making payment.

28. As section 5-5 of the *Income Tax Assessment Act 1997* (ITAA 1997) prescribes a 'statutory due date' for tax that is payable, the ATO would generally remit GIC or SIC on the shortfall up to 21 days after the issue of an amended assessment. In that way a taxpayer would have time to pay the liability without incurring GIC or SIC. Interest would start to apply after the 'reasonable time' if it remains unpaid.

Taxpayers anticipate the proposed change

29. There may be cases where the ATO advises taxpayers to comply with the existing law, but taxpayers nevertheless 'anticipate' the proposed law

30. In these cases a taxpayer may be liable to GIC or SIC at the base interest rate if the proposed measure is not enacted, or if the law is enacted and the taxpayer understates their liability under the measure. However, if the law is enacted and the taxpayer overstates their liability, they would generally be entitled to a credit amendment and interest on overpayment once the amending legislation is enacted.

Scenarios illustrating the principles outlined above

Scenario 1 – Taxpayers who lodge on time in accordance with the existing law

31. If:

- a taxpayer lodges a return or activity statement in accordance with existing law, and
- later debit amendments or activity statement revisions are needed because of the effect of retrospective legislative changes,

then:

- no tax shortfall penalties will apply, and
- any interest attributable to the shortfall will be remitted to nil up to the date of enactment of the new legislative measure. In addition, the interest will be remitted for taxpayers who actively seek to appropriately amend their returns or revise their activity statements within a reasonable time after the enactment of the new law.

If the taxpayer does not lodge an amendment request or revise their activity statement within a reasonable time, then full interest will apply from the date of enactment.

Scenario 2 – Taxpayers who anticipate an announced change to the law

32. If:

- a taxpayer lodges a return or activity statement on the basis of anticipated changes to the law, and
- later amendments or revisions which result in a reduction to an entitlement or an increase in liability are needed because of the effect of retrospective legislative changes,

then:

- no tax shortfall penalties will apply on the basis that it is reasonable that the taxpayer has followed an announced government policy, and that the existence of such an announcement represents special circumstances for remission, and

- any interest accrued in respect of the amendment will be remitted to the base interest rate up to the date of enactment of the new legislative measure. In addition, the interest, in excess of the base rate, will be remitted for taxpayers who actively seek to appropriately amend their returns or revise their activity statements within a reasonable time after the enactment of the new law.

If the taxpayer does not lodge an amendment request or revise their activity statement within a reasonable time then interest will revert to the full rate from the date of enactment.

33. This approach will be conditional on the taxpayer having acted reasonably when lodging the original return or activity statement.

34. In these situations, a 'time value of money' concept is appropriate in providing symmetry in circumstances where interest on overpayments would be payable where there is an overpayment. Moreover, if the taxpayer has acted reasonably, any underpayment or overpayment might be expected to be small.

35. In this scenario, if anticipation of the announcement has the effect of resulting in a refund to a taxpayer, then the ATO will either hold processing of the assessment or activity statement, or adjust the return or activity statement in accordance with existing law, to give effect to the Commissioner's obligations under the FMA Act if such a course of action is practicable and supported by a cost-benefit analysis with reference to the Risk Analysis Model.

Scenario 3 – Announcements not enacted

36. In some cases, a taxpayer may be affected by a proposed measure that is intended to remove a liability, but the measure is ultimately not enacted. A taxpayer may have anticipated the change when lodging and may then be liable to an amendment increasing their tax liability. Alternatively, they may have lodged originally in accordance with the existing law and delayed payment in anticipation of the proposed measure passing.

37. In these cases, the ATO will publicly advise taxpayers that the law has not passed, explaining the circumstances of the particular issue and requiring that relevant amendment requests and activity statement revisions now be lodged or that relevant payments now be made. The statement could be by a media release, agent flyer, letters to relevant professional associations, letters to individual taxpayers etc, depending on the nature of the measure and the taxpayer base affected.

38. The principles set out in scenario 2 will apply as the taxpayer has effectively anticipated the proposed change. However, the public statement will indicate that taxpayers have appropriate 'reasonable time' to lodge amendments, make revisions and/or make payment, after which time the interest applied to the taxpayer's case would revert to the full statutory rate. Regard will be paid to such factors as agent workloads and other appropriate circumstances to determine the 'reasonable time' in this situation.

GST amendments – effect of section 105-85 of Schedule 1 to the Taxation Administration Act 1953

39. Where a tax liability is attributable to or affected by a retrospective amendment to an indirect tax law, section 105-85 of Schedule 1 to the *Taxation Administration Act 1953* (TAA) is relevant. The effect of this section is that, where an Act amends an indirect tax law, the amendment cannot result in an entity being liable to penalties or interest for an act or omission that happens before the 28th day after the amending Act receives Royal Assent.

How are taxpayers advised of the ATO's approach?

40. It is the role of the project manager to communicate the PIF's decision to affected taxpayers and their agents using the ATO website and other appropriate channels. Communicating the decision provides more certainty for taxpayers about what to do in the interim between announcement and enactment. The PIF considers it important that taxpayers are promptly made aware of the ATO's administrative approach to retrospective legislation.

41. Once the retrospective legislation is enacted, especially where it may be necessary for taxpayers to amend returns or revise activity statements, then the project manager should communicate this outcome immediately.

42. If the affected taxpayers can be identified, the project manager should consider communicating the need to amend returns or revise activity statements via a targeted direct mail program. Where affected taxpayers cannot be identified, the ATO would publicise the need to amend returns or activity statements, where relevant, using some or all of the following communications channels:

- the issue of a press release
- the insertion of brochures into ATO taxpayer and agent outbound correspondence
- the provision of alerts on the ATO website and agent portal
- publishing links to the information on the ATO website in the call centre reference manager system, and
- the placement of advertisements in metropolitan newspapers, subject to a cost-benefit analysis.

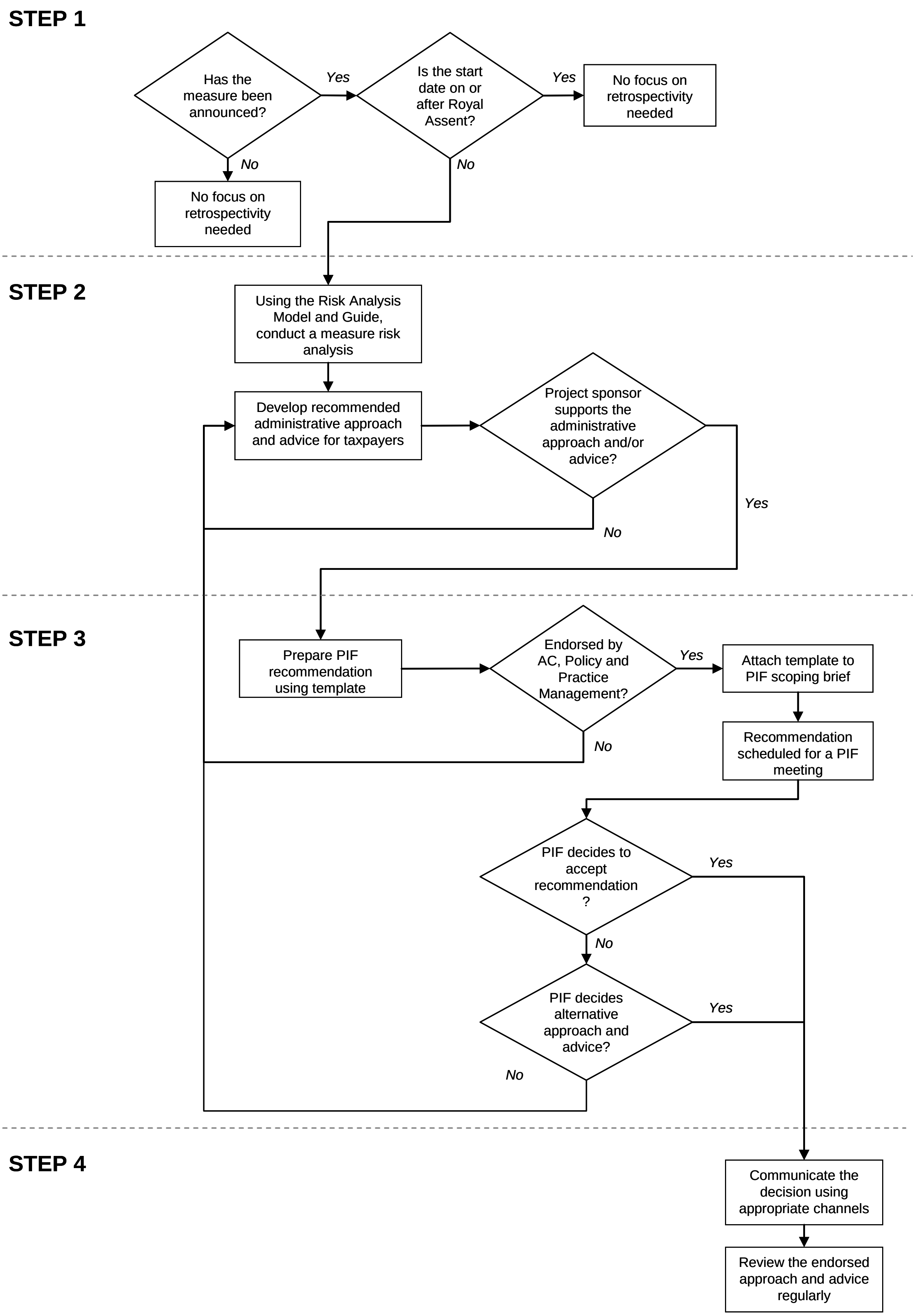
Amendment history

Date of amendment	**Part**	**Comment**
10 April 2014	Contact details	Updated.
17 October 2012	Generally	Updated to current publication style.
7 October 2011	Paragraph 28	Updated legislative reference
	References	Updated legislative reference Inserted PS LA references Removed reference to the ATO Receivables Policy
	Attachment C	Updated legislative reference Removed reference to the ATO Receivables Policy and replaced with PS LA 2011/12
1 July 2010	Paragraph 28	Updated legislative references (Part VI of the ITAA 1936 rewrite).
21 February 2010	Paragraphs 37, 38 and 42.	Removal of the word 'tax' from 'tax agent' to reflect that agents may also be BAS (business activity statement) agents.
17 December 2009	Paragraphs 1, 2, 9, 13, 15, 16, 17, 18, 23, 28	Text deleted from and inserted into this version to update and clarify the practice statement.
	Paragraph 5	Has been moved up into paragraph 4.
	Paragraph 24	Deleted.
	Paragraphs 31, 32, 33 and 34	Re-written. *Please note that paragraph numbers refer to the earlier version of this practice statement. Paragraph 34 has been inserted into the current version of the practice statement.*
15 September 2009	Contact details	Updated
11 September 2008	Related practice statements	Reference to PS LA 2006/11 removed
	Other references	Link to the ATO Receivables Policy inserted

Subject references	Administrative treatment of retrospective legislation
Legislative references	TAA 1953 8AAB TAA 1953 8AAG TAA 1953 16 TAA 1953 Sch 1 105-85 TAA 1953 Sch 1 Div 280 TAA 1953 Sch 1 280-160 TAA 1953 Sch 1 284-75(1) TAA 1953 Sch 1 284-75(2) TAA 1953 Sch 1 284-90(1) TAA 1953 Sch 1 284-215 TAA 1953 Sch 1 284-215(1)(b)(i) TAA 1953 Sch 1 284-215(2) TAA 1953 Sch 1 298-20 ITAA 1997 5-5 ITAA 1997 5-15 Auditor-General Act 1997 FMA Act 1997 44(1) FMA Act 1997 44(3) FMA Act 1997
Related practice statements	PS LA 1998/1 PS LA 2006/2 PS LA 2006/8 PS LA 2011/12
Other references	Risk Analysis Model
File references	05/7764
Date issued	24 May 2007
Date of effect	24 May 2007
Other business lines consulted	GGR, OPS, SME, LB&I, MEI, L&P

Attachment A

GENERAL FLOWCHART FOR PROJECT MANAGERS IMPLEMENTING A RETROSPECTIVE MEASURE



LEGAL FRAMEWORK FOR TAX ADMINISTRATION

Administering a tax measure, and in particular a concessionary tax measure, often involves either or both of the following things:

1. a payment of money out of the Consolidated Revenue Fund (CRF), and/or
2. an impact on the amount of revenue collected by the Commissioner.

There is a legal framework within which tax measures having these effects are administered. There are three fundamental elements of this legal framework.

First, there are limitations on the payment of money out of the CRF (for example, via a refund). These limitations are contained in the Constitution, the TAA and the FMA Act.

Secondly, the Commissioner has legal obligations relating to the financial management of the ATO and the administration of the tax system. These obligations are imposed by the FMA Act and the various statutory provisions which give the Commissioner the general administration of taxation laws (for example, section 8 of the ITAA 1936).

Lastly, the law provides for Auditor-General scrutiny of the financial management of the ATO and the administration of the tax system. This regulatory measure is provided for by the *Auditor-General Act 1997*.

Each of these fundamental elements of the legal framework is discussed separately below.

(i) Paying money out of the CRF

Under section 81 of the Constitution, all revenues or moneys raised or received by the executive government of the Commonwealth for one consolidated revenue fund are to be appropriated for the purposes of the Commonwealth in the manner and subject to the charges and liabilities imposed by the Constitution. Section 83 of the Constitution provides that:

> No money shall be drawn from the Treasury of the Commonwealth except under appropriation made by law.

For practical purposes, the 'Treasury of the Commonwealth' and the CRF are the same thing.

The combined effect of sections 81 and 83 of the Constitution is that all money received by the Commonwealth forms part of the CRF and, significantly, the Government can only spend CRF moneys which have been appropriated under a law made by the Parliament.

Section 16 of the TAA is a law which appropriates moneys from the CRF. It operates as a 'standing' appropriation and, as such, appropriates from the CRF those moneys which are necessary from time to time to meet payments which a 'taxation law' requires or permits to be made. A taxation law is defined, for the purposes of section 16, to include most of the Acts of which the Commissioner has the general administration.

Once moneys are appropriated, they may only be spent by government officials who are duly authorised by or in accordance with legislation to spend moneys for a relevant purpose. In this regard, the FMA Act and associated delegated legislation authorise and regulate the expenditure of appropriated moneys.

(ii) Financial management and tax administration obligations

The FMA Act and the TAA impose on the Commissioner obligations relating to the financial management of the ATO and the administration of the tax system.

The Commissioner is a ‘Chief Executive’ for the purposes of the FMA Act. Subsection 44(1) of the FMA Act provides that:

> A Chief Executive must manage the affairs of the Agency in a way that promotes the proper use of the Commonwealth resources for which the Chief Executive is responsible.

Subsection 44(3) defines ‘proper use’ to mean ‘efficient, effective and ethical’ use. Accordingly, the decisions which the Commissioner makes in managing the ATO must promote the efficient, effective and ethical use of ATO resources.

More broadly, a number of statutory provisions invest in the Commissioner the general administration of various taxation laws. These provisions most probably carry with them an obligation to administer the relevant laws in an efficient manner.

(iii) Scrutiny by the Auditor-General

The Auditor-General is a statutory office holder appointed by the Governor-General under the *Auditor-General Act 1997*.

The Auditor-General is responsible for auditing the Commonwealth’s finances. He is also invested with power to conduct a ‘performance’ audit, that is, a review or examination of any aspect of the operations of a Commonwealth agency.

In performing his or her functions, the Auditor-General is required to have regard to the Parliament’s audit priorities determined by the Joint Committee of Public Accounts and Audit (the JCPAA). He or she is also required to have regard to reports of the JCPAA.

EXPLANATION OF PENALTIES, GENERAL INTEREST CHARGE AND SHORTFALL INTEREST CHARGE

Tax shortfall penalty

For the purposes of this practice statement, a tax shortfall penalty is a penalty to which an entity is liable under subsection 284-75(1) or subsection 284-75(2) of Schedule 1 to the TAA.

Subsection 284-75(1) of Schedule 1 to the TAA makes an entity liable to a penalty where:

- the entity (or their agent) makes a statement to the Commissioner
- the statement is false or misleading in a material particular, and
- the entity has a shortfall amount as a result of the statement.

Subsection 284-75(2) of Schedule 1 to the TAA makes an entity liable to a penalty where:

- the entity (or their agent) makes a statement to the Commissioner
- the statement treated an income tax law as applying in a particular way that is not reasonably arguable, and
- the entity has a shortfall amount which exceeds the relevant threshold amount in subsection 284-90(1) of Schedule 1 to the TAA

For the purposes of determining whether an entity is liable to a tax shortfall penalty it is the nature of the statement, at the time that it was made that is relevant. Therefore if a statement was correct at the time it was made but is subsequently made incorrect because of a retrospective amendment to the law, the statement is not considered false or misleading and as a result the entity is not liable to a subsection 284-75(1) penalty. Likewise if the statement, treated an income tax law as applying in a way that, was reasonably arguable at the time the statement was made the entity is not liable to the subsection 284-75(2) of Schedule 1 to the TAA penalty.

In addition, tax shortfall penalties are calculated by reference to the ‘shortfall amount’. Section 284-215 of Schedule 1 to the TAA sets out a number of situations which affect whether a shortfall amount exists for penalty purposes or whether a shortfall amount is reduced or eliminated. Where a shortfall amount is taken not to exist or is eliminated, the entity is not liable to a tax shortfall penalty.

The effect of subsection 284-215(2) of Schedule 1 to the TAA is that where an entity (or their agent) has taken reasonable care in making the statement then no shortfall amount results from that statement for the purposes of subsection 284-75(1) of Schedule 1 to the TAA. Therefore, unless the entity has made other statements where reasonable care was not taken the entity will not be liable to a penalty under subsection 284-75(1) of Schedule 1 to the TAA.

In the other situations discussed in this practice statement but not otherwise covered by this Attachment, tax shortfall penalties will be remitted under section 298-20 of Schedule 1 to the TAA on the basis that it is fair and reasonable to remit.

General interest charge

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 liability by the due date.

The income tax of a taxpayer affected by this practice statement becomes due and payable on the statutory due date provided in section 5-5 of the ITAA 1997. If any income tax remains unpaid after the statutory due date, the taxpayer is liable to pay the GIC on that unpaid amount under subsection 5-15 of the ITAA 1997.

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 Law Administration Practice Statement PS LA 2011/12 *Administration of general interest charge (GIC) imposed for late payment or under estimation of liability.*

Where the taxpayer lodges in accordance with existing law, then a tax shortfall arising from the passage of retrospective legislation will be viewed as a matter beyond the control of the taxpayer.

Where the taxpayer lodges an amendment or revision request within a reasonable time of the passage of retrospective legislation, then this will be seen as the taxpayer having taken reasonable steps to mitigate the circumstances that led to the late payment. Full remission of GIC (on the basis outlined in Scenario 1) is considered appropriate in such circumstances.

Where the taxpayer anticipates an announced change to the law , it is felt that the existence of an announced government policy represents special circumstances warranting remission of GIC, provided the taxpayer acted reasonably when lodging, and requests any necessary amendment or revision within a reasonable time. However, in this scenario, the ATO has not contributed to the underpayment of tax. In these circumstances, a ‘time value of money’ concept is appropriate in providing symmetry in circumstances where interest on overpayments would be payable where there is an overpayment. Accordingly, remission of GIC in these circumstances will usually be to the base interest rate.

Shortfall interest charge

Division 280 in Schedule 1 to the TAA deals with the imposition and remission of shortfall interest charge. The shortfall interest charge applies to shortfalls of income tax that are revealed when the Commissioner amends an income tax assessment. The shortfall interest charge applies to amendment of income tax assessments in relation to the 2004-05 income year and later years.

Section 280-160 in Schedule 1 to the TAA gives the Commissioner discretion to remit shortfall interest charge if the Commissioner considers it is fair and reasonable to do so. In the scenarios outlined in this practice statement, the same considerations that give rise to remissions of GIC are equally considered to justify the remission of shortfall interest charge.