

2024

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TREASURY LAWS AMENDMENT BILL 2024: DENYING DEDUCTIONS FOR
INTEREST CHARGES

EXPOSURE DRAFT EXPLANATORY MATERIALS

Consultation preamble

Treasury seeks feedback on the effectiveness of this exposure draft explanatory material in explaining the policy context and operation of the proposed new law, including, but not limited to:

- how the new law is intended to operate;
- whether the background and policy context is sufficiently comprehensive to support understanding of the policy intent and outcomes of the new law;
- the use of relevant examples, illustrations or diagrams as explanatory aids; and
- any other matters affecting the readability or presentation of the explanatory material.

Feedback on these matters will assist to ensure the Explanatory Memoranda for the Bill aids the Parliament's consideration of the proposed new law and the needs of other users.

Treasury and the ATO work closely to identify aspects of new tax laws which may benefit from ATO public advice and guidance (PAG). Feedback is also sought on any aspects of the new law where ATO PAG should be considered, to support stakeholders' understanding and application of the new law. Stakeholder feedback on this question will be shared with the ATO.

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Glossary

This Explanatory Memorandum uses the following abbreviations and acronyms.

| <i>Abbreviation</i> | <i>Definition</i> |
|----------------------------|---------------------------------------|
| ATO | Australian Taxation Office |
| ITAA 1997 | <i>Income Tax Assessment Act 1997</i> |
| GIC | General interest charge |
| SIC | Shortfall interest charge |
| TAA 1953 | <i>Tax Administration Act 1953</i> |
| The Commissioner | The Commissioner of Taxation |

Chapter 1: Denying deductions for ATO interest charges

Outline of chapter

- 1.1 Schedule 1 to the Bill amends sections 25-5 and 26-5 of the ITAA 1997 to deny the income tax deductions for amounts of GIC and SIC incurred by a taxpayer.
- 1.2 The amendments seek to reinforce the requirements imposed on all taxpayers to correctly self-assess their income tax liability, pay their tax on time, and assist in lowering the amount of collectable debt owed to the ATO.
- 1.3 All legislative references in this Chapter are to the ITAA 1997 unless otherwise specified.

Context of amendments

- 1.4 As part of the 2023-24 Mid-Year Economic and Fiscal Outlook, the Government announced that it will deny deductions for GIC and SIC incurred on or after 1 July 2025.
 - 1.5 As set out under Subdivision 280-A in Schedule 1 to the TAA 1953, SIC applies to shortfalls of tax liabilities that are revealed when the Commissioner amends an assessment of an amount of tax payable, whereas GIC is generally imposed on unpaid tax liabilities as set out in Part IIA of the TAA 1953. Both GIC and SIC apply on a daily compounding basis and are charged at uniform rates for all taxpayers that are adjusted to reflect movements in the Commonwealth's cost of borrowing. The GIC and SIC annual rates are 11.36 per cent and 7.36 per cent respectively as at August 2024.
 - 1.6 SIC is intended to ensure that taxpayers who understate their liability in returns that incorrectly self-assess a liability do not receive an advantage, in the form of a 'free loan', over those taxpayers who report and meet their tax liabilities in full by the due date, whereas GIC is also intended to encourage taxpayers to pay their taxes on time. The ability of taxpayers to claim deductions for expenditure incurred for these interest charges can operate to undermine these objectives.
 - 1.7 Denying the deductibility of GIC and SIC will level the playing field for individuals and businesses who already correctly self-assess their tax liabilities and pay tax on time and assist in lowering the amount of collectable debt owed to the ATO.
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Comparison of key features of new law and current law

Table 1.1 Comparison of new law and current law

| New law | Current law |
|--|--|
| Expenditure incurred to the extent that it is for GIC and SIC is no longer tax deductible. | Taxpayers may claim deductions on expenditure incurred to the extent that it is for GIC and SIC in the year in which the charges are incurred. |

Detailed explanation of new law

- 1.8 Currently taxpayers may claim deductions on expenditure incurred to the extent that it is for GIC or SIC in the year in which the charges are incurred.
- 1.9 These amendments deny deductions for GIC and SIC by repealing paragraph 25-5(1)(c) of the ITAA 1997.
[Schedule 1, item 1, paragraph 25-5(1)(c) of the ITAA 1997]
- 1.10 Taxpayers will continue to have the ability to apply to the ATO and request the remission of any GIC or SIC payable. The Commissioner has the discretion to remit the interest charges where it is fair and reasonable to do so, taking into consideration the circumstances which led to the delayed payment of tax liabilities or the tax shortfall. As provided by PS LA 2011/12, in regard to GIC, circumstances the Commissioner may take into account include but are not limited to where the delay in payment was not the fault of the taxpayer such as in the event of natural disaster, where the delay in payment was caused by the taxpayer but they have taken steps to reduce the severity and impact of the circumstances, or in special situations such as where the taxpayer has a good tax compliance history.
- 1.11 In relation to SIC as provided in PS LA 2006/8, circumstances the Commissioner may take into account when deciding to remit SIC include but are not limited to where there is a delay in the processing a request to for an amended assessment or where there has been unreasonable delay caused by the ATO in the commencement or completion of an audit.
- 1.12 As GIC and SIC are no longer deductible, the remittance of the interest charges will no longer be considered an assessable recoupment as provided under subsection 20-20(3) of the ITAA 1997.

- 1.13 The amendments also insert a new subsection into section 26-5, which provides that without limiting paragraph 26-5(1)(a), the GIC and SIC cannot be deducted under the ITAA 1997.
[Schedule 1, item 3, subsection 26-5(1A) of the ITAA 1997]
- 1.14 As provided by the *General Interest Charge (Imposition) Act 1998* and the *Shortfall Interest Charge (Imposition) Act 2005*, GIC and SIC may be imposed as a tax to the extent to which they cannot be validly imposed otherwise than as a tax, for example, as a penalty. Therefore, this amendment operates to ensure that the non-deductibility of penalties under section 26-5 applies to deny the deductibility of the GIC and SIC regardless of whether GIC or SIC are formally imposed as penalties or in some other way.

Consequential amendments

- 1.15 The amendments repeal subsection 25-5(7) of the ITAA 1997 which prevents the double deduction for GIC on a running balance account. This provision is no longer necessary as GIC will no longer be deductible.
[schedule 1, item 2, subsection 25-5(7) of the ITAA 1997]

Commencement, application, and transitional provisions

- 1.16 Schedule 1 to the Bill commences on the first 1 January, 1 April, 1 July, or 1 October to occur after the day the Bill receives Royal Assent.
- 1.17 The amendments apply to SIC and GIC incurred in income years commencing on or after 1 July 2025. Linking the application of the amendments to charges incurred on or after the start date is consistent with the established principle of deductibility being tied to when an expense is incurred.
[Schedule 1, item 4]