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Director
Personal Deductions and Fringe Benefits Tax Unit
Treasury
Langton Crescent
PARKES ACT 2600

Dear Sir / Madam

Submission on the Proposed Legislation to Deny Deductions for the General Interest Charge and Shortfall Interest Charge

I am writing in response to the request for comments on the proposed amendments to the *Income Tax Assessment Act 1997* to repeal paragraph 25-5(1)(c), repeal subsection 25-5(7) and to introduce a new subsection 25(1A).

My Background

My name is Philip Roper, I am a practising Tax Agent, and I am the Principal of Kintail Accounting. My practice has been registered with the Tax Practitioners Board since 2017. I had over 31 years of experience in the Australian Pubic Service in various positions in various Departments, including two years employed in the Australian Tax Office (from May 1990 to mid-1992) and over 24 years of experience (there was some overlap), as an employee of various tax and accounting practices and as a sole practitioner Registered Tax Agent.

Purpose of this Submission

My aim in lodging this submission is to bring to your attention, the impact of past government policies on the incidence of low value debts incurred by individuals, and to make suggestions on how the impact of the proposed legislative amendments can be mitigated.

My comments relate to the impact of these proposed amendments on the Commissioner of Taxation's discretion as set out in Practice Statement Law Administration PS LA 2011/12, to remit General Interest Charge (GIC) under section 8AAG of the *Taxation Administration Act 1953* (TAA 1953) and specifically sub-section 8AAG(5), which gives the Commissioner to remit the GIC where inter alia, "there are special circumstances..." or "... it is otherwise appropriate to do so". I understand that this is the authority to remit the GIC where the calculated amount of the GIC is less than $100 for the period that it has been calculated (typically monthly).

Impact on Individuals

In my role as an employee in various accounting practices and as a sole practitioner in my own tax practice, I have seen many individuals incur low value tax debts (up to $10,000) for a variety of reasons:

- having two or more jobs at the same time, and not understanding that the assessable payments in the second (or more) job(s) should not be subject to the tax-free threshold, for tax withholding
- receipt of a taxable Centrelink benefit for a period of less than 12 months in a financial year, with little or no tax withheld
- for an employee, changing jobs to a higher paid job / being promoted to a higher paid job during the year
- crossing a threshold for the initial imposition of / or for a higher rate of the MLS
- crossing a threshold for eligibility for a lower PHI tax offset
- crossing a threshold for the initial imposition / or for a higher rate of repayment of a HELP debt

  (in these three circumstances, there are no "shading-in" provisions: one extra dollar of taxable income results absolutely in an increased tax liability)
- going from a long-term Centrelink pension such as Parenting Payment Single, to paid employment, with the unexpected and consequent loss of the benefit of the Seniors and Pensioners Tax Offset (SAPTO)
- being unable to claim any MV expenses due to starting a salary-sacrifice arrangement for a motor vehicle
- being ineligible for a deduction for personal superannuation contributions, due to not abiding by the strict rules for deductibility.

Note that all of the above are routine, everyday occurrences. Generally, people in these circumstances have not done anything "wrong" to end up with a tax liability.

In many of these cases, the client ends up with a small tax liability which they may be unable to pay immediately, but which can be dealt with by entering into an agreed payment plan with the ATO, which under current arrangements, results in zero net interest being charged. The zero net interest comes about because of the current power of the Commissioner to remit the GIC if the calculated value (generally monthly) of the GIC is below $100.

None of the above reasons relate to being in a small business, and while the standard response of the client needs better cash-flow management practices, this response simply cannot be applied to many individuals.

Addressing a select range of reasons for getting into debt brings the following government policy decisions and practices into the spotlight:

Single Touch Payroll and Receipt of a Benefit from Centrelink

It is a fact that Centrelink does **not participate in Single Touch Payroll**, for the very simple reason that Centrelink is not an employer of anyone who is receiving Jobseeker, Youth Allowance, the Age Pension, or several other taxable allowances and benefits – see section 389-1 of Schedule 1 of the TAA 1953. It is possible that Centrelink has been exempted from reporting under s389-10 of the same Schedule to the same Act.

There may be other examples of other entities who pay a regular taxable income stream to individuals, that are not required to participate in Single Touch Payroll (Comsuper would be an example).

As a result of this non-participation, I am unable to monitor and advise my clients if they are having insufficient tax withheld from their Centrelink payment during a financial year. This failure of Centrelink to participate in Single Touch Payroll has a direct impact on some of my clients, and can lead to the need to enter into an agreed payment plan. The proposed amendments to repeal paragraph 25-5(1)(c) of the *ITAA 1997* could lead my clients to being required to pay GIC on a debt that they had little or no control over in the first place, and which can be traced back to Centrelink's failure to participate in Single Touch Payroll.

"Push" Tax Returns and Single Touch Payroll

When STP was being planned and before it was introduced, it was touted as means to start "pushing" tax returns out to taxpayers, because the ATO would allegedly know the assessable income of an employed taxpayer as each financial year progressed. Many of my clients over the last 24 years have told me that Centrelink front-line staff routinely tell Centrelink clients (customers?) that either they did not need to have tax withheld from their benefit, or that it was too difficult to estimate how much tax needed to be withheld. Both of these statements are true and false, in different circumstances:

- an individual unemployed for the full year – the Beneficiary Tax Offset (BTO) of 15% of the excess income support payment over $6,000 wiped out any tax liability when it was first introduced. When the tax-free threshold was raised to $18,200, the BTO threshold and rebate rate remain unchanged. In this client's situation, the BTO is not currently needed as the maximum Jobseeker payment for a full financial year is well below the current tax-free threshold of $18,200.
- unemployed for part of the year – the proverbial "how long is a piece of string" problem. How long is a person who has been employed for four months before losing their employment going to be receiving a Centrelink benefit? If it is only for four weeks, then the naive answer is that tax should be withheld at the person's full marginal rate, but if we have access to the proverbial crystal ball, and we know that the person is going to be unemployed for more than six weeks, as an example, then the full marginal rate needs to apply to the first $6,000 and then the full marginal rate minus the 15% BTO would apply to subsequent payments. The only entity that can perform this calculation is Centrelink. The ATO cannot do it because Centrelink does not participate in Single Tax Payroll, and because the ATO does not have the data.

Recall the experience of Senator Amanda Vanstone in the latter half of 2001 when hundreds of thousands of people received debt recovery notices from Centrelink when the very first reconciliations of the Family Tax Benefit occurred with the lodgement of the 2001 income tax returns. The response of the government was to introduce a $600 one-off "bonus" payment, the policy intent of which was to "soak up" small debts as a result of the reconciliation process. Obviously the situation was repeated with the lodgement pf the 2002 and 2003 income tax returns, and this so-called one-off "bonus" payment eventually found itself being incorporated into the *Social Security Act 1991*.

I am not sure that an additional "payment" to compensate individuals who incur the GIC on their low value debt would be particularly palatable, but the remission of the GIC on such a debt, on the other hand would be well received. But in many respects, the bigger issue is why is Centrelink not forced to participate in Single Touch Payroll in the first place.

The Low and Middle Income Tax Offset

If we consider the Low and Middle Income Tax Offset, its public intent was to give low and middle income earners only, a tax break not available to higher income earners. But as it was only payable on the lodgement of the income tax return, it also had the very beneficial effect of soaking up small debts that were incurred as a result of any one of the scenarios outlined above. Its abolition has probably led to an increase in small amounts owed by any more low and middle income earners. The ATO itself would know just how many additional debit assessments have been issued, but the ATO is unlikely to be persuaded to publish that information.

When you add the potential abolition of the deductibility of the GIC and SIC, you are going to add to the angst of an increasing number of low and middle income taxpayers who, for reasons that many do not understand, end up owing money to the ATO after they receive their annual Notice of Assessment.

It may even encourage even more taxpayers to overstate their deductible expenses, even by just a little bit, to reduce the size of the debit assessment, and to avoid paying any GIC on a small income tax liability.

A negative outcome of the proposed abolition of the deductibility of the GIC and SIC could be a dramatic increase in applications for remission, under PS LA 2011/12. Even a strict application of the guidance set out in that document will not reduce the sheer volume of applications. The policy to remit the GIC that was calculated at under $100 was probably originally introduced to avoid the administrative costs of firstly, discouraging the submission of such application, secondly to reduce the administrative cost of dealing with every single application, and finally, the administrative cost of recovering such small amounts.

My Responsibility to my Individual Clients

As a Registered Tax Agent, I am already advising some of my employee clients to request their employer or their second employer to withhold additional tax over the specified minimum to protect themselves against the possibility of having a tax liability for any of the reasons outlined at the beginning of this submission.

With clients who have received Centrelink benefits in the past and /or who are at risk of needing to apply for a Centrelink benefit in the future, I am strongly advise them to consider asking Centrelink to withhold at least 20% tax from their benefit. The best case outcome from such a strategy is that they might end up with an unexpected refund, and at the minimum, they at least mitigate the risk of an unexpected and unmanageable tax liability.

If the government decides to repeal the deductibility of the GIC, then the advice to have additional tax withheld from all sources of assessable income will be extended to the majority of my individual clients. To fail to provide this advice could be considered to be negligence on my behalf, when I have so many clients who trust my deep understanding of the working of the tax system as it applies to individuals.

Conclusion and recommendations

I wish to make the following recommendations, for consideration:

1. the Commissioner be allowed to continue to exercise his discretion under s8AAG of the TAA 1953 to remit the value of the GIC up to the value of $100 per month – this would avoid the cost, both financial and political, of firstly advising taxpayers of such small amounts of GIC, and then chasing up the recovery of such amounts, which may not be particularly cost effective

2. require Centrelink to be more proactive in advising their clients (customers?) of the potential for an income tax liability in each year. This would particularly apply when an individual applies for a Centrelink benefit during a financial year, where the individual has already earned more than the tax-free threshold
3. amend the provisions in Schedule 1 to the TAA 1953 to require entities like Centrelink, Comsuper, and any other entity that pays an regular assessable income payment to be required to participate in Single Tax Payroll. Alternatively, this may require repealing any instrument under s389-10 which has exempted Centrelink and possibly other entities from participating in Single Touch Payroll.

   This would support the proposed intention of the ATO to develop systems to advise taxpayers, in real-time, of the inadequacy of tax being withheld from second jobs, and from payers like Centrelink
4. Consider the re-introduction of the Low and Middle Income Tax Offset for individual taxpayers, with the policy objective being to "soak up" small tax liabilities which were the unintended consequences of the practicalities of living – being unemployed, changing jobs, getting a promotion, etc.

Thank-you for the opportunity to contribute to the policy discussion of the proposed legislation.

Yours sincerely

Philip Roper

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