

SW & A

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20 May 2004

Review of Self - Assessment
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Sirs,

Re: SUBMISSION

I wish to make a formal submission concerning the Review of Income Tax Self-Assessment. In particular, I wish to confine my comments to issues dealing with 'The General Interest Charge' (per Chapter 5 of the Discussion Paper).

'THE GENERAL INTEREST CHARGE':

While the Discussion Paper is titled 'Review of Income Tax Self-Assessment', as you are aware GIC is imposed in respect of late payments of **any type of tax**.

I have, therefore, taken the liberty of extending my submission to the current ATO policy of imposing GIC in respect of the GST.

Given that in respect of GST taxpayers self assess on many more occasions than Income Tax, and indeed, lodge returns (BAS) far more frequently than Income Tax, it would be an oversight when considering the imposition of GIC under self-assessment, to ignore GST.

Indeed, it could also be construed under Question 5.D in which the question posed asked: 'should different market segments be treated differently for GIC purposes?' - that should these market segments also include GST?

With due respect, one of the reasons there currently exists problems with the ATO's Receivables Policy and the imposition of GIC is, with one exception - GST Wash Transactions - it fails to distinguish GST from any other tax, and yet, there are many more circumstances under self-assessment which apply to GST than any other tax.

PROBLEMS ASSOCIATED WITH GST AND GIC:

The GST Legislation is far from perfect, many different interpretations in areas such as property transactions and margin scheme, exports, sales of going concerns etc., do occur.

These different views often result in assessments being raised by the ATO. Furthermore, strict record keeping requirements such as tax invoices, and their contents also cause assessments to be issued.

Often, poor or incomplete documentation is able to be corrected by the taxpayer and as a consequence, previously disallowed input tax credits are subsequently re-claimed. This means there is in fact no actual GST recovered by the ATO!

Consider the following two **actual** examples (real situations where GIC has been imposed).

1. A business in an isolated rural location, entered into a recipient created tax invoice agreement with various suppliers (farmers). This allowed the business to issue recipient created tax invoices (RCTI's).

Unfortunately due to a computer software glitch, when issuing the RCTI's, the software failed to 'merge' the suppliers ABN onto the RCTI. When this error was discovered by the ATO's GST Auditors, despite the fact **all** the ABN's were held electronically by the taxpayer, assessments for amended BAS were issued by the ATO totalling \$3.7m. In otherwords, the original input tax credits claimed were disallowed.

The taxpayer immediately obtained corrected tax invoices and lodged its next BAS with a claim for \$3.7m credit. No cheques for the assessments were ever written to the ATO and no administrative penalty was imposed.

Despite this, GIC totalling \$1.1m was imposed. Furthermore, because the ATO's GST Wash Transaction policy only seems to apply to a supplier who does not charge GST, and the recipient could claim a full input tax credit - there was no GST Wash, GIC reduction. The ATO's view is this policy cannot apply to a recipient, only to a supplier!

In this example, there was no risk to ATO revenue, no actual GST recovered, no penalties imposed and yet \$1.1m of GIC was levied!

2. A Motor Vehicle Dealer who acquires second-hand motor vehicles as trading stock incorrectly treats vehicles from registered persons as if they were supplied from a non-registered person and claims a notional input tax credit. The ATO's GST Auditors assessed the taxpayer on the basis the taxpayer should have obtained a tax invoice from the registered suppliers - despite acknowledging the vehicles are all creditable acquisitions.

The Dealer's internal software system had no method to follow-up where a vehicle was supplied by a registered person without a tax invoice, it simply reverted to treating said vehicle as if it was supplied by a non-registered person.

Despite going to considerable expense and trouble to subsequently obtain the correct documentation, the ATO issued assessments for the relevant vehicles. While the assessments totalled \$697,000, the taxpayer was able to claim a credit for this same amount. No actual GST was recovered and no administrative penalties imposed.

GIC of \$200,000 was imposed and no reduction as a GST Wash Transaction occurred as, it was not a supply but a recipient involved.

There are numerous situations where GST Wash Transactions occur, that is one taxpayer remits GST and another has an offsetting input tax credit claim. To restrict a reduction in GIC only to suppliers, and not recipients is unfair and unjust.

There are also numerous situations where the GST assessed by the ATO has no penalty imposed, and is subsequently re-claimed as an input tax credit by the same taxpayer. No real GST tax has been recovered, and yet GIC is being imposed!

In these circumstances, the ATO itself should remit GIC.

As I understand it, the ATO treats, in examples 1 and 2 above, the matter as GST recovered from an audit when in reality no additional GST is actually recovered.

This treatment, in my view, not only distorts ATO figures, but caused the unnecessary imposition of GIC. The ATO was not deprived of any revenue - none was paid late! No GIC should be imposed.

Yours sincerely
SW&A

Max Warlow
Director