

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

By email only: deductions@treasury.gov.au

Dear Director,

Re: Exposure Draft - Treasury Laws Amendment Bill 2024: Denying Deductions for Interest Charges

The Law Institute of Victoria (**LIV**) is Victoria's peak body for lawyers and those who work with them in the legal sector, representing over 20,200 members. The LIV has a long history of promoting justice, and contributing to, shaping, and developing effective state and federal legislation.

The LIV welcomes the opportunity to provide feedback to Treasury regarding the Treasury's consultation on the effectiveness of the Exposure Draft Treasury Laws Amendment Bill 2024: Denying Deductions for Interest Charges (the **Bill**) and accompanying explanatory material, which implements a measure from the 2023-24 Mid-year Economic and Fiscal Outlook to deny the income tax deductions for amounts of general interest charge (**GIC**) and shortfall interest charge (**SIC**) (together, the **Charges**) incurred from 1 July 2025.

The following submission is informed by the views of members of the LIV's Taxation and Revenue Committee.

Executive summary

The LIV submits that denial of deductions for the Charges is incongruous with the original purpose of the introduction of the GIC and SIC. There are current measures available to encourage overall compliance with the tax obligations and denying deductions for GIC and SIC will only overburden individual taxpayers and SMEs, and have consequential negative effects for the revenue.

LIV Concerns

The LIV notes that, according to the Explanatory Materials, the stated purpose of the measure to deny the income tax deductions for amounts of the Charges is 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', and thus to prevent taxpayers from receiving an advantage in the form of a 'free loan'.¹

While these objectives are important, the LIV is concerned that the measure goes further than is necessary by adopting an indiscriminate approach, and that it will unfairly disadvantage certain taxpayers. Further, the LIV is concerned that the measure is incongruous with the original purpose of the introduction of the GIC and SIC, and that it would result in the imposition of an additional penalty.

Each of these concerns are elaborated upon in the paragraphs that follow.

Indiscriminate approach

The LIV submits that, if the rationale behind the proposed measure is that a certain cohort of taxpayers are not 'doing the right thing',² a targeted integrity rule for late payment or non-payment of tax liabilities would be a fairer, less harsh, and overall, more appropriately targeted measure.

Rather than appropriately targeting the cohort of taxpayers who intentionally delay payment of their tax liabilities, the LIV submits that the implementation of this proposed measure will punish all taxpayers, including those making honest mistakes in their tax returns.

Unfairly disadvantage to certain taxpayers

The LIV is concerned that the denial of deductions will create several disadvantages to low-income taxpayers and Small-to-Medium Enterprises (**SMEs**). These groups already face tight financial resources, and the inability to offset these Charges against their taxable income will only increase their tax burden, leading to greater financial strain and potential cash flow issues. In addition, low-income taxpayers and SMEs may find themselves needing to engage more in financial planning and tax advisory services to manage their tax affairs, leading to increased administrative costs. Such challenges may negatively impact taxpayers' and SMEs' financial well-being, and undermine the overall fairness and effectiveness of the tax system.

Contrary to the original purpose of the Charges

The LIV notes that both the GIC and SIC have an inherently punitive function, in that they are designed to discourage late payment or non-payment of tax liabilities. Whilst the LIV acknowledges that these two distinct charges are vital for ensuring compliance within Australia's self-assessment tax system, it submits that the proposed measure to deny deductions for the Charges is inconsistent with their original purposes, which is to simplify a complex array of penalty interest charges applying to late payments and

¹ Exposure Draft Explanatory Materials, Treasury Laws Amendment Bill 2024: Denying Deductions for Interest Charges, [1.2], [1.6] ('Explanatory Materials').

² Australian Taxation Office, Annual Report 2020-2021 (Report, October 2022) p 32 <<https://www.ato.gov.au/about-ato/commitments-and-reporting/annual-report-and-other-reporting-to-parliament/annual-report>>.

tax shortfalls. Specifically, the LIV refers to explanatory material from 1999³ and 2004⁴ respectively, which provided that the Charges were tax deductible.

Additional penalty

The LIV submits that the Commonwealth's purpose of encouraging timely payment of tax liabilities is already served after taking into account tax deductibility of the Charges. The proposed denial of the deductibility of the Charges thus simply represents a further penalty on taxpayers, as acknowledged at paragraph 1.6 of the Explanatory Materials:

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.

That is, SIC compensates for the 'time value of money'. This is by SIC being at a rate of three per cent above the base rate, such that even for a taxpayer on the highest marginal tax rate, the after-tax cost of the SIC would be higher than the inflation rate. Making SIC non-deductible adds a penalty element above compensation for the time value of money. In the LIV's view, this is not appropriate as the uniform penalty regime already exists for the penal purpose.

Further, the Explanatory Materials make it clear that the purpose of GIC is to encourage taxpayers to pay their debts when they fall due and is set at a penal rate, being seven per cent above the base rate. If taxpayers are not paying their debts, there are other tools available to the Australian Taxation Office to encourage payment of tax liabilities. Specifically, taxpayers who are not 'doing the right thing' by deliberately under reporting their tax liabilities can already be punished under the existing uniform administrative penalty regime.

The LIV would be pleased to further discuss any matters outlined in this submission and any aspect of the Consultation. If you would like to discuss any of the above, please do not hesitate to contact Fernando Gallieto, Section Lead, Lawyer/Legal Researcher, via email on [REDACTED] or on [REDACTED].

Sincerely yours,



Adam Awty
Chief Executive

³ Explanatory Memorandum, General Interest Charge (Imposition) Bill 1998.

⁴ Explanatory Memorandum, Shortfall Interest Charge (Imposition) Bill 2005.