Technical Resource

GUIDE TO THE NON-DEDUCTIBILITY OF GIC AND SIC

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Guide to the non-deductibility of GIC and SIC from 1 July 2025

Currency date: 4 July 2025

Summary

General interest charge (GIC) and shortfall interest charge (SIC) incurred by taxpayers on or after 1 July 2025 will no longer be tax deductible.

The correct identification of when an amount of GIC or SIC is deductible is 'incurred' will determine whether the amount is deductible.

Longstanding ATO views include the following (page 6):

- SIC is incurred only upon the issue of an amended assessment
- GIC is incurred only upon the issue of an assessment
- GIC which continues to accrue after the assessment is issued is incurred on a daily basis.

When an outstanding tax debt straddles the 2024-25 and 2025-26 income years, apportionment of ATO interest charged in relation to that debt into deductible and non-deductible components may be required based on these established views (see the scenarios from page 9).

Taxpayers and their advisers may be considering alternative sources of funding to pay overdue tax debts. However, deductibility of interest on such loans is not a given and will depend on the taxpayer's circumstances (page 14):

- non-business individual taxpayers will not be able to claim an interest deduction under s. 8-1
- individuals carrying on a business may be entitled to a deduction under s. 8-1 for interest incurred on money borrowed to meet tax debts relating to their business activities
- companies carrying on a business for the purpose of gaining or producing assessable income are entitled to a deduction under s. 8-1
- all taxpayers are denied a deduction for the interest under s. 25-5 to the extent the money is borrowed to pay income tax, PAYG withholding or PAYG instalments
- business taxpayers may continue to deduct the interest under s. 25-5 to the extent the money is borrowed to pay other business-related tax debts.

Further considerations will apply where a taxpayer chooses to use credit card debt or a related party loan to finance the payment of the outstanding tax debt (page 16).

The ATO has issued some initial website guidance (page 8). Clarity has been sought in relation to a number of technical issues (page 17).

A. Introduction

Up until 30 June 2025, para. 25-5(1)(c) ITAA 997 allows a specific deduction for expenditure incurred in relation to the GIC or the shortfall interest charge SIC.

From 1 July 2025, GIC and SIC will no longer be deductible for any taxpayer. This change was first announced as part of the 2023-24 Mid-Year Economic and Fiscal Outlook.

In the final sitting of Parliament before the Federal election in March, the Treasury Laws Amendment (Tax Incentives and Integrity) Act 2025 passed both Houses of Parliament and was enacted on 27 March 2025. The changes were as follows:

Legislative change	Effect
Repeal para. 25-5(1)(c)	GIC and SIC will no longer be deductible
Repeal s. 25-5(7)	Removes the provision which prohibits a double deduction for GIC on a running balance account (no longer necessary)
Insert new s. 26-5(1A)	Expands the provision which denies a deduction for penalties imposed under an Australian or a foreign law to clarify that GIC and SIC is not deductible under the Act.

The Act states that the legislative amendments apply in relation to assessments for income years starting on or after 1 July 2025. This refers to assessments of GIC or SIC on or after 1 July 2025 and not to the income year to which an original or amended assessment relates.

The ATO's *Taxation Statistics 2022-23 — Individual statistics* shows that for the 2022-23 income year, 302,195 individuals claimed total ATO interest deductions of $713,871,201 — an average of $2,362 per taxpayer. Assuming that most of these taxpayers had a marginal rate of 32.5% or 37%, the average tax saving range would be approximately $750-$900. With these assumptions, denying these deductions would have saved revenue of $200 to $300 million.

It is noteworthy that total ATO interest claimed has risen substantially — the 2022-23 total deduction represents a staggering 86.1% increase on the total $383,587,641 claimed five years prior in 2017-18.

* Note: The following discussion references various ATO pronouncements and guidance materials. Only public rulings (i.e. Taxation Rulings and Taxation Determinations) are binding on the Commissioner. Taxpayers may have very limited protection if they rely on the ATO Interpretative Decisions (ATO IDs) and Private Binding Rulings (PBRs) referenced in this document to protect them should they choose to apply them to their own situations, as they cannot be relied upon by a taxpayer who was not issued the ruling and merely provide indicative guidance as to how the tax law operates — however, they may provide valuable insight as to the ATO's view and approaches taken in relation to relevant issues.

ABOUT THE SIC

Where the Commissioner amends a taxpayer's assessment for an income year, the taxpayer will be liable to pay SIC on the tax shortfall amount for each day in the period starting on the day on which the shortfall would have been due to be paid under the original assessment and ending on the day before being served the notice of amended assessment.

SIC is due 21 days after the day the notice of amended assessment is issued.

The SIC is lower than the GIC and it is applied to the tax shortfall instead of GIC because taxpayers are usually unaware of the shortfall until they receive an amended assessment. However the GIC is then levied on any of the tax shortfall amount (plus SIC) that remains unpaid after the shortfall is due and payable.

In addition to income tax, SIC is also applied in relation to excess tax offset refunds, shortfalls of excess exploration credit tax, petroleum resource rent tax, excess non-concessional contributions tax and Division 293 tax.

The SIC is calculated daily on a compounding basis. Section 280-105 of Schedule 1 to the TAA sets out how to calculate the SIC rate:

$$\frac{\text{Base interest rate for that day + 3 percentage points}}{\text{Number of days in calendar year}}$$

The base interest rate changes each quarter. It is the monthly average yield of 90-day Bank Accepted Bills published by the Reserve Bank of Australia (RBA) for the month that is two months before the first day of the quarter (e.g. for the quarter commencing 1 January, the relevant monthly average yield is that for the preceding November).

The most recent SIC rates published by the ATO are as follows:

Quarter	SIC annual rate	SIC daily rate
July to September 2025	6.78%	0.01857534%
April to June 2025	7.17%	0.01964383%
January to March 2025	7.42%	0.02032877%
October to December 2024	7.38%	0.02016393%
July to September 2024	7.36%	0.02010929%

The most current SIC rates can be found on the ATO page titled *Shortfall interest charge (SIC) rates* (QC 18426).

The Commissioner must give the taxpayer a notice stating the amount of SIC payable.

ABOUT THE GIC

The ATO may apply the GIC to an unpaid tax liability after the due date.

The GIC is calculated daily on a compounding basis. Section 8AAD of the Taxation Administration Act 1953 (TAA) provides that the GIC rate for a day (rounded to two decimal places) is worked out as follows:

$$\frac{\text{Base interest rate for that day + 7 percentage points}}{\text{Number of days in calendar year}}$$

The base interest rate is the same as for the SIC.

The most recent GIC rates published by the ATO are as follows:

Quarter	GIC annual rate	GIC daily rate
July to September 2025	10.78%	0.02953425%
April to June 2025	11.17%	0.03060274%
January to March 2025	11.42%	0.03128767%
October to December 2024	11.38%	0.03109290%
July to September 2024	11.36%	0.03103825%

The most current GIC rates can be found on the ATO page titled *General interest charge (GIC) rates* (QC 16145).

The Commissioner may give a notice to the taxpayer stating the amount of GIC payable, but is not obliged to do so.

Generally, the amount of GIC applied is visible on:

- a late payment notice
- a GIC notice
- the account summary on ATO online services.

B. The practical implications of the law change

THE RELEVANCE OF 'INCURRED'

Up until 30 June 2025, s. 25-5(1)(c) allows a deduction for expenditure *you incur* to the extent it is for GIC or SIC. The law change does not include any grandfathering provisions, i.e. there is no carve-out for interest charged in relation to tax debts which originated or existed prior to 1 July 2025 or relates to prior income years. Therefore during this initial transitional period it is important to correctly identify the income year to which an amount of interest relates — this is particularly the case where an amount of GIC or SIC is incurred in relation to a tax debt which existed and was originally due prior to 1 July 2025. However the income year to which the underlying tax liability relates is not a relevant factor in determining deductibility.

The ATO holds established views as to when an amount of GIC and SIC is *incurred* for tax law purposes. GIC and SIC both *accrue* daily, calculated at a daily rate and on a compounding basis, for the relevant period as identified above.

Refer to Taxation Ruling TR 97/7 for the ATO's detailed views in relation to the meaning of 'incurred'. The general rules which have been settled by case law in defining whether and when an outgoing (or a loss) has been incurred relevantly including the following:

- an outgoing may be incurred even though it remains unpaid, provided the taxpayer is 'completely subjected' to the loss or outgoing
- there must be a presently existing liability to pay a pecuniary sum
- a taxpayer may have a presently existing liability, even though it may be defeasible by others or where the amount cannot be precisely ascertained, provided it is capable of reasonable estimation
- whether there is a presently existing liability is a legal question, having regard to the circumstances under which the liability is claimed to arise.

(Note that TR 97/7 considers the meaning of 'incurred' only for the purposes of s. 8-1. However the term 'incurred' in s. 25-5 is not defined and the common law principles discussed in the ruling may assist taxpayers and advisers in determining whether and when an amount of interest has been incurred for s. 25-5 purposes.)

WHEN SIC IS 'INCURRED'

Section 280-100(1) of Schedule 1 to the TAA makes it clear that the taxpayer's liability arises because the Commissioner amends their assessment for an income year. That is, there can be no liability (and no SIC incurred) until such time that the amended assessment has been raised. A taxpayer incurs SIC in the year they are served a notice of amended assessment. This position is confirmed in TD 2012/2.

Where, during 2025-26, a taxpayer receives an amended assessment for a tax shortfall and SIC in relation to a prior income year (e.g. for the 2023 or 2024 year), none of the SIC will be deductible. This is the case even if the tax shortfall would have been due prior to 1 July 2025 had it formed part of the original assessment. There is no 'apportionment' required despite the fact that some of the shortfall period (in relation to which the SIC accrues) is before 1 July 2025.

If a taxpayer is issued an amended assessment in mid-late June 2025 and the SIC is not due until July 2025, the SIC amount will be deductible in 2024-25 as it was incurred upon the issue of the amended assessment.

WHEN GIC IS 'INCURRED'

Unlike the SIC, there is no statutory rule that GIC can only arise upon the issue of an assessment or amended assessment. The table in s. 8AAB contains a table which sets out the specific provisions of the Tax Acts which specify that a taxpayer is liable to pay the GIC. For example, for income tax debts, FBT liabilities and GST instalments, a liability for GIC will arise if any of the relevant tax remains unpaid after its due date.

The long-standing ATO view — supported by the Federal Court judgment in *Commissioner of Taxation v Nash* [2013] FCA 336 — is that income tax (and any GIC on unpaid income tax) is due and payable only once income tax has been assessed. In its Decision Impact Statement on the judgment (Nash DIS), the ATO states that:

> Although GIC is calculated retrospectively for each day in the GIC liability period, the earliest time the GIC liability crystallises into a presently existing liability is when all of the steps necessary for its imposition have occurred — namely the making of an assessment by the Commissioner with the amount of tax payable.
>
> ...
>
> The Court's decision concerned GIC imposed as a result of unpaid income tax as a result of a late lodgment of an income tax return, and does not apply to GIC accruing after the issue date of the assessment, which is deductible on a daily basis.

Therefore, when the Commissioner issues an assessment imposing the primary tax liability and GIC, it is at that point in time (and in that income year) that the GIC is considered to be incurred, even though part of the GIC may relate to one or more previous income years. However, GIC which continues to accrue after the assessment is issued will be treated as being incurred on a daily basis.

Where a taxpayer lodges a prior year return or prior period activity statement late and receives an assessment that imposes GIC in June 2025, that amount of GIC will be deductible. If the taxpayer does not pay the primary tax liability and GIC until, say, August 2025, the initial amount of GIC assessed in June 2025 will remain deductible, as will GIC accruing daily to 30 June 2025, but any further GIC accruing on or after 1 July 2025 will not be deductible.

Note: In limited circumstances, GIC that accrues to a taxpayer may not be the result of the issue of an assessment or amended assessment. Clarity is being sought from the ATO in relation to the application of the law change to these self-executing liabilities (see page 17).

C. The ATO's guidance

The ATO has released a webpage titled *Denying deductions for ATO interest charges*, (QC 73746 — at time of writing, it was last updated on 6 June 2025).

Currently the guidance is fairly brief and practitioners may need to seek clarity on various matters.

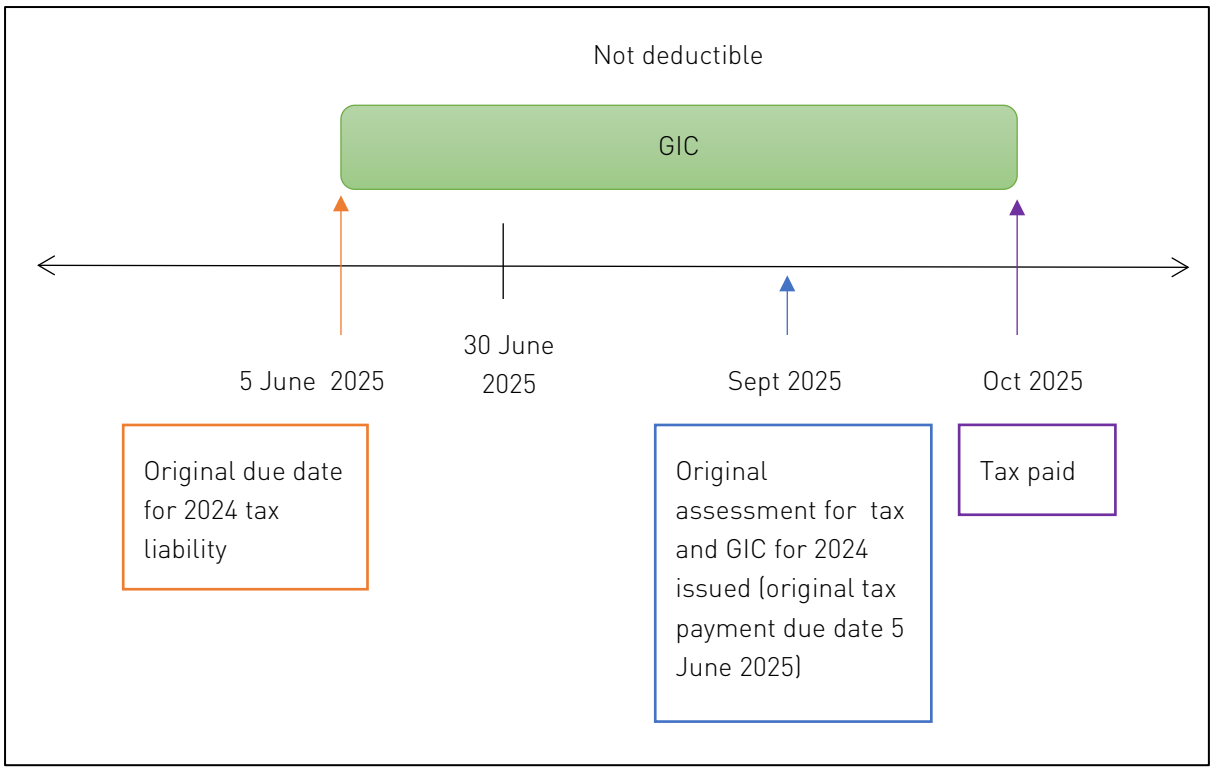
Note that the guidance states the following:

> When you claim a deduction for ATO interest depends on when GIC or SIC is incurred. This is when you become liable for the interest charge. Examples of this include (but are not limited to):
>
> - GIC imposed on unpaid income tax liabilities is incurred on a daily basis.
> - SIC imposed on an unpaid income tax shortfall is incurred in the year you are served a notice of amended assessment.

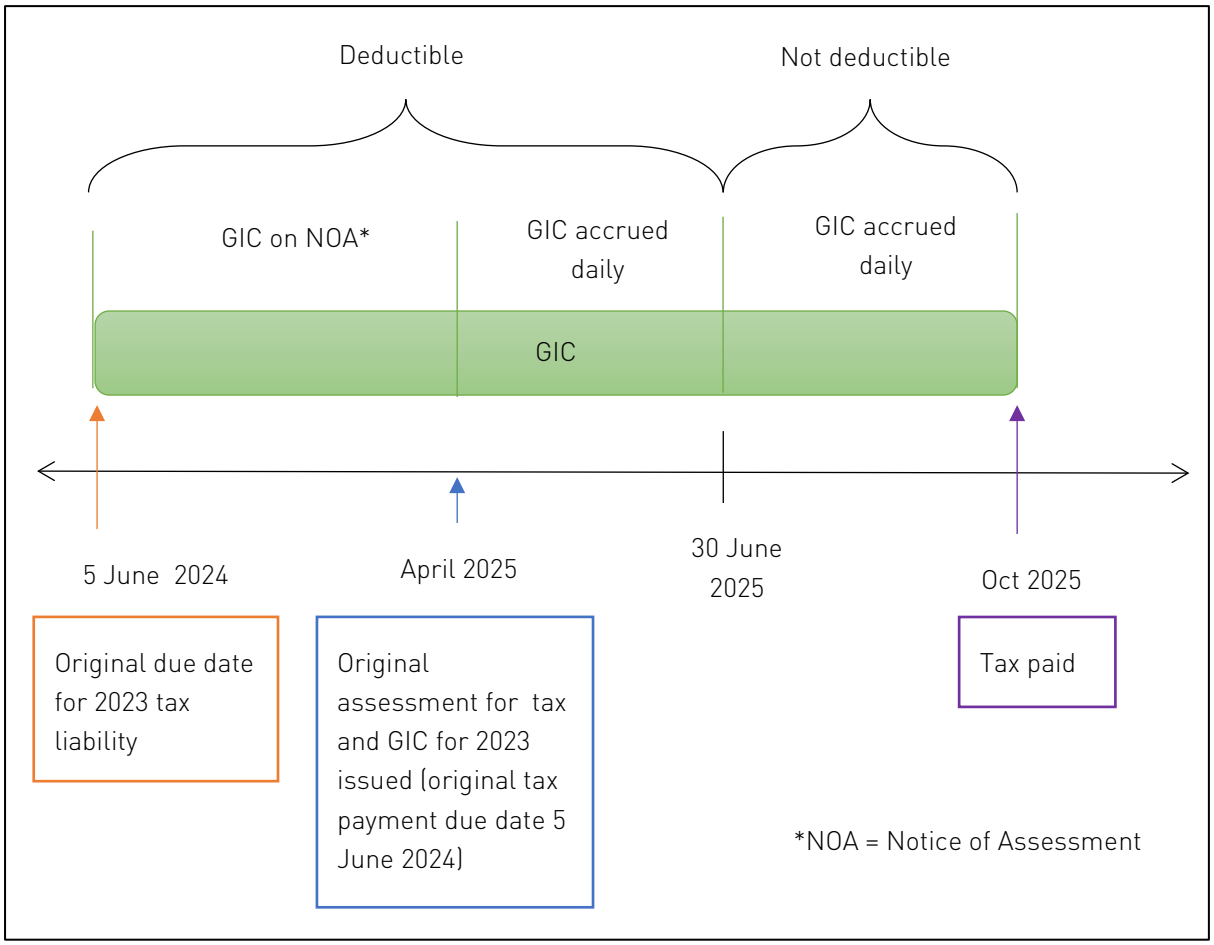
It is critical to note that (while acknowledging that the guidance makes clear that there are instances of interest being incurred other than the two included examples) the webpage does not refer to the position established by the Federal Court that GIC can only be initially 'incurred' upon the Commissioner issuing an assessment — and not before that point in time, despite the fact that the GIC does retrospectively *accrue* daily from the time that the primary tax debt was due to the time of the assessment. It is after the assessment has been issued that the ATO will treat — in accordance with its established view — GIC as being incurred each day. That is, the guidance needs to clarify that where a taxpayer receives a GIC assessment on or after 1 July 2025, none of the GIC forming part of the assessment will be deductible as it is incurred after 30 June 2025, even though a proportion of the GIC accrued prior to 1 July 2025. Similarly, the ATO guidance needs to clarify that if a taxpayer receives their assessment on or before 30 June 2025, the GIC will be incurred in 2024-25 and therefore deductible, but if they do not pay the GIC until after 30 June 2025, then any daily GIC accruing on or after 1 July 2025 will not be deductible.

D. Scenarios

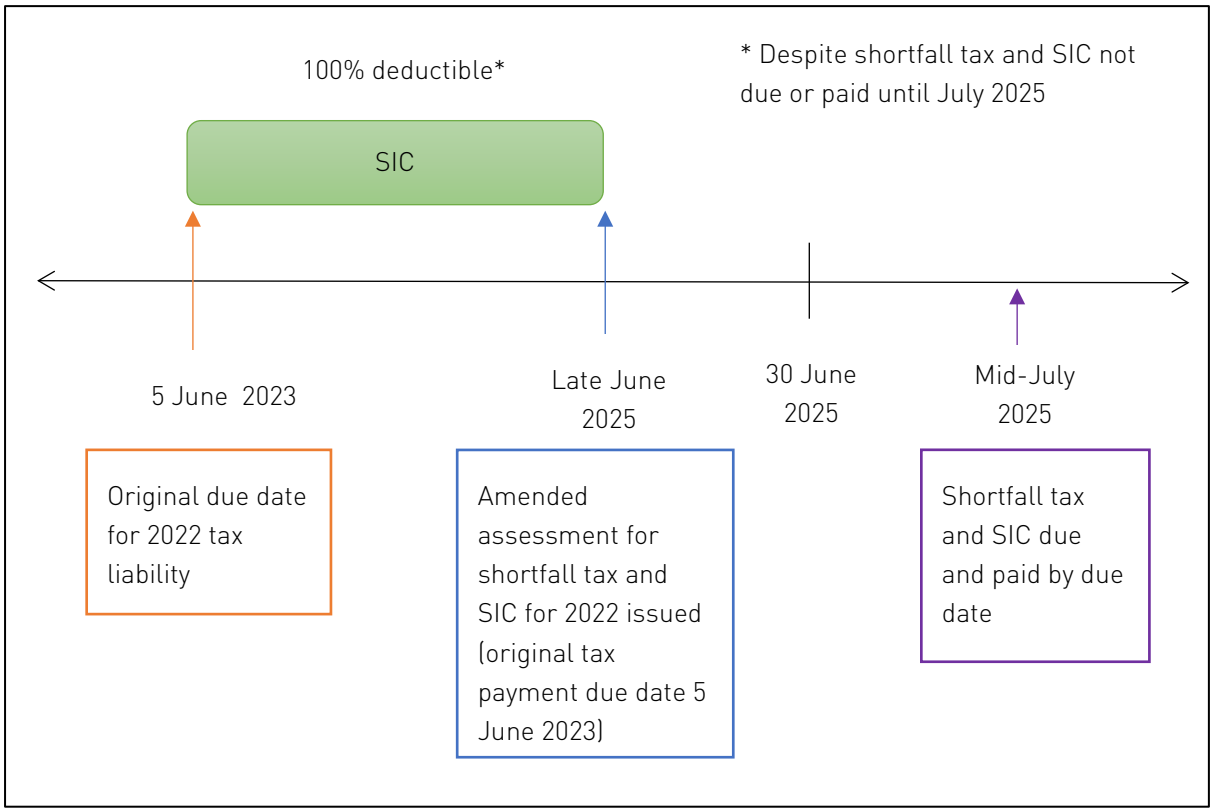
SCENARIO 1 — LATE LODGMENT OF TAX RETURN — GIC ASSESSED IN 2025-26



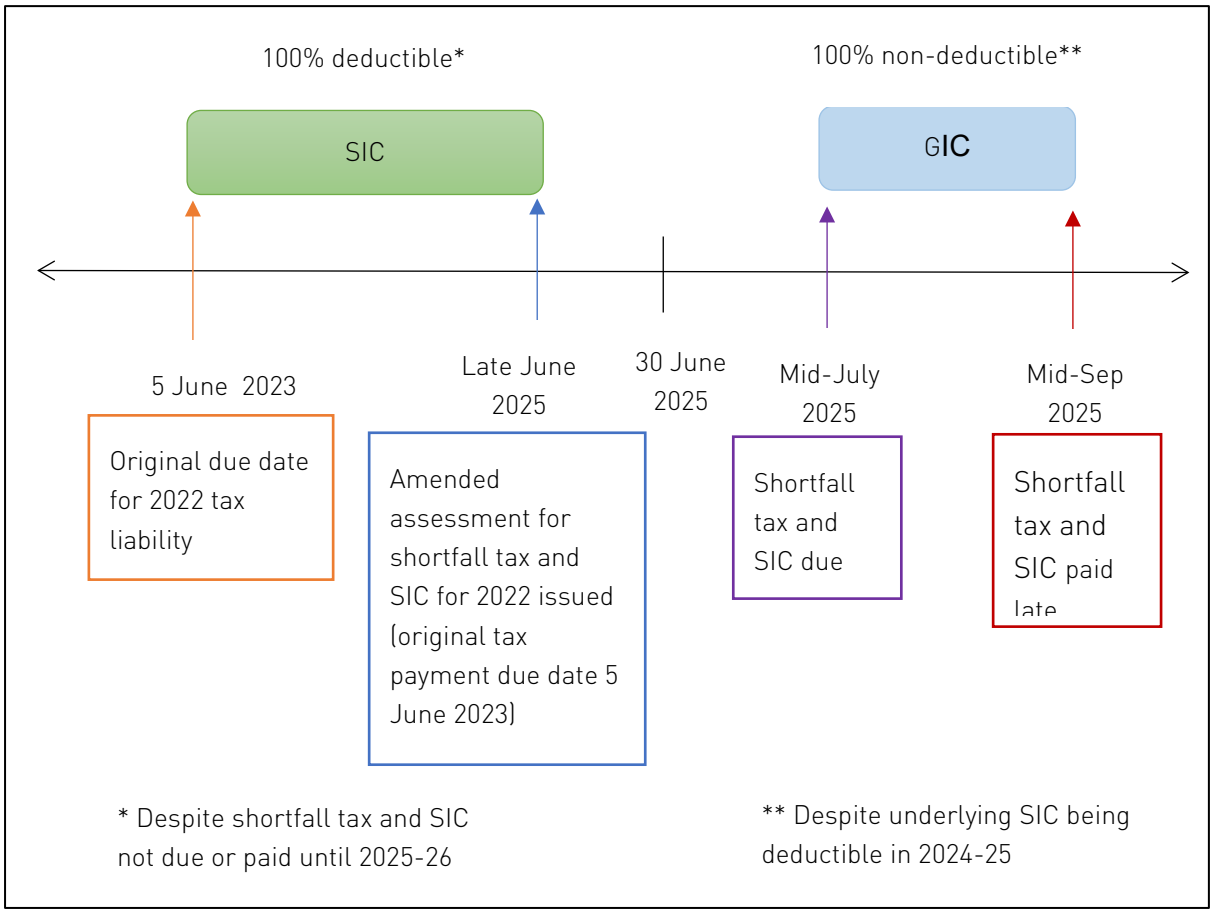
SCENARIO 2 — LATE LODGMENT OF TAX RETURN — GIC ASSESSED IN 2024-25



SCENARIO 3 — AMENDED ASSESSMENT — SIC ASSESSED IN 2024-25 AND PAID ON TIME



SCENARIO 4 — AMENDED ASSESSMENT — SIC ASSESSED IN 2024-25 AND NOT PAID ON TIME



E. ATO pre-fill

For individual taxpayers, GIC and SIC is normally pre-filled in their tax returns. Presumably this will cease from the 2025-26 year as the interest will no longer be deductible.

F. Remissions of GIC and SIC

There are no changes to the rules relating to the remission of GIC. For information see the ATO page titled *Remission of interest charges* (QC 33808). Also refer to PS LA 2011/12 and PS LA 2006/8 which set out the ATO's internal policies in relation to the remission of GIC and SIC respectively.

An assessable recoupment is assessable statutory income. Remitted amounts of GIC and SIC which are non-deductible will not be treated as assessable recoupments under s. 20-20(3) ITAA 1997. This section relevantly provides that an amount received as recoupment of a loss or outgoing that is deductible for the current or an earlier income year is an assessable recoupment. Further, s. 20-25(2A) clarifies that remitted GIC or SIC is taken to be recoupment of the expenditure.

The recoupment will no longer be an assessable recoupment as the GIC or SIC expenditure to which it relates is not deductible in any income year.

Not all remissions of interest charges granted on or after 1 July 2025 will be non-assessable. If the GIC or SIC was deductible in the 2024-25 or an earlier income year, the amount remitted on or after 1 July 2025 will be an assessable recoupment in the year received as the interest expenditure had previously been deductible.

Note: During 2025-26, the Tax Ombudsman will undertake a systemic review into the ATO's management of remission of GIC.

G. ATO interest on overpayments

Interest received from the ATO on overpayments of tax continue to be assessable income in the year received. The legislative changes have no impact on this treatment.

H. What steps can be taken now?

There are several steps which practitioners could advise clients with outstanding tax debts to take.

In the absence of any other considerations, the preferred course of action would be to pay the tax debt as soon as practicable in order to minimise any non-deductible GIC.

Where the tax liability is currently under dispute, the taxpayer could consider negotiating a quick settlement with the ATO (where possible) to avoid a lengthy drawn-out dispute process which, if the taxpayer loses, could potentially give rise to a large amount of non-deductible interest charges.

Of course, a prompt payment of the outstanding debt in full may not be possible due to cash flow issues and non-tax priorities.

The taxpayer could simply choose to allow GIC to accrue and accept that any amount incurred on or after 1 July 2025 will be non-deductible. Some taxpayers may choose to do this if the non-deductible GIC will be a relatively small amount and any potential tax saving may not outweigh the total costs of sourcing and arranging alternative finance for the entire liability amount plus the costs of that alternative borrowing (even if deductible).

Alternatively the taxpayer could choose to borrow money externally to pay the tax debt, where the after-tax cost of servicing the debt would be less than the non-deductible GIC.

It is critical to ensure all assessable income is included in a tax return to avoid the risk of the Commissioner subsequently raising an amended assessment and imposing SIC which would be entirely non-deductible.

I. Whether interest on money borrowed to pay tax debts is deductible

A taxpayer may choose to borrow money from external sources to pay the overdue tax debt, with a view that the interest on the loan should be deductible even though GIC would not be deductible if the ATO debt remained unpaid.

A deduction for the interest would only be allowable if the deductibility requirements are met for either:

- a general deduction under s. 8-1 ITAA 1997; or
- a specific deduction under another provision of the Tax Act.

GENERAL DEDUCTION

Section 8-1 allows a taxpayer to deduct expenditure that is either:

- incurred in gaining or producing their assessable income (first positive limb); or
- necessarily incurred in carrying on a business for the purpose of gaining or producing assessable income (second positive limb).

However, a deduction is not allowed if any of the four negative limbs apply — including where the expenditure is of a private or domestic nature (second negative limb).

Non-business individuals

ATO ID 2002/607 sets out the ATO's longstanding view that an individual taxpayer cannot claim a deduction under s. 8-1 for interest incurred on a loan taken out to pay a tax debt. This is because the interest expense is not incurred by the taxpayer in earning their assessable income.

That is, an individual non-business taxpayer cannot satisfy the first positive limb as the interest lacks the requisite nexus to the derivation of assessable income.

While ATO ID 2002/607 does not consider the second positive limb, a non-business individual would not be able to satisfy it as the interest is not incurred in the carrying on of a business.

As a result, a non-business individual will not be able to claim the interest deduction under s. 8-1.

Individuals carrying on a business

So how about an individual who does carry on a business, either as a sole trader or as a partner in a partnership? Would they satisfy the second limb — to the extent that the interest on the loan relates to a tax debt on their business income (and not employment or investment income)?

A suite of Private Binding Rulings confirm that the ATO is of the view that an individual carrying on a business is entitled to a deduction under s. 8-1 for interest incurred on money borrowed to meet tax and PAYG instalment obligations arising from the business. However, interest incurred on money borrowed to pay tax liabilities that arise from non-business income (employment or investment income) is not deductible. As such, interest on money borrowed to pay tax liabilities that arise from both business and non-business income will need to be apportioned on a reasonable basis.

See PBR Nos: 1052265296362 (26 June 2024); 1051792560709 (22 December 2020); 1051616287081 (5 December 2019).

While the PBRs only consider income tax and PAYG liabilities, interest on money borrowed to pay GST, FBT and other taxes would also be deductible under the same principles.

Corporate entities

Taxation Ruling IT 2582 confirms that where a company carries on a business for the purpose of gaining or producing assessable income and, in connection with the carrying on of that business, borrows money to pay income tax (whether to preserve the assets of the business, maximise the return on them, retain sufficient money to fund the business or otherwise), the interest is deductible under the general deduction provisions. The ATO considers that the interest incurred on those borrowings is a normal incident of conducting that business. That is, such an expense is an expense incurred in carrying on that business and therefore qualifies for deduction under the second positive limb.

Whether a company is carrying on a business for the purpose of gaining or producing assessable income is a question of fact. See Taxation Ruling TR 2019/1 for the ATO's view in relation to when a company is considered to carry on a business (note that even if the company's activities consist only of passive investment, it is likely to be considered to be carrying on a business).

Working capital loans

Alternatively, a business taxpayer of any type may choose to plan and utilise their cash flow such that available cash is used to settle tax liabilities, and a working capital loan is then taken out to finance business operational expenses other than tax. Interest on the working capital loan is deductible under s. 8-1.

* Also refer to Taxation Ruling TR 95/25 for the ATO's binding guidance on the deductibility for interest expenses more generally.

SPECIFIC DEDUCTION

Subsection 25-5(1) allows a taxpayer to claim a specific deduction incurred for, relevantly, managing their tax affairs or for complying with a legal obligation in relation to the tax affairs of an entity. Subsection 25-5(2)(c) however denies such a deduction to the extent that it is for expenditure for borrowing money, including interest payments, to pay an amount of:

- 'tax'; or
- PAYG withholding (Part 2-5 in Schedule 1 to the TAA); or
- PAYG instalments (Part 2-10 in Schedule 1 to the TAA).

The expression 'tax' is defined to mean 'income tax' imposed by the Income Tax Act 1986 and a limited number of other Acts.

The denial of the deduction therefore does not extend to interest on money to borrow to pay tax debts other than those listed above. That is, interest on loans to pay FBT, GST, superannuation guarantee, other indirect taxes and state taxes, etc may be deductible under s. 25-5(1) so long as the deduction satisfies subsection 25-5(1). An individual who is a sole trader or partner in a partnership may therefore be able to claim a deduction under s. 25-5 for money borrowed to pay these tax debts, in the event that a deduction is not available under s. 8-1.

Section 25-5 applies to all types of taxpayers and therefore a corporate entity may be able to claim a deduction under this provision even if a deduction is also available under s. 8-1.

Note that subsection 25-5(2)(c) only applies to deny a deduction under subsection 25-5(1). It does not deny a deduction that would otherwise be allowable under s. 8-1.

The anti-overlap rule in s. 8-10 requires that if a deduction in respect of the same amount is available under both s. 8-1 and s. 25-5, the deduction should be claimed only under the 'most appropriate' provision. This is most likely to be s. 25-5 but it will depend on the circumstances. Note that the ATO's individual tax return instructions advise individual taxpayers to claim the interest charges under the Cost of managing tax affairs label, including where it relates to GST or PAYG.

J. Credit card fees incurred in paying tax liabilities

If a taxpayer only needs financing for a month or two, they may choose to pay the outstanding tax debt on a credit card and pay off the credit card when it is due later.

According to ATO ID 2010/160, the ATO is of the view that a salary and wage earner — i.e. a non-business individual — cannot claim a deduction under either s. 8-1, s. 25-5 or s. 25-25 (which allows a deduction for expenditure incurred for borrowing money for the purpose of producing assessable income) for a card payment fee they are charged by the ATO for using a credit card for paying their personal income tax debt. The fee is not incurred for the purpose of producing assessable income. It is a payment out of income after it has been earned.

However, a business taxpayer of any type may be able to claim a deduction for the credit card fee under the second positive limb of s. 8-1 where the expense is 'necessarily incurred' in the carrying on of the business (and none of the negative limbs apply, including that the money is not used for private purposes in the case of an individual).

For completeness:

- section 25-5 — a deduction for the credit card fee as a cost of managing tax affairs may be denied under s. 25-5 where the expense relates to the payment of income tax, PAYG withholding or PAYG instalments
- section 25-25 — a deduction for the credit card fee as a borrowing expense may not be available under s. 25-25 as the provisions requires that the borrowed money is used for the purpose of producing assessable income (unlike s. 8-1, there is no 'second limb', i.e. the cost being necessarily incurred in the course of carrying on the business will not qualify it for the deduction).

Current ATO card payment fees are as follows (QC 50297):

Card type	Fee
American Express	1.45%
Mastercard — international	1.99%
Mastercard — domestic credit	0.92%
Visa — international	1.99%
Visa — domestic credit	0.80%

K. Related party loans — extra considerations

A taxpayer with an outstanding tax debt may be able to obtain a loan from a related party, such as a shareholder or another entity within the same corporate group or family group.

Apart from interest deductibility, there are other issues which may require consideration.

Where the money is lent or given by a private company to the taxpayer who is a shareholder or an associate of a shareholder of the private company (and the taxpayer is not a corporate entity), the Division 7A rules may potentially apply to treat the loan or payment as an unfranked dividend paid by the private company.

A subsequent forgiveness of a loan by a private company may also be subject to Division 7A.

Where a corporate taxpayer receives an 'at call' loan (without a fixed term and repayable on demand) from a connected entity (such as a controlling shareholder or director), the 'loan' may give rise to either a debt interest or an equity interest under the debt/equity measures — which will determine the tax treatment of the payments of 'interest'. Note that under the small business carve-out for companies with an annual aggregated turnover of less than $20 million, the at call loan is automatically treated as a debt interest.

If the related party subsequently forgives the loan or part of the loan, the commercial debt forgiveness rules may potentially apply if the interest on the loan was deductible.

L. Issues for clarification

Whilst the ATO's webpage is a welcome first step, its brevity leaves a number of issues in relation to which the ATO's specific guidance is sought, to assist taxpayers and practitioners to apply the non-deductibility rule correctly.

Topics for which further guidance would be welcomed include the following.

INTERACTION BETWEEN ASSESSMENT DATE AND INCURRED DATE

As noted above, the ATO guidance highlights that GIC is incurred on a daily basis and SIC is incurred in the year the notice of amended assessment is served.

The guidance should include reference to the established view set out in the Nash DIS (page 7) that GIC is considered to be incurred only upon the issue of an assessment, with subsequent GIC then being incurred on a daily basis. Alternatively if there has been any change in the ATO's view then this should be clarified.

SELF-EXECUTING LIABILITIES

On the basis established by the Nash decision that GIC is only incurred upon the issue of an assessment by the Commissioner, the ATO needs to clarify how the change in the law will apply in cases where there is no assessment process.

Such tax liabilities include the Family Trust Distribution Tax (FTDT) and the Franking Deficit Tax (FDT).

The FTDT is automatically due and payable 21 days after the date of the relevant distribution outside the family group — an assessment is not required to trigger the liability. GIC accrues from 60 days after the FTDT became due and payable. Generally the Commissioner may give a notice of FTDT but he is not obliged to do so (unless upon request, or in certain cases involving non-resident entities). There is no time limit and a taxpayer may be made aware of historical FTDT many years down the track. The ATO has recently signalled that it is focusing on FTDT. While GIC on income tax liabilities also automatically accrues without the need for an assessment, it has been established in common law that the assessment is necessary for the GIC to be 'incurred'. Clarification from the ATO as to whether this equally applies to GIC imposed on FTDT, or whether the GIC on FTDT would instead by considered to be incurred as soon as it accrues, would be appreciated.

The FDT arises if an entity's franking account is in deficit at 30 June (or when it ceases to be a franking entity). Over-franking tax (OFT) arises if the entity over-franks a distribution. A franking account tax return disclosing FDT and OFT must be lodged, and liabilities paid, by 31 July. If a taxpayer does not pay by this date, are they considered to both accrue and incur the GIC on the unpaid liability daily from 1 August or is a further notification from the ATO required before the GIC is treated as incurred?

DEDUCTIBILITY OF INTEREST INCURRED ON LOANS TO PAY TAX DEBTS

As discussed above, taxpayers who source alternative funding to pay their overdue tax liabilities may potentially be able to claim interest deductions under s. 8-1 or s. 25-5, depending on the facts and circumstances. The ATO should issue guidance on its views in relation to deductibility of these interest expenses in recognition of the fact that there is likely to be an increase in these loans.

In particular, clarity is sought in relation to:

- the potential application of s. 25-5 to allow a deduction for interest on borrowings to pay tax liabilities other than income tax, PAYG withholding and PAYG instalments
- the potential application of s. 8-1 to allow a deduction for interest on borrowings by individual partners who carry on business in a partnership to pay tax liabilities on distributions of net partnership income — whether the tax debts are considered wholly private in nature.

PAYMENT PLANS

Taxpayers may enter into a payment plan on or after 1 July 2025 in respect of a liability assessed before that date, and the payment arrangement may also include GIC accrued before that date. The ATO needs to clarify the practical application of the law change to these arrangements.

ONLINE SERVICES FOR AGENTS

As noted above, in some cases GIC will need to be apportioned for deductibility. ATO guidance needs to clarify whether its Online Services for Agents platform will clearly apportion GIC (and SIC) which is considered to be incurred before 1 July 2025 and that which is incurred on or after that date.

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