28 October 2024

Australian Taxation Office

GPO Box 3335

MELBOURNE VIC 3001

**Informal Review Request: Request for Remission of General Interest Charge (GIC) from 1 July 2020**

**Taxpayer: XXX Pty Ltd ABN xx xxx xxx xxx**

Respectfully, we request an Informal Review of the decision not to allow full remission of GIC (Reference Number: xxxx xxxx xxxxx), dated on 4 December 2024.

In support of this request, we have added a new general ground of appeal, concerning remission of penalty and interest decisions, pursuant to paragraph 3 of PS LA 2007/4:

**Remission of penalty for failure to comply with GST registration obligations”, subject to the “general principles for ATO decision making” and the “good decision-making model”. In summary, the Commissioner of Taxation protects the taxpayer from incurring penalties and interest in these matters, when the Commissioner of Taxation has issued written guidance in the form of a PS LA.**

The XXX Pty Ltd is a small business and its sole director is Ms xxx xxx.

Our understanding is that the most relevant ATO citable source for this GIC Remission request matter is LI 2023/27 *Taxation Administration (Remedial Power - Remission of Charges and Penalties) Determination 2023.*

Of particular importance is paragraph 17 of the Explanatory Statement to LI 2023/27, which identifies three specific individual grounds whereby a remission of GIC from a taxpayer should be considered when a taxpayer identifies that one of the three listed grounds enable the Commissioner of Taxation to remit GIC.

*Except from paragraph 17 of the Explanatory Statement (ES) to LI 2023/27*

“17. A 'relevant class' is defined as a class of entities:

(a) that the Commissioner is satisfied has been affected by a natural disaster or **other serious and external adverse event, or**

(b) with a liability to a charge or penalty that the Commissioner considers is a **minor amount**, having regard to any relevant matters such as the cost of collecting the liability, costs of compliance for taxpayers, and the need to maintain adequate incentives for the prompt payment of liabilities, or

(c) with a liability to a charge or penalty that the Commissioner considers it is appropriate to remit to encourage ongoing compliance with taxation laws, having regard to **previous compliance history.** “

We intend to demonstrate that our client has met two of the three grounds that are relevant in this instance to remit GIC, being the grounds listed at paragraph 17 of the ES to LI 2023/27: (a) ‘other serious and adverse event’ and (c) ‘good compliance history’.

**GROUND A: SERIOUS AND EXTERNAL ADVERSE EVENT**

We will now outline several serious and adverse external events that have impacted upon the taxpayer in accordance with paragraph 17 of the Explanatory Statement to LI 2023/27 *Taxation Administration (Remedial Power - Remission of Charges and Penalties) Determination 2023.*

as follows:

1. **CASHFLOW AND EXTERNAL ADVERSE CUSTOMER RELATED ISSUES**

After a significant R&D investment, the firm launched its Ecoactiv Digital Platform in June 2020 as a user-pays collection and recycling service, with JB Hi-Fi as the first of what was expected to be many key partners. Ecoactiv was designed to be a central revenue driver for our business, providing services in the areas of circular economy and sustainability, which are critical focus areas for The Activ Group. However, the onset of the COVID-19 pandemic severely disrupted our business, including the Ecoactiv launch.

EraseIT, as one of the major clients and a key profit contributor with an annual spend of $xxx,000, brought forward a significant amount of project work, primarily involving the collection of assets for disposal. This provided a temporary surge in revenue, which was crucial at the time. However, this was short-lived, and after this initial burst of activity, EraseIT’s project work and spending dried up. This sudden and sharp drop-off, combined with the unexpected loss of other projects, severely affected our client’s revenue streams.

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Description automatically generated

While there was increased demand for new products due to the shift to remote work, XXX’s Pty Ltd’s environmental services, including recycling programs and end-of-life product stewardship, were viewed as “non-essential”. Many businesses delayed or cancelled sustainability initiatives given the significant uncertainty in the economy at that time. This downturn impacted both Ecoactiv and the broader circular economy, leading to a drastic decline in revenue.

The culmination of these compromised projects forced our client to reduce its workforce from 16 to 6 by 2023. EraseIT was a critical profit centre, but the impact spread across multiple services.

As a direct result our client experienced a slowdown in its debtor’s turnover which adversely effected their ability to pay its bills on time, which prevented timely payment of tax debts.

Our client has also written off $X in bad debts in the last three years, which prevented timely payment of tax debts.

Our client recently had a major client enter into administration and liquidation, which resulted in $x being written and significant cash flow issues, which prevented timely payment of tax debts.

**Our client has experienced significant supply chain issues since 2020, which has resulted in them incurred additional costs of x% on the purchasing costs, most of which they have had to absorb and as such their business margins have decreased by x%.**

**2. CRITICAL STAFF TURNOVER, IT AND ACCOUNTING SYSTEMS FAILURES**

In November 2022, CFO, xxx xxx, retired unexpectedly, leaving the accounting function under the management of xxx xxx, a relatively junior accountant. Unfortunately, the full extent of the issues with financial records only became apparent when xxx xxx Liyanage subsequently resigned unexpectedly in March 2023.

During Mr. X’s tenure, our client had attempted to implement Oracle’s NetSuite, an enterprise resource planning (ERP) software system. However, the implementation subsequently failed as the system was configured using custom tables instead of the standard out-of-box features. This added unnecessary complexity, rendering our client unable to run standard financial reports or manage financial processes effectively. With hindsight, the system was not configured to meet our client’s business needs, resulting in significant operational inefficiencies.

Senior NetSuite staff from the Asia-Pacific and U.S. regions later reviewed our client’s NetSuite implementation and confirmed that the failure was the fault of the Australian reseller. NetSuite acknowledged that the system had been improperly configured using custom tables, bypassing standard features and resulting in ongoing manual processes, such as manual invoicing, that were error-prone and inefficient.

As a result of this confirmation, our client was offered a 72% discount on their ongoing NetSuite fees as compensation, a decision that required Senior VP-level approval. Despite this, the system remained plagued with issues, which affected our ability to produce accurate financial reports in a timely manner. Our client relied on the accountant’s communication about these issues, but due to the lack of standard reporting functionality and the highly manual nature of our client’s IT processes, it was difficult to spot and resolve errors effectively.

In March 2023 after Mr xxx xxx resigned unexpectedly, Ms XXX xxx as sole Director also assumed the role of CFO and in order to reduce costs.

Soon after Mr X’s departure our client immediately engaged an external bookkeeper to assist with the account’s reconciliation. Given the complexity of the system and data issues left dating back two years by the prior finance manager the efforts of the bookkeeper unfortunately compounded the problem.

(X Partners) discovered the bookkeeper recorded several journal entries that we later found to be inaccurate, and this process took a huge amount of time to unravel and fix.

It was then in September 2023 that we (X Partners) were engaged to assist with the bookkeeping and reconciliation. It was very clear from the time we took over the bookkeeping function the accounts were left in a “mess” by the bookkeeper and the previous finance manager. Attending to the problems caused by the bookkeeper and previous finance management became an expensive exercise for our client.

We also had to rely on the CEO to assist in resolving multiple gaps we identified whilst attending to the reconciliation. The CEO and X Partners had to liaise with multiple non-finance staff to assist us in resolving the issues we had identified with the accounts. The issues included:

* revisiting a significant number of incorrect journal entries recorded by the Bookkeeper and the previous finance manager.
* reconciliations not performed dating back multiple financial periods in the system (manual records differing from system records)
* supplier payments not offset / recorded against the supplier invoices leading to a complete mismatch of supplier statement of accounts and our NetSuite records that was complex and time-consuming to resolve. In order to rectify this, our client had to request supplier statements from its various suppliers and then reviewing the payments in NetSuite and re-allocating these correctly against the supplier invoices.
* intercompany transactions not correctly recorded
* the wages and superannuation payments not correctly recorded. This required Kidmans to revisit each fortnightly pay run journals and updating the journals to correctly reflect the pay run transactions

**3. INCREASED CARE GIVER RESPONSIBILITIES AND OWN MENTAL HEALTH ISSUES**

Since 2021, Ms XXX XXX has been the sole caregiver for her 82-year-old mother, whose health has been in rapid decline. She suffers from advanced osteoporosis, Moreton’s neuroma, lymphedema, and has undergone multiple surgeries, including four hip replacements and a parathyroid operation that caused postoperative delirium. In 2023 alone, Ms X 35 GP appointments in addition to numerous specialist consultations and rehabilitation sessions.

Balancing her caregiving responsibilities with managing the business placed an enormous strain on Ms xxx xxx mental and physical health. Ms xxx xxx has been diagnosed with severe stress and anxiety and is under a formal healthcare plan to manage these conditions. Despite these personal challenges, Ms xxx xxx believes that she has no choice but to continue to work over 60 hours per week to resolve the financial issues and related compliance with tax obligations.

The Director MS X has also advised me that the existing tax debt is causing her significant anxiety and other related mental health issues.

In support of this request, we have all attached relevant documents.

* GP Letter from the taxpayer’s physician – Dr X
* NetSuite Invoice showing the discount which was given due to the issues with its implementation

**GROUND C: GOOD COMPLIANCE RECORD – Part A**

We are also submitting that the taxpayer now has a good compliance record, when considering the totality of serious adverse external events that had to be confronted. For example:

* All ATO lodgement obligations are all up to date.
* All current debts are in a complying payment arrangement.
* Our client is willing to make additional voluntary payments when their finances enable them to do so.

**GROUND C: GENERAL PRINCIPLES FOR MAKING ATO DECISIONS – Part B**

The following table provides a summary of key types of ATO advice and guidance products, along with:

* the extent to which they are binding on the Commissioner, and
* the level of protection they afford to taxpayers who rely on them.[[1]](#footnote-1)

| ATO advice/guidance type | Binding on ATO? | Protects taxpayer from: | | |
| --- | --- | --- | --- | --- |
| Shortfall | Penalties[[2]](#footnote-2) | Interest[[3]](#footnote-3) |
| **Public ruling**  (Div 358 of Schedule 1 to the *TAA*) | Legally binding | **✓** | **✓** | **✓** |
| **Administratively binding advice**  e.g. MT series[[4]](#footnote-4) | Administratively binding | **✓** | **✓** | **✓** |
| **Written guidance e.g. Practice Statements (PS LAs), ATO IDs, DIS and Consultative forum minutes** | **No** | **🗴** | **✓** | **✓** |

Paragraph 3 of PS LA 2007/4: **Remission of penalty for failure to comply with GST registration obligations”, states the “general principles for ATO decision making” and in particular the “Good decision-making model”. We note that the same good decision-making principles are re-iterated in paragraph 5 of PS LA 2023/1: SMSF – rectification directions for contraventions of the SIS Act 1993 and paragraph 3 of PS LA 2006/17** **Self-managed superannuation funds - disqualification of individuals to prohibit them from acting as a trustee of a self-managed superannuation fund.**

**“Remission of the penalty - general principles**

You need to consider remission in all cases where an entity is liable to pay the penalty. Generally (unless there is evidence of fraud or evasion), before making your remission decision, you should give the entity the opportunity to comply with its registration obligations. You should:

* explain their registration obligations
* explain how to comply with the obligations, and
* allow them a reasonable time to comply.

When making a decision about remission of the penalty, you should have regard to the objectives which underpin the penalty regime, meaning you should:

* Base your decision on the individual circumstances of the case.
* Ensure your decision is consistent with the principles of [Our Charter](https://www.ato.gov.au/about-ato/commitments-and-reporting/ato-charter/our-charter) and the [Compliance model](https://www.ato.gov.au/about-ato/managing-the-tax-and-super-system/strategic-direction/how-we-help-and-influence-taxpayers/compliance-model).
* Promote consistent treatment in respect of the penalty - the penalty should not be remitted without just cause, arbitrarily or as a matter of course.
* **Be reasonable and make your decision in good faith - you should follow the**[**Good decision-making model**](https://atooffice.sharepoint.com/sites/AboutTheATO/SitePages/Good-decision-making-model.aspx?web=1)
* Take into account all relevant facts and circumstances.
* Aim to improve future compliance by the taxpayer.

At all times, over and above these factors, your decision should ensure that there are no unintended or unjust results.

**Specifically, the** [**Good decision-making model**](https://atooffice.sharepoint.com/sites/AboutTheATO/SitePages/Good-decision-making-model.aspx?web=1)**–** which requires that the decision be legal, ethical, equitable overt, sensible, timely and **consistent** with the principles **of natural justice.**

**We note that the Commissioner of Taxation remitted in full on 13 December GIC Remission requests for two other similar successful GIC remission applications approved by the ATO recently for the following entities:**

1. A Pty Ltd – successful - full GIC remission – Rec.No. 10 523 432 81 454
2. B Group Operations – successful – full GIC remission – Rec. No. 10 523 434 86 588

There were no formal letters issued for the two successful GIC remission application. Just a response on ATO portal inbox.

The unsuccessful GIC Remission submission for above named entity XXX **Pty Ltd ABN xx xxx xxx xxx, was not factually distinguishable to those of the A Pty Ltd and B Group Operations were both successful in having GIC remitted in full.**

In summary, we are respectfully requesting that the Commissioner of Taxation consider remitting GIC in full for X **Pty Ltd ABN xx xxx xxx xxx, on the legal basis of consistency of decision making and additionally on the basis that it lead to an unjust result, as stated in the Commissioner of Taxation’s citable source for making “general principles for ATO decision making”, as stated in three PS LA 2023/1, PS LA 2007/4 and 2006/17. We note that the taxpayer is protected from penalty and interest being applied in this matter pursuant by the three above cited PS LAs.**

**SUMMARY OF REQUEST FOR REMISSION OF GIC FROM 1 JULY 2020**

We respectfully claim that the taxpayer in terms of their own factual matrix has satisfied both Grounds (a) and (c), when we only need to satisfy one of the three grounds stated at paragraph 17 in the Explanatory Statement LI 2023/17, and therefore, this GIC Remission request should be granted, on the legal basis of consistency of decision making and additionally on the basis that it lead to an unjust result.

Please consider contacting me directly in order to further discuss this matter.

Yours faithfully,

Mr X XXXX

Managing Partner

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1. See PS LA 2008/3, TR 2006/10, PS LA 2003/3 and PS LA 2012/5. [↑](#footnote-ref-1)
2. This column relates to protection from false or misleading statement penalties. [↑](#footnote-ref-2)
3. Taxpayers will only be protected from interest on shortfalls where they have acted reasonably and in good faith. Protection also does not cover GIC for late payment of the shortfall (i.e. more than 21 days after the Commissioner notified the taxpayer of the correct position). [↑](#footnote-ref-3)
4. Unless labelled as public rulings. Also see Attachment B to PS LA 2008/3 for a list of topics on which the Commissioner can provide administratively binding advice, including superannuation law, takeover bids, and various circumstances where there is no entity in existence or identifiable as a suitable private ruling applicant — e.g. private or public infrastructure schemes, and proposed commercial-in-confidence products. [↑](#footnote-ref-4)