

2 October 2025

Australian Taxation Office
GPO Box 9990
SYDNEY NSW 2001

By email: RedefiningConcessionsProject@ato.gov.au

Dear Sir/Madam,

The ATO's approach to taxpayer relief provisions

1. The Taxation Committee and the SME Business Law Committee of the Business Law Section of the Law Council of Australia (collectively the **Committees**) welcome the opportunity to provide feedback on the Australian Taxation Office's (the **ATO's**) review of how it administers the discretions concerning lodgment and payment deferrals, interest remissions, failure to lodge penalty remissions and payment plans (**Concessions** using the same nomenclature as the ATO) and set of proposed principles to guide the ATO's use of the Concessions (**Principles**).
2. The Committees welcome the ATO looking to clarify how it administers the Concessions, particularly considering the recent changes to the deductibility of the general interest charge (**GIC**) and the shortfall interest charge (**SIC**). These changes increase the penal nature of interest charges, and greater transparency on how the ATO administers the Concessions is warranted to, amongst other things, ensure that non-compliant taxpayers are not dissuaded from reengaging with the system.
3. The Committees reiterate the insights and recommendations provided in earlier submissions to the ATO on how it could deal better with vulnerable taxpayers and notes that many of the instances covered by the Principles will likely involve taxpayers in vulnerable circumstances, many of which are likely to be exacerbated by the inappropriate non-application of the Concessions.
4. With those preliminary observations in mind, the Committees provide their feedback below in response to the six consultation questions.

Consultation Question 1: Is there anything in the principles that you find confusing or unclear?

1st Principle - Fairness

1. The first Principle is 'Fairness', which appears to try to balance being fair to compliant taxpayers and the specific circumstances of the applicant including vulnerability.
2. That suggests that what is fair will be different for taxpayers who chose not to comply with their obligations and those who were unable to comply due to extraneous circumstances, including vulnerability. When finalising the Principles the ATO should clarify this distinction.
3. The ATO should also ensure that, when looking at the specific circumstances of taxpayers, it consistently applies the Concessions to different taxpayers with similar circumstances.
4. The Committees suggest that the ATO change this principle as follows:

In providing concessions, we will balance being:

- *fair to the taxpaying community who have lodged and paid on time by not advantaging those who haven't;*
- *fair to taxpayers by taking into account their specific circumstances, including any vulnerability they are experiencing to ensure they are not disadvantaged.*

2nd Principle - Conditionality

5. The second Principle is 'Conditionality', which is explained by saying that taxpayers 'may need to show that they are making all efforts to lodge and pay on time before we provide a concession.'
6. The Committee are concerned that including this in the Principles may cause ATO officers to interpret this as a condition of the exercise of the relevant statutory powers. [We note that none of the discretionary powers in question appears to include such a requirement, as far as the Committees have been able to identify.]
7. The Committees recommend that the ATO change this principle to:

Some concessions may come with conditions or expectations. This might mean taxpayers may need to show that they are making all efforts to comply with those conditions or expectations.

3rd Principle - Context

8. The third Principle is 'Context', but the explanation appears to reflect instead earlier ATO decision-making 'History.'
9. The Committees consider this to be confusing as the 'context' that should more appropriately be considered in the exercise of the relevant statutory powers would appear to be the taxpayer's relevant subjective circumstances including the taxpayer's history.
10. The Committees also note the risk of potentially entrenching ATO views from past consideration of taxpayer circumstances in such continued reference to past decisions on fresh applications for the exercise of relevant discretions, especially when supported by further/new evidence.

4th Principle - Engagement

11. The fourth Principle is 'Engagement' with the explanation suggesting that *'taxpayers who proactively engage with us and who show they are willing to comply will be considered more favourably'*.
12. This proposition does not appear to be supported by the statutory framing of the relevant provisions so including it in these principles may cause ATO officers to inappropriately deny the exercise of the relevant Concessions to taxpayers who are deserving of those powers being exercised in their favour.
13. The Committees therefore recommend that this be reframed to encourage early engagement where possible, but not to punish taxpayers who do not engage with the ATO earlier where there may be good reasons for such delays (such as due to instances of vulnerability from mental health issues, or simple ignorance from lack of financial or tax awareness).

5th Principle - Exclusions

14. The fifth Principle is 'Exclusions', and the explanation says *'Taxpayers who knowingly and deliberately avoid their obligations may not have access to concessions. This means that when taxpayers do the wrong thing or attempt to gain an unfair advantage, may not be able to benefit from concessions that are available to those who do the right thing.'*
15. As currently drafted, the explanation appears to conflate non-compliance and doing the "wrong thing" and / or "attempt to gain an unfair advantage".
16. The reasons why taxpayers fail to comply with their obligations are varied and endless. Some of those reasons may be within the taxpayer's knowledge and/or control, some may not be. Some taxpayers may know that they are not complying but may not be in a position to do anything about it. For example, a taxpayer who has failed to lodge tax returns on time due to severe illness may *knowingly* have avoided his or her obligations, but it cannot be said that that state of mind alone elevates their conduct to doing the wrong thing or attempting to gain an advantage. On the other hand, another taxpayer may simply be ignorant of their obligations such that their non-compliance would not be "knowing or deliberate" yet it cannot be suggested that ignorance alone would warrant concessional treatment.

17. The use of the phrase “knowingly and deliberately” seems to be suggesting that unless non-compliance is involuntary, the Concessions will not apply. The Committees assume that this is not intended and suggest that the explanation be clarified.

18. The Committee suggests that the ATO reformulate the fifth principle to:

Taxpayers who knowingly and deliberately avoid their obligations without a good reason or to attempt to gain an unfair advantage may not be able to benefit from concessions.

Consultation Question 2: What impact do you see these principles having on you and/or your clients?

19. Until such time as the ATO commences to implement the Principles in its administration of the Concessions, it is not possible to predict their impact. However, for the reasons set out above, the Committees consider that some of the Principles need to be re-framed to avoid imposing inappropriate conditions or restrictions on the exercise of otherwise unfettered (or largely unfettered) discretions. The Committees also recommend that the Principles be reframed as a positive articulation of when the Concessions should be applied in favour of taxpayers in suitable circumstances, rather than being framed in a negative way identifying when they should not be applied.

Consultation Question 3: Is there anything missing from the principles that you think should be included?

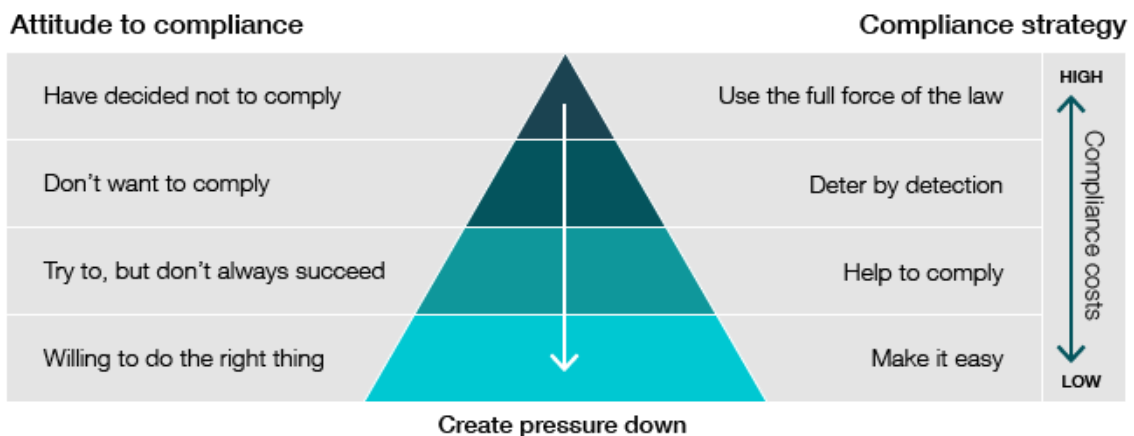
Circumstances

20. While the preamble to the Principles—“About taxpayer concessions”—refers to a taxpayer’s specific circumstances, the Principles do not, apart from “Fairness”, appear to include any injunction for ATO decision-makers to consider the taxpayer’s subjective circumstances.

21. The consideration of a taxpayer's subjective circumstances is consistent with the ATO's Compliance Model, which is intended to guide ATO compliance responses, particularly the part which recognises that taxpayer behaviour is influenced by Business, Industry, Sociological, Economic, Psychological and Technological factors,¹ depicted below:



22. Recognising that taxpayer behaviour is influenced by a number of factors, the ATO's compliance responses to those subjective circumstances should then consider the sources of the non-compliance in guiding ATO actions, as shown in the second part of the Compliance Model (the 'Compliance pyramid'):²



23. The Committees view this as being especially important in ensuring that ATO decision-makers consider the **subjective** circumstances of taxpayers in applying

¹ See <https://www.ato.gov.au/about-ato/managing-the-tax-and-super-system/how-we-help-and-influence-taxpayers>

² Ibid.

the relevant remedial discretions at an **objective** standard (noting the differences in the framing of each of the relevant statutory powers).

24. The Committees recommend that the ATO include “Circumstances” as a stand-alone Principle and that this articulation should highlight the point in the preceding paragraph.

Evidence-based

25. The Principles as currently drafted are silent as to the need for ATO decision-makers to make evidence-based decisions in the potential application of the Concessions.
26. The Committees recommend the inclusion of a principle that decisions should be ‘Evidence-based.’
27. An “Evidence-based” Principle is connected to the “Circumstances” principle recommended above and the “Transparency” principle recommendation below, in that the proper consideration of a taxpayer’s specific circumstances, supported where appropriate by evidence, should flow through into the transparent articulation of the reasons for the relevant decision being made.

Transparency

28. The Committees recommend adding “Transparency” to the Principles. Transparency in this context should encompass the ATO being transparent about how it administers the Concessions and being transparent about how and why it has decided to grant or refuse to grant a particular Concession.
29. As far as the latter is concerned, we have previously communicated to ATO representatives (via the NTLG) concerns raised by members of the Taxation Committee on behalf of clients whose GIC remission requests have been refused. Those concerns ranged from ATO officers refusing to provide written reasons for the decision not to remit, clients receiving reasons that were either grossly inadequate to clients whose GIC remission request was refused in such a short period of time that it was evident that their circumstances and supporting evidence were not properly considered.
30. When the ATO denies a Concession, whether in full or part, it should state its reasons for the denial by reference to the applicable legislation and the ATO’s administrative practice. Often reasons for decision quote the legislation and ATO administrative guidance before saying little more than “*based on the information you provided a decision has been made not to remit the interest.*” Taxpayers should not be left to guess why an adverse decision has been made.
31. The Committees consider transparency in administration to be an important feature of a robust tax system and in inspiring trust in that system. Decision-making that is, or is seen to be, arbitrary or inconsistent has the opposite effect, particularly where the decision-maker has an unfettered discretion to exercise a concession, as is the case for remission of GIC, it is important that the manner in which that discretion is exercised is both consistent with the law and is seen to be consistent. The Committees consider that consistency within the law, and in turn trust in the administration of the system, is promoted by transparent decision-making.

Consultation Question 4: What other guidance (in addition to updating our existing policies, processes and guidance material) would you need in order to understand the principles?

Practice statements and website guidance

32. The Committees recognise that the ATO will need to update its framework of practice statements and website materials to reflect the Principles and how they will guide its administration of the Concessions.
33. The Committees urge the ATO to consult publicly in the development of that guidance.

Evidence standards and evaluation

34. The Committees consider that the ATO's guidance should identify the types of evidence the ATO may expect to receive from taxpayers to support their applications for particular Concessions including guidance on the more common types of evidence relevant to the potential exercise of these discretions, e.g. trusted third-party reports from medical and/or mental health practitioners; financial counsellors and/or domestic violence support groups.
35. The practice statement(s) should include guidance to ATO decision-makers as to how to evaluate evidence including by making it clear that the types and classes of evidence that a taxpayer may present are not closed and may vary from taxpayer to taxpayer and across different taxpayer populations (e.g. an individual taxpayer should not be expected to maintain the same type and quality of records as a business taxpayer).

Staff training

36. While not impacting directly on external understanding of these principles, the Committees suggests that the proper implementation of the Principles will require training of ATO decision-makers on the appropriate application of these principles in practice.
37. In particular, the Committees consider that it is imperative that ATO officers are trained on the precise statutory provisions underpinning the relevant Concession and the fact that the Principles are not a substitute for the words of those statutory provisions and are not a limitation on the Commissioner's powers.
38. There is a risk that ATO decision-makers may otherwise elevate the Principles, the practice statements and website material as representing mandatory rules to inflexibly be followed, rather than merely guidance as to the matters to take into account in the proper exercise the relevant statutory discretions that are intended to provide relief to taxpayers who have been unable to comply with their lodgment and payment obligations.

Consultation Question 5: Are there any opportunities you see to improve the way the ATO operates in relation to taxpayer concessions?

39. The Committees consider that there are a number of opportunities for improvement in current operations.
40. First, Committee members have observed inconsistency in outcomes of GIC remission applications depending on whether the application is made by a client directly, by their tax agent or by another representative. Members have also reported that this inconsistency means advisers are often making multiple phone calls to the ATO until they manage to speak to someone who is willing to make a favourable decision—leading to ‘forum-shopping’ within the ATO and increased costs of both compliance and administration.
41. Second, Committee members have observed inconsistency in knowledge by ATO call centre staff as to the ambit of the different concessions and the requirements to be met. Practitioners have reported instances where a husband and wife have each had the same circumstances judged favourably by one case officer with respect to one party, while the other has been denied the relevant concession by another case officer.
42. Similarly, practitioners have repeatedly seen matters involving vulnerable taxpayers being denied access to Concessions on the basis of misunderstandings of the powers themselves, misunderstandings of the evidence provided or simply because ATO decision-makers have not properly read the materials provided with the submission. These matters often involve significant factual complexity and questions of judgment that the average ATO call centre staff member may not be able to properly execute, and which scripting will never be able to properly address. The Committees consider that this could be avoided by having permanent, specialist, ATO staff with specific training on the relevant statutory powers making all Concession-related decisions instead of allowing all call centre staff, who the Committees understand are in some cases an outsourced workforce, to make those types of decisions.
43. It is also imperative that all taxpayers, regardless of whether they are self-represented or represented by a tax agent or other type of adviser, have equal access to the ATO. The Tax Committee has previously identified, through its NTLG representatives, the various issues lawyers face in communicating effectively with the ATO on behalf of clients. These issues include, but are by no means limited to:
- significant delays in being able to speak to ATO staff because of antiquated communication systems: many ATO forms being lodged outside the tax agent portal can only be lodged by mail or fax; ‘authority to act’ forms having to be submitted via fax and faxes either being lost or, where they are actually received, not being actioned straight away because of the 28-day service standard;
 - ATO staff not being adequately trained on proof of identity procedures (e.g. asking a taxpayer’s representative to quote their own TFN) which leads to delays in establishing a lawyer’s authority to act;
 - ATO debt litigation cases being managed via aggregate high-volume mailboxes, where lawyer representation communications are lost, unactioned or disregarded for days or weeks; and

- ATO responses to lawyer correspondence being sent directly to taxpayers by post, despite the lawyers' correspondence having adequately provided authority for, or even direction of, communication to be via email to that law firm.
44. These issues mean that a lawyer's ability to communicate with the ATO on matters where there is not already any existing engagement with a dedicated ATO officer (such as e.g. an application for a private ruling, an objection or an ongoing review, audit or litigation) are severely hampered due to the time it takes for posted or faxed communications to be received, scanned into the ATO's systems and being actioned. Ironically, the types of engagements where these issues arise are often the matters that need the most urgent attention and have potentially severe consequences because they concern debt-related issues.
45. The Committees acknowledge that these 'access' problems require a 'whole of system' fix. Notwithstanding this, a review of how the ATO operates in administering the Concessions cannot ignore these issues in favour of a 'whole of system' fix that may be years away. The Committees encourage the ATO to urgently address, as a matter of priority, the communication channels for debt-related matters (including for debt-related remedial discretions such as GIC remissions, payment deferrals and payment plans) given that the availability of such discretions can have serious and lasting consequences for taxpayers.

Consultation Question 6: Do you have any other feedback or suggestions before we finalise the principles?

46. It is important that the Principles are not elevated above being more than a guide or a standard to be considered in exercising the relevant statutory discretions. The Principles should not be used as a substitute for decision-makers considering all the relevant facts and circumstances and should not be used to fetter what are otherwise wide remedial powers.

Conclusion and further contact

47. The Committees would be pleased to discuss any aspect of this submission.
48. Please contact the chair of the Taxation Committee Neil Brydges [REDACTED] [REDACTED] if you would like to do so.

Yours faithfully



Professor Pamela Hanrahan
Chair
Business Law Section