

16th February, 2005

“Joint Committee of Public Accounts and Audits”
Parliament House
CANBERRA ACT 2600

Dear Sir / Madam

Submission Re
“Joint Parliamentary Committee of Public Accounts and Audits”

I am a tax payer under the self assessment system and because of defects in that system have been targeted by the Australian Taxation Office (A.T.O) and subjected to retrospective penalties and interest.

On the advice of my Accountant (a member of a very well respected Adelaide Accounting Firm) and several Financial Advisers, I became involved over a number of years in several Mass Marketed Schemes, and one Retirement Village.

At the time of my involvement I was assured that:-

- (i) National accounting companies had given favourable opinions regarding the schemes
- (ii) the schemes were legal
- (iii) the A.T.O. had accepted the arrangements and had confirmed the validity of these arrangements
- (iv) tax minimisation was not the main object of the investments
- (v) I could expect a return from the Investments over a number of years which would provide towards my retirement
- (vi) I was assisting the Australian Economy and Welfare of all Australians by Investing in our country.

The Advice I received, was I considered at the time, the Best Available. Unfortunately I did not have access to the extensive investigations available to the A.T.O. There was no suggestion at that time in the media from the A.T.O. encouraging tax payers to obtain advice before investing, as occurs now. Even so I did seek advice which was not effective as the A.T.O. changed its policy and then applied these changes retrospectively.

I am confused as to why the A.T.O. appears to have different methods of treating similar tax payers in similar disputes. Some tax payers appear to be offered better terms of settlement depending as to whether they are taking appeal action or not. Settlement offers differ for tax payers in similar circumstances.

I wonder as to why Mr Costello would appoint Mr Robert Gerard to the Reserve Bank Board, despite his alleged non-compliance with tax laws and the A.T.O. forming the view that Mr Gerard's company had evaded tax with a series of sham transactions. The tax bill issued to

Mr Gerard totalled \$150 million. Although the A.T.O. maintained its view in the Federal Court, it settled with Mr Gerard's company for \$75 million, a 50% reduction in the liability. This deal included a remission of the penalties to zero. Given that the remaining amount was split between primary tax and G.I.C. (General Interest Charges), the tax deductibility of the G.I.C. component makes the settlement deal even more attractive.

This deal contrast with the Commissioner's treatment of myself and other investors where;

- (i) the arrangements were not considered by the A.T.O. to be shams
- (ii) the A.T.O. rejected similar settlement offers over several years
- (iii) Over 60 rulings and opinions were issued in favour of the arrangements before the Commissioner changed his mind
- (iv) I am expected to repay the full tax liability with penalties and interest

Presently there are three rates of penalty, 0%, 5% and 10%. There are three rates of interest; full G.I.C., currently 12.63%, 6.28% and 4.7%. The A.T.O. seems to be able to create rates that suit it form time to time, either to maximize revenue or appease existing criticism.

It seems that Mr Gerard has been rewarded for his "sham transactions", while ordinary tax payers, acting on advice from their Accountants and Financial Advisers and having obtained prior favourable advice from the A.T.O. are being punished.

I believe that the A.T.O. was harassing and intimidating in its handling of ordinary investors. I was sent multiple assessments of progressively increasing amounts by the A.T.O and eventually given a fortnight to make a decision as to whether or not to settle with the Tax Office or fight the assessments. I was told that immediate action would be taken in terms of confiscation of assets in the event that I did not settle. I was informed that the tax liability would be four times the amount in the event that I refused to settle compared with the amount due in the event that I did settle.(Even in the event of settling the money owed to A.T.O. is in the range of the cost of a suburban family home).

Despite seeking legal advice, the response I obtained was unhelpful. (A representative from a leading Adelaide Law Firm laughed, told me that the fee was \$300.00 an hour, and that "lots of people had been caught" and that I would probably end up having to "pay" anyway).

The failure of the present self assessment system and failure to protect tax payers from retrospective changes in the tax laws has resulted in enormous stress on tax payers and their families in terms of negative health and psychological effects. In addition there have been major financial consequences on business practice, and ability to plan for the future in view of the very heavy and unexpected financial consequences.

In my own situation, some of the schemes which I believe would have been viable in a different taxation climate have become insolvent. Therefore, I have had the added burden of losing money originally invested in addition to facing an enormous tax burden. I have been forced to sell assets at a large loss in order to be able to afford my regular tax repayment, including penalties. I will be forced to continue working for years longer than I expected in order to repay my tax burden.

I was relying on my investments (mass marketing schemes) to provide an income for my retirement. I now live with the unpalatable understanding that rather than being financially independent in my retirement, I and my husband will be forced to accept Government Welfare payments.

In addition to all of the above I am unable to change Accountants, despite feeling dissatisfied with the advice I received regarding investments as no other Accountant is willing to engage with a new client with such taxation problems.

My belief that there are different taxation standards for people such as Mr Robert Gerard compared with ordinary tax payers has been emphasised by the response of numerous Members for Parliament who have answered my letters of concern with a standard response indicating that it was “impractical” to reconsider my situation in view of the cost to the Government and “confusion” caused by “amending” assessments. They also indicate that many people elected to settle their dispute with the Commissioner. As I mentioned above I believe that most people settled under huge emotional and financial duress.

I recall reading a notation in the local media indicating that the A.T.O. supported tax payers taking legal action against their Financial Advisors and Accountants in the event of them providing incorrect financial advice. When I telephoned the Tax Office to enquire about this statement I was told that the persons that I spoke to had no knowledge of any such statement.

In the event that I was to make a mistake with a patient I would very quickly be the victim of a Mal Practice suit. However, I have no avenue for complaint or redress. The Accountant and Financial Advisors insist that the Advice they gave regarding the Investments was the correct advice at the time and that the Taxation Office was at fault for retrospectively changing the existing legislation.

The A.T.O.’s main reason for sending amended assessments was based on the assumption that people invested in mass marketed schemes etc, for the purpose of minimising their taxation. No opportunity was given to investors to discount this assumption

I thank you for your interest in my submission

Yours faithfully

Renata Maruszczuk