JOINT COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT
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As a member of the public who has become entangled with the ATO in regards to Employee Benefit Arrangements (EBA's) I wish to make the following submission to the Committee.

Part A

*the administration by the Australian Taxation Office (ATO) of the Income Tax Assessment Act 1936 and 1997 (including the amendments contained in the Tax Laws Amendment (Improvements to Self Assessment) Bill (No. 2) 2005) with particular reference to compliance and the rulings regime, including the following:*
** the impact of the interaction between self-assessment and complex legislation and rulings;*

There is no doubt in my mind that the Taxation Act is a complex and difficult Act to understand and it is not something that the ordinary person has any real chance of fully comprehending. Consequently, I and many other Australians sought taxation advice from trained professionals in regards to EBA's. I then had this advice confirmed by taxation specialists from one of the major international accounting firms and only then did I act on the advice.
It is my understanding that the ATO authored over 60 separate rulings in favour of the EBA arrangements and consequently I was satisfied that the arrangement complied fully with the Tax Act and the Commissioner of Taxation's understanding as well.
Subsequent to my investment into an EBA, the Commissioner has subsequently after further extensive investigation into EBA's utilising the full resources available only to the ATO, determined that his 60 plus previous rulings were in fact wrong and therefore any participant in an EBA is therefore a taxation cheat.

Due to the complex nature of the Tax Act, the Commissioner continues to encourage taxpayers to obtain advice before investing. However, there doe not appear to be any value in this approach when the ATO can change one of its policies that it has stated is acceptable practise through numerous rulings after someone has taken independent advice. The ATO then has compounded this untenable state of affairs by applying its changed views retrospectively and imposing draconian penalties upon the individuals caught by its revised stance.

It is firmly beyond my comprehension how the average man in the street is supposed to endeavour to comply with the Act if even after taking professional advice, backed up by numerous rulings from the ATO, if the ATO is then able to retrospectively alter its stance. It is my view that this is an untenable situation which cannot possibly work and hence makes it impossible to comply with the act if the Commissioner or the ATO can behave in this manner.

** the application of common standards of practice by the ATO across Australia;*

In regards to the settlement offers currently issued by the ATO in regards to EBA's, it would appear that the ATO has different methods of treating similar taxpayers in similar disputes. I have observed that different taxpayers appear to have been offered better terms of settlement depending on wether they are taking appeal action in the AAT or not. If the ATO is able to offer different settlement offers to taxpayers in similar circumstances then there is no application of common standards of practice by the ATO across Australia.

** the level and application of penalties, and the application and rate of the General Interest Charge and Shortfall Interest Charge;*

With respect to EBA participants there are currently 3 rates of penalties being applied by the ATO, namely 0%, 5% and 10%. There are also 3 rates of interest being applied, 12.63%(full GIC), 6.28% and 4.72%.

The ATO can apparently create rate that suit itself from time to time, either to maximise revenue or to appease extensive (and in my view fully justified) criticism of the ATO.

It is my understanding that the use of penalties and interest in the legislation was to punish wrongdoing. The principal of wrongdoing cannot be applied to the case of EBA's when, as noted earlier, the ATO had issued over 60 rulings in favour of the arrangements before it belatedly changed it's position and then retrospectively applied penalties to the participants.

Part B
*The Committee shall examine the application of the fringe benefit tax regime, including any "double taxation" consequences arising from the intersection of fringe benefits tax and family tax benefits.*

As a consequence of the ATO's belated change of position on EBA's it subsequently issued multiple assessments to many taxpayers, myself included. In fact I received 3 separate amended assessments which resulted in a legal liability of approximately 6 times the original taxation benefit. In other cases some participants received multiple assessments resulting in penalties up to 10 times the original taxation benefit.

The sole purpose for the use of multiple assessments was in my view to intimidate taxpayers into settling the dispute on the ATO's terms. Although the Commissioner claimed that only 1 of the multiple assessments would apply he failed to remove or withdraw the redundant assessments and they remain in force to this day.

To justify this patently unjust position taken by the Commissioner, he has stated that "he did not know which taxing point applied". If the Commissioner doesn't understand the true legal position, with all of the resources available to the ATO, then how can the average taxpayer ever hope to do so. The Commissioners stated position also reinforces the impropriety of penalties and interest for EBA participants as both penalties and interest were introduced to penalise taxpayers who were reckless in their claims, and not

taxpayers embroiled in a situation caused by the ATO’s reckless behaviour

Yours faithfully
Peter G Panek

* the operation and administration of the Pay As You Go (PAYG) system.