

## Supplementary Submission 1-1

**Sent:** Thursday, 15 December 2005 2:06 PM

**To:** Committee, JCPAA (REPS)

**Subject:** Addition to Submission lodged 12 Dec 2005 - Inquiry into Taxation Matters.

Joint Committee of Public Accounts and Audit.

A

In my original submission I referred to a letter from Senator Murray to the ATO on my behalf. I have been able to have the letter scanned into my computer and can now provide copy for the Committee to view.

I fully understand that the ATO will form its own decisions without the influence of anyone else. However I believe that the Senator's letter provides an indication of the intentions behind the Senate's and ATO Commissioner's acceptance of the recommendations relating to the general settlement offer's terms when being published in February 2002. In applying the policy the ATO generally seem to have tended to overlook these views.

Yours sincerely,



PARLIAMENT OF AUSTRALIA • THE SENATE

**SENATOR ANDREW MURRAY**

SENATOR FOR WESTERN AUSTRALIA

Parliament House  
CANBERRA ACT 2600  
Tel: (02) 6277 3709  
Fax: (02) 6277 3767

Electorate Office  
51 Ord Street  
WEST PERTH WA 6005  
Tel: (08) 9481 1455  
Fax: (08) 9481 1679

18 October, 2004

Mr Robert Charles  
Assistant Commissioner of Taxation  
Australian Taxation Office  
PO Box 9990  
Moonee Ponds  
Melbourne Victoria 3039.

Dear Mr Charles,

I : **Mass Marketed Tax Effective Investment Schemes**

You will no doubt be aware that I am a long-standing member of the Senate Economics Committee, and you will remember that I was a member of the Senate Economics References Committee that inquired into and reported on the mass marketed tax effective investment schemes.

As you know, I was a leading participant in discussions with the ATO on MMTEI, and in the preparation and formulation of the Report and the recommendations made by that committee.

In my parliamentary portfolio capacity I have also had to deal with a large volume of correspondence and advocacy over the last few years from those affected by the MMTEI schemes.

One of those correspondents has been [redacted]. I had not met him until recently, when he visited me on Tuesday 5 October 2004 in my Perth Electorate Office.

He advised me that he has been liaising with MHR Don Randall, the Liberal Member for Canning. He tells me that he is meeting with you in Mr Randall's office on 21 October 2004, and has asked that in view of my detailed knowledge of the MMTEI matters that I write to you concerning him.

I am obviously not in a position to form a judgement as to [redacted] personal MMTEI dealings and his tax affairs.

However, based on my interview with [redacted] I have come to a view as to his circumstances, and the merits of his case for relief in the form envisaged by the Senate Committee.

I have attached a section of the Senate Report that provided the basis of the ATO's approach to the resolution of MMTEI issues.

The Committee considered that "...the vast majority of affected taxpayers will be eligible for the remission of penalties and interest...[and that] ...investors will be deemed eligible unless they fall into the following categories: ...Investors in these categories are not automatically eligible for the concession and would need to have their circumstances considered on a case by case basis...For those who do not qualify for the concession, the Committee considers that the ATO should retain the discretion to vary rates of penalties and interest payable."

All the above quotes clearly indicate that the Committee felt that the ATO should assess individual circumstances and use its discretion.

I doubt whether it is intended by ATO management, but the anecdotal evidence reaching me is that some ATO officers dealing directly with taxpayers in these circumstances are not meeting with taxpayers face-to-face, are taking a black and white approach, and are not using the discretion they have under the law, as per the Senate/ATO approach, and as spelt out in the Tax Charter.

Although on the face of it [redacted] job function appears to indicate that he may arguably fall within those broad categories where eligibility for relief might be denied, a face-to-face interview with him makes it readily apparent that he is not in any respects a sophisticated professional promoter or agent. He strikes me as a person who assists clients with financial planning at a fairly basic level.

If I recall our interview correctly, I understand [redacted] has not been assessed by the Tax Office 'face-to-face', or in terms of his individual circumstances.

Accordingly, I am pleased you have decided to interview [redacted] personally.

The ATO is easily able to establish the veracity of [redacted]'s evidence to me, but I have judged him to be truthful in his description of his circumstances.

Based on his statements to me and on my interview, my conclusions are that [redacted]

- appears to be a person of integrity;
- is an older man of modest means, limited professional prospects and with limited future earning capacity;
- is unlikely to be able to pay much more than the primary tax due;
- if pressed into liquidation or bankruptcy for hundreds of thousands of dollars of penalties and interest, has few assets able to go towards such claims, (which, practically speaking, makes the application of such pressure pretty pointless); and
- is experiencing major personal and family problems as a result of ATO demands, is at the end of his tether and at risk of breakdown.

It has advised me that he has, on several occasions, lodged submissions to the Australian Taxation Office to be granted "Eligible Investor" status. To date each of his submissions has failed to amend his status.

He advises me he wishes his individual circumstances to be taken into account, and to settle his taxation debt as an "Eligible Investor" in the General Settlement Offer made by the Taxation Commissioner to investors in February 2004.

I am of the view that, in the context of the Senate Economic References Committee recommendations, Mr. [redacted] is a person who demonstrates that he should be favourably considered for relief as envisaged by the Committee.

In my opinion, the knowledge base he was required to hold to perform his functions was not at the level or sophistication that would give him any insights into the actual tax structure and intent behind mass marketed investment schemes. While Mr. [redacted] does act as a financial planner he clearly relied on the information and the advice of others.

Prior to investing in these schemes he advises me he has no prior history of reducing incomes to very low levels to reduce taxation and avoid Medicare levy, superannuation surcharges or to claim Social Security benefits.

Further, he advises me that not one of the schemes in which he is involved have been declared shams by the ATO.

I would therefore urge you to consider carefully Mr. [redacted]'s personal and individual circumstances, his real level of culpability, and exercise the discretion you have in these matters for a fair and practical outcome that leaves Mr. [redacted] able to continue as a productive working Australian family man. I believe the stress he and his family are under requires a rapid resolution.

Please do not hesitate to call me if you need to.

Yours sincerely,



**Senator Andrew Murray**  
**Senator for Western Australia**  
**Australian Democrats Taxation spokesperson**

Copy MHR Don Randall,

**Extract from Senate Economic References Committee, *A Recommended Resolution and Settlement : Second Report – Inquiry into Mass Marketed Tax Effective Schemes and Investor Protection*, September 2001, pp. 7-8.**

### **Eligibility Guidelines**

1.1 It is expected that the vast majority of affected taxpayers will be eligible for the remission of penalties and interest. For the sake of fairness, administrative efficiency and in the interests of resolving this issue quickly, investors will be deemed eligible unless they fall into the following categories:

- scheme promoters, including the directors and office bearers of the entity which managed the investments;
- tax advisers, financial planners and tax agents; and
- taxpayers with a tax history pattern of reducing their incomes to very low levels (thereby avoiding Medicare levy, superannuation surcharge, claiming social security benefits, etc).

1.2 Investors in these categories are not automatically eligible for the concession and would need to have their circumstances considered on a case by case basis.

1.3 Participation in schemes over three or more years does not necessarily disqualify investors from the concession. However, these investors too would need to have their circumstances considered on a case-by-case basis.

1.4 For those who do not qualify for the concession, the Committee considers that the ATO should retain the discretion to vary rates of penalties and interest payable. Factors influencing these rates will include:

- the tax history of investors;
- the extent to which individuals should, by virtue of their professional qualifications or scheme involvement, have had knowledge of the tax system and the financial structures of the investments; and
- the commercial viability of the scheme established (it is assumed that the culpability of promoters of viable or potentially viable schemes will be less than that of schemes that were never intended to succeed or were shams).

Investors should be aware that the ATO has provisions which allow for the long-term repayment of debt in accordance with individual financial circumstances. These include provisions for varying the rates or remitting entirely the interest payable on the agreed debt.