

Sent: Friday, 10 February 2006 5:09 PM

To: Committee, JCPAA (REPS)

Subject: Joint Parliamentary Committee of Public Accounts and Audit

Dear Joint Committee

I would like to submit to the Joint Parliamentary Committee of Public Accounts and Audit regarding EBA's.

I would like to point out there is a huge impact between self-assessment and complex legislation and rulings. We investigated the products before investing. If you look at what has now transpired it is only after extensive investigation by the ATO and utilizing information that was only extracted with the commissioner's powers that the real situation is understood. Quite clearly in this case we have made an investment based on the information available from the promoter and confirmed by the ATO's own ruling. It was only after which the ATO changed its policy and then applies that change retrospectively. That is fundamentally unfair. Therefore the information we made the decision on was no longer valid. That is completely unfair. If the ATO rulings were not in place we simply would not have made the investment in the first place. Now we are being penalized for the ATO's lack of understanding of the investments in the first place. Please explain that logic.

Just to make matters worse, when the ATO has offered settlements it has then done it on a different basis for similar taxpayers with similar issues. How can a government body give favourism to some taxpayers and not others?

There are currently also 3 penalty rates (0%, 5% and 10%) and 3 interest rates (full GIC, currently 12.63%, 6.28% and 4.72%) being applied to EBA taxpayers. It would appear that the rate is set at rates that suit the ATO from time to time, either to maximize revenue or appease extensive criticism. Again, how is this fair to taxpayers across the board?? In the case of EBA's we were not doing anything wrong we were acting on investment opportunities which had the backing of more than 60 rulings prior to the ATO changing its position.

Also the commissioner used the overlap between multiple claims and FBT assessments to force us into settlements. This borders on harassment and when you have the power that the ATO has, this is incredible behaviour. In previous responses to this the commissioner claimed that only one of the multiple assessments would apply. The only problem is that he failed to remove the assessments that wouldn't apply. This left a legal liability sometimes 10 greater the original tax benefit, thus simply penalizing those taxpayers reckless in their claims.

I would like these points presented to the committee.

Regards

Neil Fox