

23rd February 2006

The Secretary
Joint Committee of Public Accounts and Audit
Parliament House
Canberra ACT 2600
Email: jepa@aph.gov.au

Dear Sir/Madam

Inquiry into Taxation Matters
- (Part A) the administration by the Australian Taxation
Office of the Income Tax Assessment Act 1936 & 1997
- (Part B) FBT

I understand your committee is going to look into certain aspects of the ATO's modus operandi.

Firstly I commend Senator Bishop on her hard work in establishing this review by the committee and I now respectfully ask that my views, thoughts and situation be considered by your good self/(ves).

Firstly I am a small business owner and have little or no knowledge on finances, taxation or legalities. I rely on the external professionals I engage from time to time to provide me with the fitting advice to my varying circumstances. I am a butcher by trade and started off my business from scratch 25 years or so ago with two partners

In the mid 1990's my business was approached by our financial advisors to enter into a scheme called something like "Employee Benefits Scheme" and I was told that the contributions made and other associated costs would be tax deductible. I was also told that the taxation aspects of this scheme had been approved by the Australian Taxation Office (ATO). I then referred the proposed scheme to my external accountants who recommended I participate.

So my business entered into the scheme and I know now that our accountants claimed the contributions and the expenses as tax deductions until 1998 when the ATO advised it no longer supported the scheme in so far as claiming the contributions etc as taxable deductions. It was not until 3 years later (2001) when we received amended assessments from the ATO for substantial amounts of FBT (later changed to Income Tax assessments) that we started to understand the enormity of the issue. So for 3 years whilst we were "in the dark" all this interest at high interest rates plus penalties had been accruing against us by the ATO.

Claiming the amounts we did as taxable was not something that was hidden by us or our accountants. These amounts were clearly included in our tax returns for 1996, 1997, 1998 and that is how the ATO “picked up” on the scheme’s deductions.

I and my family were and still are distressed that the ATO can say in 1995 that certain amounts within the scheme can be tax deductible then three years later change its mind and then apply high penalties and charge interest at ridiculous interest rates. If Bank’s charged such outrageous interest rates the public and political spheres would be “up in arms”. I understand the current rate we are charged on our debt is some 12.7% whereas our bank overdraft rate is only 8.25%

I have read the submission from the promoters of the scheme we were in. I know for sure that the ATO gave a positive response to the proposal of the scheme that we entered into. The ATO certainly gave approval to the scheme as far as deductibles were concerned and I note that it did reserve its right to change its mind later if it so saw fit. In our case the ATO did change its mind and the rest is history but we relied on the recommendations of our advisors and the ATO approval.

Following the review by the Inspector General of Taxation and my belief that the law was to be changed so that other taxpayers would not be treated as harshly and as unfairly by the ATO, I was astounded to recently read the proposed law changes affecting my circumstance was not going to be backdated in that it would only apply to future tax years. If it is not too late I will be grateful if your committee could consider the unfairness of the failure of the legislation to be retrospective.

I accept that relative to my situation the law allowed the ATO to “change its mind” however had I known that I would never have entered into the scheme. I now accept that I have to pay interest to the ATO on the amount that we paid into the scheme and that we claimed as a tax deduction. But I do not accept that we should have to pay interest at the rate of 12.5% + for all those years plus a penalty as well.

Sir/Madam I ask that all Australian Taxpayers be treated equally and fairly and I ask that you recommend to the Government that the proposed taxation law amendments you are now reviewing, be made retrospective back to 1/7/1995. This means that I will still be paying significant interest to the ATO, but at least this would help ease the pain and stress and worry me and my family have endured over the years as a consequence of being treated like tax criminals by the ATO and the attached financial strain as a result of these transactions

I also ask that the ATO be brought to account with regard the inconsistencies in the application of interest and penalties. Penalties can be either 0, 5% or 10% The same for interest rates charged by the ATO. This can vary over three rates of interest. Viz 12.63%, 6.28% and 4.72%. We have been charged at the highest rate, but we know of others who have been charged at lesser rates. There seems to be no reason for applying the different rates other than the Commissioner has the discretion.

Some two years ago we signed a settlement deed with the ATO as they gave us two options, either pay up or they would commence legal action to dissolve our business. As yet we have not been able to repay the debt despite our best efforts. We have however substantially reduced the debt but now we find that a recent delegation of taxpayers who were in the same schemes as us and who had not agreed to settle with the ATO flew to Canberra and met with ATO personnel and the Minister and were offered settlement on the following terms:

A penalty of 5%

Interest at 4.72% if amount owing is paid in one lump sum

Interest at 6.72% if repaid over 18 months.

Our settlement terms were a penalty of 10% and interest at 12.72%

This does not seem to be right. If a taxpayer does the right thing and agrees to settle it should not be financially disadvantaged by the ATO as against people that "hold off" and don't settle.

At the time the ATO levied assessments against us in around 2001/2002, us we were being inundated with FBT assessment which totalled million and millions of dollars and were being issued every few weeks, each time with no correlation to the previous ones. And the amounts were incorrect anyway. Then the ATO issued income tax assessments on the same matter which means we had millions and millions of dollars of assessments because the Commissioner would not remove the FBT assessments even though he had then issued Income Tax Assessments as well. We view all of this as a heavy handed attempt to confuse and scare us into settling which we did under fear of the ATO closing our business down, sending me and my partners bankrupt and our staff out of work.

All in all our experience with the ATO has not been pleasant and have found the Commissioner to be "heavy handed", uncompromising, inconsistent and unfair.

Again I commend your efforts in conducting this review and thank you for giving us taxpayers the opportunity to write to you.

Yours faithfully

Richard Kevin James

