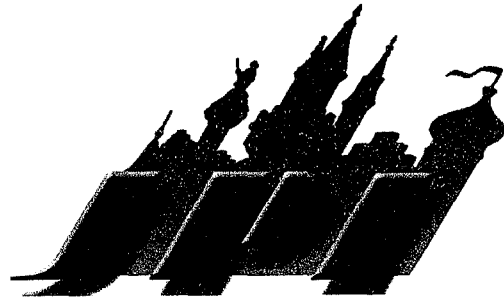


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30 JUN 2004

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Tourism & Leisure Consulting Pty Limited

29 June 2004

The Secretary
House of Representatives Standing Committee on Legal and
Constitutional Affairs
Parliament House
CANBERRA ACT 2600

Bankruptcy
Submission No. 117

Dear Sir/Madam

***Re: Bankruptcy Legislation Amendment (Anti-Avoidance and Other Measures)
Bill 2004***

Please accept submission to the Committee on the proposed amendments to *Division 4A of Part VI of the Bankruptcy Act 1966* ("the Act") by the *Bankruptcy Legislation Amendment (Anti-avoidance and other measures) Bill 2004* ("the Bill").

SYNOPSIS

- I concur that bankruptcy should not be a tool for individuals to negate their obligation taxation obligations when the capacity to pay exists.
- However, the proposed changes are a primary shift in the law significantly affects bona fide professionals.
- It is submitted that the amendments should:
 - Provide trustees in bankruptcy, together with the appropriate authorities, all necessary powers to prosecute those purposely not paying debts and using bankruptcy to artificially and protect assets unjustifiably.
 - Not put at risk the assets a person has worked diligently to accumulate throughout their career because of one honest mistake or negligence claim.

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MAIN SUBMISSION

From the writer's review of The Bill, together with *Joint Taskforce Report on the use of Bankruptcy and Family Law Schemes to Avoid Payment of Tax* ("the Taskforce Report"), it appears clear that high income fee-for-service professionals who use bankruptcy to avoid paying tax and other debts were its targets. In particular, the Taskforce's primary targets were those individual undertaking this regularly.

In contrast to the above categories of individual in the Taskforce Report, I present my own situation as a consultant to the tourism and hospitality industries following.

- I have worked for more than 12 years as a member of a professional firm under the umbrella and disciplines of a global accounting firm. I have established a private practice as a sole trader three years ago.
- When this practice was established, I took advice and established a Proprietary Limited company allowing generation of income in a tax effective manner. However, personal income was earned from by payment of monthly salary together with statutory PAYG tax instalments. The balance of profit is invested in operating equipment (GST taxable) or distributed as bonus payments (PAYG taxable).
- My home is owned by my wife and recently is unencumbered.
- As a hypothetical case:
 - Notwithstanding that all my work is executed diligently.
 - If an error in forecasting may have been made and the error may have been small, the potential damage to the client may be [say] \$3 million.
 - PI insurance may be for \$1.25 million insurance.
 - Being sued and ordered to pay \$2 million in damages, \$1.25 million is paid by the insurer. I would be required to pay the balance of \$750,000.
 - My practice and other assets are valued at \$200,000. I have no other assets and declare bankruptcy.
 - Under the proposed changes my wife's house and any other family assets may be accessible to the trustee in bankruptcy - notwithstanding I have (demonstrably) paid all taxes and debts as they fell due. I have not instantly, or systemically, defrauded the tax office or any creditors. Simply, an honest professional mistake has been made.
 - It is unjust for an individual to potentially lose all they had earned (and paid tax on) in their career because of an honest mistake.

The Attorney General has said that the solution to Joe's problem is to take our professional indemnity insurance. With respect, this is a shortsighted and glib comment. Generally, standard cover is available up to \$1.5 million. My firm, works on projections (hotels, golf clubs, theme parks etc.) valued at tens of millions of dollars. To provide 100% cover, my company (individual practitioner annual revenue approximately \$230,00) would need cover for approximately \$50 million. It is simply not economically viable for a small company such as mine to pay premiums on that level of cover.

Under the Bill, even if JPI Tourism & Leisure Consulting Pty Limited was insured for, say \$2 million, it would lead to the financial ruin of my business because once the insurance was exhausted the family assets would be at risk. Family assets that have been acquired through hard work during my career, and paid from after tax income, would be lost - not because of abuse of the tax system and avoidance of tax, but because of a single honest mistake.

Contrast this with some barristers who continually did not meet their obligations to the ATO. My view is they should be punished severely.

However, my submission is not to change the law to penalise and discourage small business and sole traders. If the Bill is passed in its current form then I, as a tax payer, together with many others (I am sure) will almost certainly discontinue business rather than risking all I have worked for in the previous years. It would be a better risk, and dramatically less desirable outcome, for me to:

- Close my business; and
- Cease to be a tax payer at the highest marginal rate; and
- Attempt to find a position as an employee - unlikely at age 55 and if so, almost certainly at a significantly lower level of PAYG tax; or.
- Go on government relief and not pay any tax at all.

I would have thought the government would be concerned at this prospect.

If the government's goal is to stop people abusing the system in the way some barristers and other professionals have, then in my submission the solution is to close that option to those people via subtle law changes rather than proposed changes that simply catch all.

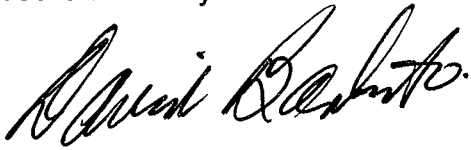
The Bill will change the way in which Australia does business:

- All business will analyse risk as overwhelming reward.
- Fewer people, such as me, will be prepared to take entrepreneurial decisions.

- People will not start small businesses.
- Directors will not accept the invitation to take a seat on the board.
- Fewer people will choose professions in a society that is becoming increasingly litigious; it simply is not worth it.

In a country where small business is one of the largest employers, this is a serious concern.

Yours sincerely

A handwritten signature in black ink, appearing to read "David Barbuto". The signature is written in a cursive, flowing style with a large initial "D".

David Barbuto
Managing Director