

Leighton Jenkins

I would like to make some comments and input to the committee on the following matters:

Part A

* the impact of the interaction between self-assessment and complex legislation and rulings;

I have been the subject to two retrospective rulings by the ATO:

- The first was a "Linked Bond". I consulted with my accountant and the marketer of the product and was advised that the product met the ATO guidelines and had been ruled to comply.
- The second was with regard to an investment in a Retirement Village (something Australia's ageing population needs). In this case too the ATO retrospectively ruled against a deduction that had previously been approved. Again, I sought the advice of an accountant and an advisor.

It would appear that the Commissioner's gives a 'green light' to a product, then at a later date (after extensive investigation only available to the ATO) changes the colour of the light to red and sets up a camera to catch tax payers after we have gone through the junction. The Commissioner continues to encourage taxpayers to obtain advice before investing. This doesn't appear to be of value when the ATO changes it's policy and then applies that change retrospectively.

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

The ATO appears to have different methods of treating similar taxpayers in similar disputes. A friend was ruled against with the linked bond, from another organisation and received a different "deal". Some taxpayers appear to be offered better terms of settlement depending on whether they are taking appeal action in the AAT or not. Settlement offers differ for taxpayers in similar circumstances.

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

The Commissioner appears to also to ignore the recommendations of the Inspector General of Taxation on his report into GIC. (Either this or the Government appears to have broken a promise).

Currently, there appear to be 3 rates of penalty, 0%, 5% and 10% being applied to EBA taxpayers. There are also 3 rates of interest; full GIC, currently 12.63%, 6.28% and 4.72%. The ATO seems to be able to create rates that suit it from time to time, either to maximize revenue or appease extensive criticism. It would be worth noting that penalties and interest are in the legislation to punish wrongdoing. This is not the case with EBA's where the ATO authored over 60 rulings in favour of the arrangements before changing it's position.

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. "

I would note that the implied threat put forward were quite frightening. This included settlement deeds that did not allow me to retrospectively object, something that the commissioner keeps to himself. This underlines the impropriety of penalties and interest, which are ostensibly to penalise taxpayers who were reckless in their claims.

Regards

Leighton Jenkins