

SUBMISSION TO THE JOINT PARLIAMENTARY COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT

Ladies and Gentlemen,

I wish to relate my experience with the ATO after entering into an EBA in 2000. In that year, aged 65, and in what was to be the last of my working life, I earned considerably more than I ever had before, by working as a contractor, and by some profitable share trading. In search of some tax relief, I was directed by a trusted family member to a Melbourne accounting firm, (Cunninghams P/L). The company principal came highly recommended as a thoroughly reputable expert in his field, and I have no doubt as to his honesty and integrity.

Mr. Cunningham recommended an EBA which involved setting up a non-conforming superannuation fund; the arrangement was an absolutely safe, completely legal means of preparing for retirement and/or estate planning. Payment of taxation was delayed, and the people organizing the procedure had a private ruling from the ATO which assured its viability. (This subsequently proved to be incorrect, - although some 60 to 70 rulings had been issued for EBAs identical in principle, and differing only in minute detail). Mindful of the fact that every Australian taxpayer has the right to minimize his/her taxation liability by legitimate means, I went ahead quite confidently.

Two years later, and as I understand it, only after a change of heart by the ATO, I was advised of an ATO audit, and the nightmare began. I subsequently received an assessment based, not on company tax, but FBT, 40% "culpability" penalty, and interest accruing at 12.6% - in effect, at that particular time, four times the unpaid tax, increasing daily. I was absolutely dismayed. I was advised that the procedure was to lodge an objection (cost \$2000), until the issue was resolved. As the EBA was soundly based in law, I should not be distressed, as it would all be sorted out in court. Some weeks after this, I received a revised assessment: the original \$200+ had been reduced to **Zero**. No explanation, but I was immensely relieved - obviously the error had been corrected. Not so. Again, after some weeks, I received a further advice, a bullying, accusatory letter accusing me of collapsing our family company in order to escape them, but assuring me that there would be no escape. The company had not been collapsed at all, and I have no way of knowing why they thought so. (careless incompetence?) A series of letters from our accountants eventually led them to the truth - and in due course the re-issue of the FBT assessment (No apology).. With this, the need to lodge the objection a second time - with attendant costs.

Over the coming weeks, I received letters demanding various information always with the inexorable threat of the GST. Although we responded in full and on time, we received threatening letters demanding to know why these requests were ignored. These seemed to come from different ATO locations, with no particular group authorized to deal with any given taxpayer.

The constant anxiety this caused led to an illness diagnosed by my doctor as "reactive depression": he prescribed anti-depressants, powerful drugs with very unpleasant side effects. He also wrote a letter for me to tender to the ATO requesting a resolution to the matter. This was declined on the grounds that offers were not available at that time, but would be issued in due

course. About February last year, I received a phone call from our local (Morwell) accountant of 30 years. He informed me that he had been in touch with ATO by phone, and that an offer would be made based on company tax, 10% penalty, and interest 4.72%, with the possibility of further concessions. This became my expectation, and removed some of the fear. We were receiving reports that such settlements, and others more benign (zero, 5% penalty etc.) were being issued. Nothing happened for nearly a year.

In November 2005 ATO advised that my objection against their assessment had been rejected. In early Dec I received a letter of demand for a new assessment based on company tax, 20% penalty, 12.6% GIC. The FBT assessment was not withdrawn. I was given 14 days to pay before they seized my assets. This exacerbated my anxiety, and depressive illness, as I couldn't raise that kind of money. In an effort to get to some sort of arrangement to get it out of my life, I sought, and was granted a meeting with taxation officers at the Moonee Ponds site. Armed with a further letter from my doctor outlining another rapid deterioration in my physical and psychiatric condition, and requesting as rapid a resolution as possible, I met with two officers (one from Settlement dept. and the other from Collection).

At that meeting, I was presented with a sheet containing two tables- on the left side, the FBT calculation, and on the right, another showing company tax, 20% penalty, GIC at 12.6%, both still applicable. What I got from that meeting did little to assuage my stress. I was informed that if I was not satisfied with the penalty/GIC settlement offer, I was entitled to appeal via Albury for an examination by "an independent "taxation official. I was also given a "Settlement Deed" for signature, and a set of forms to request time to pay. I was also informed that if I made a down payment on the debt, that the GIC clock was to be stopped. (I was advised by phone next day that this had been their mistake. It would apply to individual taxpayers, but not a family company) The collections officer recommended quick action as she was going on leave on Dec 16.

Returning home, I made out the application for the independent appeal, and sent it off to the nominated person at the Albury site. On Dec 5th I sent a down payment of \$20K to the settlement person by Express post hoping to make something happen. (They lost it for two days). Because I was trying to get to some sort of resolution before the Collection women took leave, she agreed over the phone to accept a "position statement" prepared by our accountant (clearly defining our unhealthy financial condition), rather than a complete set of financials. I sent the paper work off in the week prior to the 16th, received nothing in return, and was unable to contact her by phone in the last half of that week. I waited for some direction.

A fortnight after Moonee Ponds, the Settlement women phoned. She informed me that if I signed the Settlement Deed that she would reduce the culpability from 20 to 10%, and withdraw the FBT provisions, relieving me of one "hassle" (her term) whilst the GIC was sorted out. I signed it and sent it back. Later I received an advice that a revised assessment would be issued. I don't have it yet.

In January, I received two calls from the ATO – the first from Parramatta office, acknowledging receipt of my appeal for my case to go before an independent tribunal (on-sent from Albury), with the assurance that it would be processed in January. The second was from another collection woman, who informed me that, as the first had taken leave, that she was in fact dealing with me. Also that the “position statement” was unsatisfactory, and full financials were required. She confirmed this by fax, spelling out exactly what she wanted from our accountant, and giving me until 31st Jan to do so. The fax also reminded me that the GIC was still ticking over at 12.6%, and failure to make the deadline would result in further penalties. Because this all occurred over the holiday period, the figures were returned a week late, and our accountant was advised that the original (holiday) person would be dealing with it again.

At this stage, I am still waiting and frankly dreading their next move.

It is no exaggeration that this whole thing has ruined my life and wrecked my health. It has completely robbed me of my enjoyment of life – my golf, my garden, my grandchildren. I took the action I did under the advice of a reputable tax professional, assured I was doing nothing wrong. I still believe this. There is no suggestion of untruthfulness or fraud here – only full disclosure under the direction of a trusted professional. I am incensed by the term “Culpable penalty”. I am not a criminal and having been a salaried taxpayer for 50 years, with what I suggest is an impeccable record, I resent being labeled a tax cheat. The ATO acts as judge, jury, and executioner in these cases. They are more into punishment than mere revenue collection, and I don’t think they have a right to have me in their sights. Their bullying, blackmailing tactics would not be accepted in a private collection agency.

Much of this problem is attributable to the farce of self assessment. If the ATO didn’t like what I did, the time to tell me was when it occurred – not two years later. Had that happened, they’d have had their money, and I’d still have my mind. I find it incredibly unfair that the Parliament legislated to out-law multiple and retrospective assessments, but failed to make this retrospective to protect the very people who had been caught up in it.

The treatment of taxpayers in exactly the same situation varies enormously. Settlements have been made at 0, 5, 10, and maybe 20% (that’s what they wanted from me) penalty, and 0, 4.72, 6.28, and 12.65% interest. This arbitrary and inconsistent treatment is grossly unfair to those on the wrong end of it. I contrast what is demanded of me with the very gentle treatment of former RBA board member, Mr. Gerard – liability halved, penalties zero. I’m sure many of us would go for that. Furthermore, in the first week of December, it was announced by Mr. Don Randall in Parliament in the Asst. Treasurer had arranged for all EBA victims to settle at Primary tax, 5% penalty, 4.72% interest.

Much has been made of the “culture” of the Federal Immigration Department. What of the ATO; intimidating, bullying, sadistic, judgmental, punishing, delaying, relentless, inhuman. I consider the treatment I have received from the ATO to be abominable, but typical of that dealt out to anyone they get in their crosshairs. The presumption of innocence does not apply here – guilty without consultation, no independent non-taxation arbitration, and punish, punish, punish. The

GIC of 12.6% speaks for itself. That in some cases, the final liability in these EBA cases has accrued to as much as 10 times the primary tax is absolutely obscene – and this in a country, where death resulting in culpable driving brings a fine of \$1000, and a two year suspended sentence. In submitting this, I am not defending tax cheats – they deserve the full force of the law. But the punishment should fit the crime.

This is not a plea for sympathy, although I think I've had enough. More a search for justice – natural justice – fairness. I suggest that most of the people caught up in this terrible situation aren't from "the top end of town" – they are just ordinary working people like myself, and I can't believe that the Australian Government can allow one of its instrumentalities to treat ordinary law-abiding citizens with such cruelty.

I honestly believe that the only fair and reasonable way to correct the EBA imbroglio is to make retrospective last year's legislation which outlawed multiple and retrospective taxation assessments, and I strongly urge the Committee to give this their earnest consideration. Failing this, no penalty should apply, and minimum interest should only apply from the date of the first revised assessment,

Yours faithfully,

N.G.Gerrans.