

Committee Secretary
Joint Committee of Public Accounts and Audit
Department of the House of Representatives
Parliament House
Canberra ACT 2600
AUSTRALIA

Dear Sir,

It is my understanding that the Joint Committee of Public Accounts and Audit is inquiring into certain aspects of the administration of the Australian Taxation Office and that the Committee has extended those terms of reference to include “settlement guidelines” of large audit cases.

I would like to make a submission in respect to this aspect of your inquiry.

I have recently retired from the Australian Taxation Office after spending thirty five years working there initially as an assessor then as an auditor, an audit manager and a prosecutions manager.

As an assessor manager and audit manager I followed the penalty guidelines put out by the Australian Taxation Office. This would have resulted in imposing substantial penalties on individuals and small businesses in some cases.

I had my first experience with “negotiated settlements” in the mid nineties when I was a manager in an audit area at the Chatswood Taxation Office called “Top End” where audits were carried out on businesses with turnovers up to fifty million dollars. One of my auditors had found a substantial problem with a business that was being audited, I researched the issues of the case in depth and came to the conclusion that the penalty should be one million dollars and was proposing to impose that amount. My manager was in the Senior Executive Service (SES) and was not happy with this decision because the person involved was a high profile person in New South Wales. The result was that the case was further reviewed by two other experienced higher ranking managers and they recommended that the penalty be reduced by half. I did not agree with this as I believed that I had covered all points thoroughly, however the assessments were issued reflecting the lower penalty and paid. About six months after the issue of the assessments a complaint was lodged with the Commissioner about the SES involved, I received a two line instruction from my SES directing me to remit all penalties in full and of course the high profile person was also paid interest on the tax penalties refunded. The high profile person had advised in his letter that he would not contest the assessments and had not submitted any plausible explanation as to why the claims had been made other than he believed he was right. I requested the SES involved reconsider her decision as no new information had been received to change her decision, she instructed me to do as I was told.

I was appalled at this action and sent an e-mail to my fellow audit staff at the Chatswood Taxation Office to ascertain if settlements of this nature were normal practice. The Audit Chief at Chatswood admonished me for sending the memo and stated it was normal practice.

I have observed the frustration and despair of fellow officers involved with at least two other major "settlements", one where the penalty was reduced from about thirty five million dollars to nil and the other from over one hundred million dollars to about half.

I researched the process within the Public Service to have actions of senior officers reviewed, it is time consuming and the senior officers do tend to become very antagonistic to the officer involved. Often the senior officer who made the decision on the reduction of the penalty becomes involved in the review process, appealing to Caesar about Caesar.

It is my submission that the system cannot continue in its present form, a review process independent of the Commissioner of Taxation is needed to oversee the settlement process for amounts involving tax and penalties of say more than five million dollars. The process would have to record why the guidelines were not adhered to if they were not followed.

I note that it was a Joint Committee of Public Accounts and Audit that recommended to the Australian Taxation Office ten years ago that all settlements be taped, I would suggest that the reason that they are still not is not because the companies do not want it but because the senior Taxation Officials do not want it.

At the moment the Commissioner hides behind the mask of the Secrecy Provisions of the Income Tax Assessment Act when it comes to large settlements. There appear to be continual leaks concerning these large settlements to the point where the average Australian citizen is convinced that the big end of town is treated more generously by the Commissioner than they in other words there is no common standard of practice when it comes to the imposition of penalties.

It is further my submission that large Public companies should have the settlements and the nature of the problem made public to allow the many shareholders to better understand the nature of transactions that their companies enter into.

Robert Lindsay Fitton