Submission to the Federal Parliament's Public Accounts and Audit Committee
New inquiry on taxation, announced on 8 December 2005.

REFERENCE: Bjorn Jonshagen — Submission No 1, Amended 5 May 06

Dear Committee Secretary,

Please accept this as a submission addressing the Part A terms of reference:

- o the impact of the interaction between self-assessment and complex legislation and rulings;
- o the application of common standards of practice by the ATO across Australia;
- o the level and application of penalties, and the application and rate of the General Interest Charge and Shortfall Interest Charge; and
- o the operation and administration of the Pay As You Go (PAYG) system.

My submission is specifically about the administration of the so called mass marketed tax effective investments entered into by 40,000+ people from 1994 until 1998 and targeted by the ATO as "tax avoidance" from 2000.

I hereby put it to the Committee that this issue fits squarely under the terms of reference. It is a direct result of the new PAYG self assessment system that this whole sorry saga could happen. These taxpayers simply have NOT been given justice and fairness in taxation. There is plenty of information on this and I personally submitted detailed information, about what happened to me, to the Senate Inquiry in 2000/01.

I also gave evidence in' person to the Senate Inquiry and I do remember feeling disappointed when very few senators remained at the hearing for my late slot. I was even more surprised and let down when that inquiry failed in agreeing on a unified report and failed to condemn the Australian Government/ATO actions.

Submission to the Federal Parliaments Public Accounts and Audit Committee
New inquiry on taxation, announced on 8 December 2005.

REFERENCE: Bjorn Jonshagen – Submission No 1, Amended 5 May 06

It is my hope that this committee will be different and that you will consider justice and fairness to be important – even paramount! What sort of society are we if justice can be negotiated?- even if tax revenue is threatened because the ATO has slipped up in it's responsibility and allowing average taxpayers access to the sort of tax breaks normally reserved for the rich and powerful!

Please compare so called infra structure bonds that I understand are still today available to a few well healed and well connected people – far more tax effective than the investments I talk about - Fair treatment for all?

This committee now has an opportunity to look at what has happened also after the previous inquiry – it is actually not a very complicated issue. The outcome so far has been devastating for many people. Please remember the terms of reference; "the impact between self assessment and complex legislation and rulings"

I suggest that the committee must look at what happened to people, please ask yourself what they did wrong. Please look at what has happened to the typical investor in a typical project. I would be happy to suggest a typical situation for your assessment.

It is a serious issue having affected tens of thousand of people who clearly did nothing wrong. We all know about ruined families, businesses, relationships and several suicides.

We all know that the truth is that the ATO attack was directly orchestrated by the government and that the ultimate responsibility therefore falls directly on our parliaments. I suggest that if this committee is serious about its responsibility it can do something about this.

Of course the committee can also follow what appears to be tradition and maintain that the government's hands are tied and that our leaders knew nothing. This committee will then be just another political stunt to maintain the illusion of justice and accountability - The illusion of fairness.

We see daily evidence of the lack of accountability in the Howard government. The government is, right now feverishly attempting to bury the truth and gagging its public servants about its knowledge on the AWB kickbacks to Saddam Hussein. We all remember the false claims about children overboard, the detention of Cornelia Rau, the Iraqi weapons of mass destruction and the deportation of Vivian Alvarez Solon.

Submission to the Federal Parliament's Public Accounts and Audit Committee
New inquiry on taxation, announced on 8 December 2005.

REFERENCE: Bjorn Jonshagen — Submission No 1, Amended 5 May 06

I say this committee has an opportunity to say; enough is enough! This country is based on the notion of open and accountable government. Everyone in Australia deserves to be treated equal and with basic access to justice.

I expect that you will agree that convictions for tax fraud should follow due process and fair administration - as is indeed guaranteed in the United Nations declaration of human rights.

I put it to the committee that the fact of the matter is that the treasurer and government are directly behind the tax commissioner's actions. The fact that the ATO appear to be able to justify its action under anti avoidance provisions does not make what happened right. It is the responsibility of the government and our parliament to ensure justice and fairness in taxation. The tax collector is just doing his job and the courts are doing their best to interpret the legislation. Parliament has ultimate responsibility for justice.

The real question is actually very simple;

is this country prepared to compromise justice and fairness to protect tax revehue? Yes or No!

We hear evidence of political interference and secret deals. I have been told that coalition politicians who have complained to the treasurer about unhappy constituents in their electorates have been able to secure secret and favorable ATO settlements for these taxpayers only. Justice and equal treatment for all — apparently not!

The fact that our Ombudsman has failed to carry out his duties is a bad reflection on independence and accountability. The Tax Ombudsman prior to 2003, Mr Ron McLeod told me that he personally knows Mr Carmody well and can therefore vouch that the tax commissioner would never do anything wrong against taxpayers. So much for independently looking at the facts.

The new Tax Ombudsman, from 2003, Mr John McMillan has told me that "it is not his role to defend the people in their dealings with government". That is exactly his duties — I happen to know what it means to be an ombudsman. It is also outlined on his own website. The ombudsman's role is to be a watchdog and

defender of people against the might of government — to actually look at the fairness of what is happening under our tax system and make recommendations back to parliament. Nobody expects the tax commissioner or the judiciary to do that — it's an important job and is supposed to safeguard justice and fairness in taxation. Our watchdog appears to be a lapdog and this committee ought to find out why.

Mr McMillan has consistently refused to do anything but make excuses for what the Government/ATO has done against these investors who did nothing wrong. He has for example refused to even look at the erroneous statements made by the tax commissioner to gang press taxpayers into the ATO dictated settlement. The ombudsman has flatly refused to look at how the "gun to the head" settlement was administered. Crippling penalties and threats of much worse only removed in return for cash and giving up of any rights to justice.

Our ATO applied enormous duress and used a very big stick to give people NO choice but to settle or loose everything. I must admit that I am frightened that my persistence to stand up for justice and tell what I know will again lead to similar ATO reprisals against me personally.

If our Tax Ombudsman and professor of public administration and law had carried out his duties, this whole sorry saga could have been cleared up many years ago.

The Ombudsman is appointed by the Governor-General and can also be suspended by the G-G. The G-G has refused to look into the ombudsman's failure to carry out his duties. The Ombudsman can be removed from office if both houses of parliament pass such a resolution.

Clearly the Ombudsman is accountable to parliament somehow and it is this committee's duty to now investigate and take action against his failure to carry out his duties. If parliament will not - who will do it? Who is the ombudsman accountable to if not to this committee?

I put it to the committee that the committee must now recommend to parliament that Mr McMiIlan be removed from office for his failure to carry out his job.

The tax commissioner has been very keen to bandy around the notion that the problem largely is due to unscrupulous promoters of these investments. It is simply NOT true and ASIC has indeed looked at many of these projects and

cleared them. Again, please look at a typical project and what has actually happened — what did ASIC find? Has any action been taken?

I would be very happy to provide information and suggest suitable projects and investors to look at. In several cases the ATO attack has not only ruined the investors but also terminated the whole project and caused damage to the beneficiaries of the project such as employees, the environment and the economy. The one common party responsible to have caused all this grief is our government/the ATO.

The Committee must now recommend to the Government that these taxpayers (including those who have accepted the settlement) must have their original assessments re-instated.

The taxpayers must be compensated for financial losses, personal stress and other suffering endured over the many years that this has been allowed to drag on. It does frankly not matter how much it will cost. There is NO price on justice and if we make official policy that fairness and justice can be negotiated for any reason - we may as well kiss good buy to the whole notion of freedom and democracy.

The ATO's actions goes to the very heart of the integrity of the tax system and if allowed to stay unchallenged, willonly increase the distrust in both the government, the tax system and our ATO now so evidently clear.

I hereby ask to give evidence in person to the full Committee and look forward to your action. Please give me a ring.

Yours Sincerely

Bjorn Jonshagen

Submission to the Federal Parliaments Public Accounts and Audit Committee
New inquiry on taxation, announced on 8 December 2005.

REFERENCE: Bjorn Jonshagen — Submission No 2, Amended 5 May 06

Dear Committee Secretary,

Please accept this as a submission addressing the Part A terms of reference:

- o the impact of the interaction between self-assessment and complex legislation and rulings;
- o the application of common standards of practice by the ATO across Australia;
- o the level and application of penalties, and the application and rate of the General Interest Charge and Shortfall Interest Charge; and
- o the operation and administration of the Pay As You Go (PAYG) system.

My submission is specifically about the administration of the so called mass marketed tax effective investments entered into by 40,000+ people from 1994 until 1998 and targeted by the ATO as “tax avoidance” from 2000.

It has been suggested that the whole sorry saga of the tax effective investments would have been solved if the ombudsman had carried out an arms length and independent budplan report. Further down is a suggestion regarding what could have been said in that report.

I am looking forward to the committee’s comments on the statements and suggested recommendations made in the text.

Now, we did eventually get a first level court outcome in the budplan case and it gave the ATO some strength. Our Commissioner has openly made erroneous statement about that outcome. ATO officers also made erroneous statements to the ombudsman’s special tax advisor Mr Philip Moss, about the reasons the verdict was not appealed.

An ATO deputy commissioner told Mr Moss that there was no appeal because the taxpayers did not appeal. Carmody has also been using this untruth to increase the pressure on taxpayers to agree with his settlement. The fact is that there was no appeal because there was no funding from the ATO for appeal of this very important test case. I have this information direct from the lawyers representing the tax payers.

It is a judgment that clearly needed to be appealed. After all it is meant to be the test case for some 40,000+ cases.

In the judgment, Justice Conti has curiously found that the R&D expenses were "preliminary in nature" and that the investment makes no sense without the tax advantage and therefore falls under Part 4A tax avoidance.

Think about it. How can the investor decide if R&D is "preliminary in nature" or not?

And

Who will decide if an investment makes sense with or without tax advantage?

Many investments, for example negatively geared property investments and super payments may make no sense without the tax breaks. Will the commissioner now be free to come back against those deductions as well after six years? Guilty of tax avoidance for submitting the tax return! Penalties and loan shark interest rates — settle and pay up, a gun is against your head! We have the might to ruin your life! Tax administration in Oz!

I put it to the committee that the summary below would have been a report that an independent and arms length ombudsman investigator would have been able to write.

**What an Ombudsman Budplan Report should have said:**

*I have received over 1500 complaints from investors in Budplan about the actions of the ATO. While Budplan is not an afforestation project it is not in my view the role of the ATO to make selective industry policy. Old people's homes, forestry, vineyards, nut trees, new communications strategies, and research into new*

*therapeutic agents all have particular merits, but it is the government not the ATO, if anyone, which makes the value judgements about their merits. I am also conscious in reviewing Budplan that over 200 other cooperative in vestment projects, involving up to 60,000 taxpayers, have also been affected by a reversal of thinking by the ATO some time in 1998, and some time after the issue of Draft Tax Ruling 97/D17 in October 1997. This was the first public statement on the issue by the ATO in five years.*

*As a matter of law, I am not persuaded that "threat to the revenue" is a sufficiently good reason for the principle in a decision made by the ATO in an individual case to be altered simply because there are many similar cases. I am not persuaded that considerations such as the government's revenue base were a good and sufficient reason for a 17 month delay in determining Mr St otter's application for a private ruling. This is as I have said a matter for the Treasurer not the Commissioner.*

*I also prefer this approach to one, which given the powers granted to the Commissioner, would condone him adjusting his decisions on the law to meet government revenue targets. This is a task for government. The Commissioners granted powers must be used with a correspondingly high degree of ethics. If the present approach is to carry on and decisions are to be reversed in hindsight on the many GST discretions exercised, a chaotic situation will result.*

*I prefer an approach which supports the important legal principle of consistency espoused by High Court Justice Brennan in Re Drake and Minister for Immigration (1979) as it applies to transfer of case principles and fairness to that of Mr Justice Merkel in Bellinz. In any case Bellinz hinged on the fact that the classes of arrangements were different — here many were the same.*

*I am also conscious of the Victorian Administrative Appeals Tribunal requirements that the Minister in writing has made a statement of policy, an applicant is aware of the statement of policy, people could reasonably have been expected to be aware of the statement of policy, and the policy had been published in the Government Gazette. It is my view that the ATO gave no clear public indication of a change of policy in the period 1993 to 1997, and only in 1998 in the Magic Pudding speech was a proactive policy announced.*

*I have seen evidence that three Deputy Commissioners — Doughty, Nicholls and Foster, approved of the structure of the Main Camp project in 1992 and 1993, which in their essentials were reflected in Budplan. I am aware that the ATO allowed 221D variations for Budplan, stopped some and then continued them after a full audit of a taxpayer. I am aware that the ATO actually invited taxpayers to apply for further 221D variations for Budplan in the following year. I am of the view that the issue of a 221D variation should be an active exercise of judgement*

*by an ATO officer, and once accepted, the taxpayer is entitled to rely on it, notwithstanding actions taken by people Other than the taxpayer of which the taxpayer is not aware. I am aware that WA ATO staff contacted taxpayers to verify that the deductions claimed were for investment in Budplan and then indicated their continued approval that is there was an active exercise of judgement.*

*I am of the view that in the self-assessment environment, a taxpayer who can show that they have taken reasonable steps to ascertain the state of the law in relation to an investment is entitled to be treated as honest, and, in the absence of contrary advice from the ATO to the public and its network of registered tax agents, to have the tax deduction allowed. I am of the view that the ATO has wrongly treated Budplan and other taxpayers as dishonest.*

*The issue of whether the Budplan participants were actually in a business has been raised. Here I am aware of the decision of Deputy Commissioner Appleton in the Tumut River Orchard PBR in 1996. The allowance by Deputy Commissioner Butler of an objection over Red Claw in 1995 is also similarly persuasive. Further I am aware of the 1999 decision in Merchant's case (followed by Madison Pacific), which supports the view that the taxpayer is entitled to believe that the business relationship is as described in the contract, and commences at the point of signing.*

*The ATO in their reassessments have also accused the participants of entering the projects wholly or partly for purposes other than to gain assessable income. Firstly let me say that the Westraders case in 1999 (and Duke of Westminster) is authority for the fact that individuals are permitted to structure their affairs in a way which takes account of the tax consequences. I note that the opening of a research centre funded by Budplan at an Australian university by the Deputy Prime Minister for research on the pharmacological properties of natural oils had a genuine and sufficient business purpose.*

*However more importantly the accusations about the intent of the taxpayer (this is not dominant purpose under Pt IVA) were made without any questioning of the individual concerned, without any scrutiny of documents lodged with financial planners, and were continued without any consideration of responses to the accusations. This is a clear denial of the right to due process implied by S.8 of the ITA Act, of an established body of case law on procedural fairness, and a breach of the undertakings in the Taxpayers Charter which guarantee procedural fairness and treating the taxpayer as an individual. In the light of the 1999 Public Service Code of Conduct, this is reprehensible.*

Submission to the Federal Parliament's Public Accounts and Audit Committee
New inquiry ontaxation, announced on 8 December 2005.

REFERENCE: Bjorn Jonshagen — Submission No 2, Amended 5 May 06

*I note that post the issuance of this report the Commissioner in a letter to Taxpayers Australia on 21 July 2000 said: "Business and other taxpayers are invariably making significant investment decisions from which the tax treatment of the relevant transaction or investment cannot be divorced."*
*What then are the qualifications on "Partly for a purpose other than the earning of assessable income?"*

*I now wish to comment on the Pt IVA aspect. The word sham has been raised. It is clear that commercial failure does not render, in hindsight, a project a sham. However it is also clear that the individual taxpayer is entitled to rely on the fact that the proposal is as described in the prospectus approved by ASIC and that they entered it on that understanding. If the manager acts contrary to that, then that is not a sufficient reason to transfer responsibility under Pt/VATO the project participant. In a speech tot he Institute of Chartered Accountants in November 1998 the Commissioner said: "Many participants have become involved in the arrangements believing them to be perfectly legitimate. They were not tax experts and had relied on others in making the investments."*

*I do not agree with the Commissioner's decision to hold back from including a Pt IVA clearance in a PBR. As to the Spotless case in relation to Pt IVA, / think that can be distinguished on the facts. I am not aware that any project has tried to treat Australian-sourced income as if it originated in an offshore tax haven.*

*Recommendation:*

*Project investors and their investment advisors were undoubtedly influenced by the decisions taken by Deputy Commissioners Foster, Doughty, Nicholls, and Appleton.*

*In the circumstances, and because the introduction of a new Product Ruling system is evidence of previous deficiencies, a fact acknowledged by a Senate Inquiry, I recommend that the reassessments for all those entering Budplan before 1 July 1998 be withdrawn. This takes into account the fact that it was issued part-way through the 1997-8 tax year and the time taken for TR97/D17 to enter the public consciousness.*

*It also takes into account the unfairness and improper discrimination inherent in dealing with people with a PBR differently from people with identical investments but with no PBR, or in fact people with investments with essentially similar structures but no PBR. In the period 1992-1997 knowledge of what was considered favourably by the ATO depended almost exclusively on diffusion of knowledge about those PBR5 and the treatment of 221D variations.*
*It would follow that I believe that the reassessments for other projects based on the Main Camp principles entered into prior to 1st July 1998 be withdrawn.*

*(Subsequent to this report, I have learnt that on the 21 July 2000, the Commissioner has resiled from the undertakings he gave me about holding off on further action while test cases were heard, and which I included in my report. I note that a Senate Committee report of March 2000 lays the responsibility for the delay in the test cases at the door of the ATO. (Paras 4.18. and 4.19). I therefore view with great concern this breach of good faith by the Commissioner. The "safe harbour" legislation proposed by the Assistant Treasurer on December 1999 also suggests to me that the government believes that there is an unfair burden placed on a taxpayer, who under self-assessment, relies on the advice of an ATO-registered tax agent.*

*I note that in the March 2000 Senate report, the Commissioner said that acceptance of a 221D variation does not imply acceptance of the reason for it. I am forced to ask on what other basis an administrator charged with making an administrative decision, might act. This raises the question of irrelevant considerations.*

*I note also in a letter to Taxpayers Australia from the Commissioner of 28 August 2000 that he believed taxpayers should have found rulings by his four Deputy Commissioners "incredulous" — I think he means incredible. I am forced to ask why a taxpayer should be expected to question a ruling by a Deputy Commissioner.*

*The Senate Committee report of March 2000 notes that Budplan involved 9842 investors investing $372.5m. Recent ATO figures in late 2000 have said that only 0.1% of Budplan money was spent on research. The Southern Cross University research institute cost I understand $4m. This alone is a tenfold increase on the ATO figure given out. More public explanation of the basis for the ATO figures is called for.)*

Case dismissed ! — if only our ombudsman had done his job properly!

Recommendation

The Committee must now recommend to the Government that these taxpayers (including those who have accepted the settlement) must have their original assessments re-instated immediately.

The taxpayers must be compensated for financial losses, personal stress and other suffering endured over the many years that this has been dragging on.

The ATO's actions goes to the very heart of the integrity of the tax system and if allowed to stay unchallenged, will only increase the distrust in both the

government, the tax system and our ATO now so evidently clear.

I hereby ask to give evidence in front of the full Committee and look forward to your action. Please give me a ring.

Yours Sincerely

Bjorn Jonshagen

Submission to the Federal Parliament's Public Accounts and Audit Committee
New inquiry on taxation, announced on 8 December 2005.

REFERENCE: Bjorn Jonshagen — Submission No 3, Amended 5 May 06

Dear Committee Secretary,

Please accept this as a submission addressing the Part A terms of reference:

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

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

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

o the operation and administration of the Pay As You Go (PAYG) system.

My submission is specifically about the administration of the so called mass marketed tax effective investments entered into by 40,000+ people from 1994 until 1998 and targeted by the ATO as 'tax avoidance" from 2000.

I hereby put it to the Committee that the Tax office has provided the test case funding for so called Mass Marketed Tax Effective Investments that they promised in early 2001.

It was announced nearly five years ago, by assistant commissioner Michael O'Neill, that;

*"Possibly hundreds of test cases would be funded by the ATO"*

And that;

*Most investors would have certainty by the end of the year".*

This is a copy of a newspaper article covering the ATO announcement made in early 2001:

*Tax office will fund test cases*
*By David Reed*

*THE Australian Taxation Office will spend millions of dollars to fund both sides of court cases to determine who is right in a dispute over tax-effective schemes.*

*The move is a big win for about 30,000 WA investors who face tax bills of up to $500,000 each after the crackdown on investment schemes dating back several years.*

*The tax office will suspend recovery action against people who have objected to tax debts related to the schemes until the courts have ruled on the matter.*

*The move comes in response to a concerted investor backlash - particularly in*

*WA where more than half of the schemes were sold.*

*The investors thought deductions for the schemes had been allowed because they were not queried in previous years. Many claim to have followed professional advice.*

*Fighting funds were set up by groups of investors to challenge the tax office reassessments in a number of test cases in the Federal Court. Investors were asked to pay up to $1500 to join.*

*But not one case has made it to court yet, with each side blaming the other for delays.*

*The funding offer was announced by tax office assistant commissioner Michael O'Neill in Perth last night.*

*Mr O'Neill said there could be hundreds of test cases to be tried. "There is no doubt we are talking about a multi-million-dollar exercise," Mr O'Neill told The West Australian.*

*"But we believe one of the most effective ways to put an end to schemes of this type is to secure strong judicial decisions reinforcing the strength of the law, including anti-avoidance provisions."*

*The tax office said the first case was due in court on June 1. Mr O'Neill hoped there would be certainty for many investors by the end of the year.*

*Lawyer Frank Wilson, whose firm represents 8000 taxpayers from WA and elsewhere in more than 25 projects, with combined disallowances of $1.4 billion, said the move should be applauded. "It is just unfortunate it was not offered more than a year ago because it could have saved a lot of anxiety for people, "he said.*

*His firm also had seven cases listed before the Federal Court.*

*A Senate inquiry was called last year to look at the tax office treatment of the schemes after an outcry from investors.*

*The Senate committee's interim report is due this month but chairman Shayne Murphy pre-empted its findings last week when he blamed tax office inaction for the problems.*

*Senator Murphy said the tax office had done nothing for years about the schemes and had not provided a valid excuse for this.*

Submission to the Federal Parliaments Public Accounts and Audit Committee
New inquiry on taxation, announced on 8 December 2005.

REFERENCE: Bjorn Jonshagen — Submission No 3, Amended 5 May 06

*The tax office estimates that disallowed deductions for WA investors would total more than $2 billion and date back up to six years. With most investors in the top tax bracket, the bills top $1 billion in WA alone.*

The reality is vastly different with NO investors having certainty 3 years after this ATO announcement.

Many investors were forced under duress to accept the ATO settlement in 2002 (without having test case certainty), pay up and give up the chance of having justice and their day in court.

These people had NO real alternative since the ATO threatened to come down on them with the full force of the law. We have seen those threats come true when people are forced to sell their homes to pay penalties and interest that have not been tested by a court.

The people who were forced to settle might have certainty in terms of how much money they have to pay. They do not yet have any certainty regarding the validity of the ATO allegations against them.

I find this an un-acceptable situation.

The ATO would argue that they did provide test case funding for the so-called budplan case. The Ombudsman's Special Tax adviser Mr. Moss was lied to when an ATO Assistant Commissioner told him in 2002 that the budplan case was not appealed because the taxpayers elected not to appeal.

The truth is that the budplan case was not appealed because the ATO refused test case appeal funding for this most flimsy decision to ever have come out of an Australian court.

Today the ATO still uses the same lie in their propaganda ATO bring the people to their knees. Look at:

http://www.ato.gov.au/atp/content.asp?doc=/content/27144.htm&mnu=4956&mfp=001/008

Under the bud plan case;

*"On 18 March 2002, the Federal Court held that amounts paid to participate in the Budplan Personal Syndicate were not deductible under the general deduction provisions of the income tax law. The court also held that the general anti avoidance provisions in Part IVA of the income tax law operated to deny*

*deductions for the amounts subscribed because the investment made no commercial sense without the tax benefits.*

*No appeal was filed by the taxpayers."*

That is at best a very biased interpretation of the outcome of that case. It is definitely not the whole truth. I find it disturbing that the ATO is spreading miss-information to the public.

Judge Contie came up with gem's such as:
"a business engaged in research is not a business"

I have personally worked for a business engaged in nothing but R&D for the last 20 years. Should my employer be concerned about not being a business?

….and the finding that basically says that if an investment does not make sense without the tax benefits - it is tax avoidance! Should I stop my super contributions that would definitely not make any sense without the tax concessions?

The budplan investment (R&D) is also not very representative of most investments (Primary Production).

The committee must now determine whether the ATO have provided the funding for test cases that they promised to the people of Australia.

I urge the committee to recommend to the and the Government/ATO that truly representative test cases be fully funded and brought to the highest courts as soon is absolutely possible.

An alternative would be a recommendation to the government to acknowledge that this issue, having got nowhere in so many years and attempts to find certainty through the courts, has caused enough damage and that it requires a political solution.

The Committee must recommend to the Government that these taxpayers (including those who have accepted the settlement) must have their original assessments re-instated immediately.

The taxpayers must be compensated for financial losses, personal stress and other suffering endured over the many years that this has been dragging on.

The ATO's actions goes to the very heart of the integrity of the tax system and if allowed to stay unchallenged, will only increase the distrust in both the

government, the tax system and our ATO now so evidently clear.

I hereby ask to give evidence in front of the full Committee and look forward to your action.

Yours Sincerely

BjornJonshagen

Submission to the Federa' Parliament's Public Accounts and Audit Committee
New inquiry on taxation, announced on 8 December 2005.

REFERENCE: Bjorn Jonshagen — Submission No 4, Amended 5 May 06

Dear Committee Secretary,

Please accept this as a submission addressing the Part A terms of reference:

- o the impact of the interaction between self-assessment and complex legislation and rulings;
- o the application of common standards of practice by the ATO across Australia;
- o the level and application of penalties, and the application and rate of the General Interest Charge and Shortfall Interest Charge; and
- o the operation and administration of the Pay As You Go (PAYG) system.

My submission is specifically about the administration of the so called mass marketed tax effective investments entered into by 40,000+ people from 1994 until 1998 and targeted by the ATO as "tax avoidance" from 2000.

I put it to the committee that the ATO has breached the principles of procedural fairness in its application of part IVa. I ask you to investigate and to make a recommendation to the Government so that this unacceptable situation can be rectified.

The ATO have effectively admitted that the Part-I VA Panel have breached the principles of procedural fairness when it was applied to so called tax effective investments made in 1994 to 1998.

The Commissioner of Taxation has outlined [Carmody Crown Plaza speech 15.4.04] that there is a present opportunity for individuals to have written material considered by the panel (so this right would have existed in 2000 when the Part IVA determinations were made). He has outlined that this existing right now be extended to include the right to be present at an individuals Part-I VA hearing.

These investors were informed by the Australian Government/ATO that their reason for making the investments in the agricultural projects was to avoid tax (being tax cheats) under Part-I VA.

ATO Deputy Commissioner Steve Chapman wrote to investors in June 2000 and informed them about this, that the deductions were disallowed and sentenced them to penalties with interest (at loan shark rates of 14%+) for the crime of submitting the tax returns.

They were told in the letter from Mr Chapman that they had "rights of objection" and specifically were told "Please include any further information about your individual circumstances that may help us in resolving this matter in a fair way".

Many responded in writing to the ATO decisions and outlined in detail their individual circumstances and reasons why they had made the investments. The true reasons for investing were of course the potential for a financial return to save for retirement. That was the true dominant purpose and these investors are not tax cheats.

It has become clear that those submissions have never been read by anybody and definitely not considered by a Part-IVA panel.

In fact NO Part-IVA panel ever met to consider the real reasons for investing.

It is even possible that NO Part-I VA panel ever even met to consider most of the projects.

If the panel existed the following is facts:

- It operated in secret.
- Who served on the panel is a secret (if it existed).
- The panel took NO minutes from it's meeting (if it was ever held).
- It did NOT consider the investors stated reasons for investing.
- It did NOT consider the submission following Dep. Commissioner Chapman's invitation to give information about individual circumstances.
- It is a secret what submission the ATO Commissioner made to the panel (if such a submission was made and IF the panel ever met)

This looks more like a Stalinist Russian style of public administration than what I am expecting from our ATO. What does the Committee think?

Mr Chapman did ask investors to "Please include any further information about your individual circumstances that may help us in resolving this matter in a fair way".

Many investors did so, nobody considered those submission and we all know that this matter has not been resolved in a fair way. These investors definitely had **NO**

opportunity to have written material considered by the panel as the tax commissioner has declared was their right.

Many investors clearly outlined how they did nothing wrong by submitting the tax returns that fully declared their investments. Nobody cared about this. It is impossible to understand how it is fair that these investors were sentenced to penalties and loan shark interest for submitting those tax returns.

The penalties and interest are central since the penalties and the exponentially growing debt to the Australian Government/ATO was used in 2002 to force many investors under duress to accept the settlement, admit to being a tax cheats, sign away rights to justice and admit a large debt to the Australian Government. For many the alternative was to face total financial ruin.

I put it to the committee that the application of Part-I VA is in breach of "procedural fairness". It must be withdrawn immediately.

The settlements that were forced through using the illegal Part-I VA application must also immediately be withdrawn.

The Committee must recommend to the Government that these taxpayers (including those who have accepted the settlement) must have their original assessments re-instated.

The taxpayers must be compensated for financial losses, personal stress and other suffering endured over the many years that this has been dragging on.

I hereby ask to give evidence in front of the full Committee and look forward to your action.

Yours Sincerely

Bjorn Jonshagen

Submission to the Federal Parliaments Public Accounts and Audit Committee
New inquiry on taxation, announced on 8 December 2005.

REFERENCE: Bjorn Jonshagen — Submission No 5, Amended 5 May 06

Dear Committee Secretary,

Please accept this as a submission addressing the Part A terms of reference:

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

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

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

o the operation and administration of the Pay As You Go (PAYG) system.

My submission is specifically about the administration of the so called mass marketed tax effective investments entered into by 40,000+ people from 1994 until 1998 and targeted by the ATO as "tax avoidance" from 2000.

My submission is specifically about the ATO handling of the Chalice Bridge project offered to investors in 1998.

The ATO issued the attached position paper [*ATO Chalice Bridge position paper w marks.PDF*] was sent to taxpayers and is telling them why the submission of a tax return with tax deductions made for project expenses is considered tax fraud and deserves penalties. I have marked some sentences in the document.

In summary, the ATO is arguing that excessive fees and sham loan arrangements are designed with the dominant purpose to create up front tax deductions to investors. Therefore the investor is a tax cheat (the dominant purpose was to avoid tax — part IVa).

I put it to the committee that the ATO position paper is NOT telling the truth on the three main issues of loan arrangements, up front fees and tax deductions.

<u>Artificial loan arrangements</u>
There is no basis for the allegation that the loan is artificial. The loans are real and the investors are still paying them off with interest from project income distributions. The loan funds were forwarded from the lender to the project manager. If some part of the funds did not stay with the manager, it is certainly not something that the investor could possibly have suspected when the investment decision was made in 1998.

It is also curious how the position paper makes no mention of the example in Tax Ruling TR95133 which permits "round robin" loans in certain circumstances in agricultural projects. TR95133 is available from the ATO website and was in effect in 1998 when the investment was made.

Submission to the Federal Parliament's Public Accounts and Audit Committee
New inquiry on taxation, announced on 8 December 2005.

REFERENCE: Bjorn Jonshagen — Submission No 5, Amended 5 May 06

Tax Savings greater than cash payments

The ATO Position Paper on the Chalice Bridge project is incorrect in stating that; "Tax savings generated the necessary funds to meet the required cash payments by those participants on the top marginal tax rate"

The tax savings did not meet the cash repayments for those tax payers.

An investor (on the top marginal 1998 tax rate of 48.7%) would according to my estimates in 1998 have total tax savings over the first six years of the project of $15,692. The 1998/99 application funds and year one cash payments alone were $16,997 and in excess of the tax savings.

Excessive fees

The allegation that the fees are "excessive" is curious for example in the light of a simple comparison with other projects that have since received ATO "ticks of approval" in the form of Public Rulings (PR). The PR system did not exist in 1998.

The following projects have fees (calculated per hectare) considerably higher than the Chalice Bridge project; Please see [ *Comparative per hectare costs for first 3 years.PDF*]

- Hillston Grove PR1999/1
- Settlement22 PR2001/8
- Palandri2000 PR2001/11 pls see

I can find no evidence for the allegation that the fees are excessive. The ATO have confirmed this view by issuing PR's for projects with higher fees.

I hereby put it to the committee that The Australian Government has allowed its Tax office to use untruths and unsubstantiated allegations to accuse tax payers of tax fraud.

I find it even more distasteful to see how the Australian government has been allowing their tax collector to use lies and unsubstantiated allegations to force tax payers under severe distress and duress to admit being a tax fraud, give up his rights to justice and pay up (the reality of the ATO dictated settlement).

The Committee must recommend to the Government that these taxpayers (including those who have accepted the settlement) must have their original assessments re-instated.

The taxpayers must be compensated for financial losses, personal stress and

other suffering endured over the many years that this has been dragging on.

I hereby ask to give evidence in front of the full Committee and look forward to your action.

Yours Sincerely

Bjorn Jonshagen

Submission to the Federal Parliament's Public Accounts and Audit Committee
New inquiry on taxation, announced on 8 December 2005.

REFERENCE: Bjorn Jonshagen - Submission No 6 , Amended 5 May 06

Dear Sir/Madam,

Please accept this as a submission addressing the Part A terms of reference:

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

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

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

o the operation and administration of the Pay As You Go (PAYG) system.

My submission is about the overall fairness and justice given to taxpayers under the operation of the PAYG system.

My submission is specifically about the administration of the so called mass marketed tax effective investments entered into by 40,000+ people from 1994 until 1998 and targeted by the ATO as "tax avoidance" from 2000.

These taxpayers have not been given the fairness and justice they deserve. They have not been dealt with according to principles of procedural fairness.

I put it to the committee that the Tax Ombudsman forms an integral part of the operation of the overall tax system. After all, the ombudsman's office is the watchdog with a duty to investigate the ATO and to ensure fairness in taxation.

This is in fact what has been lacking in this whole fiasco. Blind Freddy can see that the way the taxpayers have been treated is not fair. The evidence for this is not difficult to find and anybody who takes the time to understand what has actually happened does indeed agree. The problem has been that legislation is apparently such that our ATO can evidently accuse taxpayer who definitely did nothing wrong of being tax cheats and issue penalties to be used to force a settlement on ATO terms. We even have some court outcomes confirming that with existing legislation the ATO can indeed do this. We also have court outcomes confirming the opposite where the ATO actions have been struck out.

The problem obviously is that our courts are NOT looking at the issue of fairness, maybe they should? The courts only determine if the laws have been followed.

The Ombudsman is different. It is actually his charter to look at the fairness of what happens to a tax payer.

I put it to the committee that the Tax Ombudsman has NOT carried out his duty in

relation to this and that his failure to carry out his duty should be covered by this committee.

The ombudsman appointment is made by the Governor-General who can also suspend the ombudsman and refer the matter to the Minister and both houses of parliament. The G-G has refused to look into this matter and the committee would therefore appear the appropriate place for review. After all even the Ombudsman must somehow be responsible to our parliament.

The Ombudsman has NOT carried out any independent and impartial investigation into this matter.

Unfortunately our ombudsman appointed the wife of one of the key ATO architects of the attack on taxpayers to carry out an investigation relating to her husbands work. Is that good enough as an independent investigation? Yes or

No?

The settlement was in essence a "gun to the head" approach by the ATO. The ATO had a very big stick and all the resources to ruin an investor with tax debt growing exponentially with severe penalties and interest.

The settlement (removing the penalties) was conditional on accepting the dictated terms, accepting to have committed tax fraud, giving up rights to justice and paying up. The taxpayers were given only weeks to make this decision.

The Ombudsman's reply to me is that he will NOT investigate the settlement because "it was designed to bring to an end many of the issues of dispute" and therefore "make any further investigation of that dispute unwarranted".

This is extremely disturbing! Really like a prison warden shooting a prisoner dead would not be investigated because the shooting was designed to end the matter of the troublesome prisoner.

The ATO settlement and the way it has been implemented have not been investigated. Our ombudsman has attempted to justify his failure to act by

stating (in letters to me) that the commissioner's approach has been exposed to considerable scrutiny by others and that change to the law has not been proposed. That simply is not good enough, Senate Committee hearings (never looked at the settlement) and media scrutiny is good but can not replace independent review by our ombudsman whose very reason to exist is to perform this role.

I put it to the committee that the ombudsman should be condemned for the failure to carry out the duties of his office. It must be ensured that a proper review of the ATO handling of this matter on the basis of fairness and justice be carried out. This has never been done! It was the Ombudsman's job!

What is needed now is a full and open Royal Commission and a prompt decision by our government to immediately implement a fair and just outcome to these taxpayers.

I hereby ask to be heard in front of the full Committee and look forward to your action.

Yours Sincerely

Submission to the Federal Parliament's Public Accounts and Audit Committee
New inquiry on taxation, announced on 8 December 2005.
REFERENCE: Bjorn Jonshagen — Submission No 7, Amended 5 May 06

Dear Committee Secretary,

Please accept this as a submission addressing the Part A terms of reference:

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

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

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

o the operation and administration of the Pay As You Go (PAYG) system.

My submission is about the ATO administration of the so called mass marketed tax effective investments entered into by 40,000+ people from 1994 until 1998 and targeted by the ATO as 'tax avoidance" from 2000.

Specifically my submission is about ATO administration of the settlement.

I ask the Committee to please answer one question:

Is it acceptable that our Tax Commissioner is misleading taxpayers to coerce them into accepting ATO dictated settlements?

Yes ☐ No ☐

On the eve of the settlement deadline, the tax commissioner, Mr Carmody sent me the attached letter *(letter from Carmody 5 June 02.PDF]*.

I have marked three sentences in the letter (l ll lll):

I. *"The outcome of both the Budplan and Vincent cases confirms that finance arrangements typically used in mass marketed schemes in an attempt to artificially create tax deductions, do not succeed."*
The fact is that neither court case ruled that the finance arrangements caused the deductions to not succeed. If the statement had been; "The outcome of both the Budplan and Vincent cases does not confirm that finance arrangements typically used in mass marketed schemes in an attempt to artificially create tax deductions, do not succeed." It would have been a better reflection of the truth. I ask the committee to check with any independent lawyer who has had a quick look at the facts.

II. . *"The settlement offer recognises that most investors were led into schemes by unscrupulous promoters."*

This is central to the ATO approach to this whole fiasco; that somehow all investors were given the wrong advice and did not follow the rules, as they were available at the time. The truth is the absolute opposite; these investments had been going on for years and numerous high-level tax-law experts confirmed that the deductions were OK. The ATO gave the same advice and continued as late as 1997 to issue PBR's extended to all participants in similar investments. *"PBR's are an important part of the self-assessment system particularly as they are legally binding on the Commissioner of Taxation if they are favourable to a taxpayer whose circumstances are comparable to those dealt with by the ruling."* (Inspector General position paper issued by Senator Coonan)

III. "There has never been any suggestion on my part that investors generally are 'tax cheats'. No such inference will be drawn because you decide to take up the settlement opportunity"

The ATO has labeled the investors tax cheats by issuing part 4A allegations that investor's actions had the dominant purpose of avoiding tax. That is what a Part 4A allegation means. The allegation is not removed in the settlement. Mr Carmody is writing the letter as the head of the ATO and that organization has labeled the investors as 'tax cheats'.

The settlement was in essence a "gun to the head" approach by the ATO. The ATO had a very big stick and all the resources to ruin an investor with tax debt growing exponentially with severe penalties and interest.

The settlement (removing the penalties) was conditional on accepting the dictated terms, accepting to have committed tax fraud, giving up rights to justice and paying up. The taxpayers were given only weeks to make this decision.

In light of this situation would the Committee consider it important that this letter issued by the Tax Commissioner be correct, complete and impartial?

Yes ☐ No ☐

Can it be accepted that the Tax Commissioner uses deliberate misinformation to press taxpayers into accepting his dictated settlement under extreme duress?

Yes ☐ No ☐

Submission to the Federal Parliament’s Public Accounts and Audit Committee
New inquiry on taxation, announced on 8 December 2005.
REFERENCE: Bjorn Jonshagen — Submission No 7, Amended 5 May 06

The Committee must recommend to the Government that the taxpayers be offered to have the settlements put aside, and the original assessments be re instated.

The taxpayers must be compensated for financial losses, personal stress and other suffering endured over the many years that this has been dragging on.

I hereby ask to give evidence in front of the full Committee and look forward to your answers to my questions.

Yours Sincerely

Bjorn Jonshagen

Submission to the Federal Parliament's Public Accounts and Audit Committee
New inquiry on taxation, announced on 8 December 2005.

REFERENCE: Bjorn Jonshagen — Submission No 8, Amended 5 May 06

Dear Committee Secretary,

Please accept this as a submission addressing the Part A terms of reference:

- o the impact of the interaction between self-assessment and complex legislation and rulings;
- o the application of common standards of practice by the ATO across Australia;
- o the level and application of penalties, and the application and rate of the General Interest Charge and Shortfall Interest Charge; and
- o the operation and administration of the Pay As You Go (PAYG) system.

My submission is about the ATO administration of the so called mass marketed tax effective investments entered into by 40,000+ people from 1994 until 1998 and targeted by the ATO as "tax avoidance" from 2000.

Specifically my. submission is about the application of penalties. I put it to the Committee to please answer a question:

Should promises made in the ATO TAX PACK which is an instruction on how to prepare a tax return be adhered to when it comes to administration of tax in Australia?

Yes ☐ No ☐

1994 "TAX PACK":

"A TAXPAYER WHO EXERCISES REASONABLE CARE WILL NOT BE SUBJECT TO PENALTY. A TAXPAYER IS CONSIDERED TO HAVE EXERCISED REASONABLE CARE/F A GENUINE ATTEMPT WAS MADE TO PREPARE AN ACCURATE RETURN FROM THE INFORMATION AVAILABLE AT THE TIME"

There are no ifs or buts in the tax pack and such a principle does indeed make a lot of sense.

The investors have been given a penalty (with interest) for the act of submitting the returns. The issue of the penalties and how the penalties were used is important. The penalties were not removed, even though 2000/01 the Senate Committee recommended this.

The ATO settlement (removing the penalties) was conditional on accepting the dictated terms, accepting to have committed tax fraud, giving up rights to justice and paying up. The penalties are therefore central to how this whole issue was administrated. They penalties were effectively used to cause distress and gang press investors to accept the ATO dictated settlement.

Submission to the Federal Parliaments Public Accounts and Audit Committee
New inquiry on taxation, announced on 8 December 2005.
REFERENCE: Bjorn Jonshagen — Submission No 8, Amended 5 May 06

I ask the Committee; Should a TAX PACK guarantee be adhered to by the ATO?

Yes ☐ No ☐

If the answer is "Yes" the Committee must recommend to the Government that the taxpayers are offered to have the settlements put aside, and tax deductions, that were valid at the time re-instated. The taxpayers must be compensated for financial losses, personal stress and other suffering endured over the many years that this has been dragging on.

I hereby ask to give evidence in front of the full Committee and look forward to your answers to my questions.

Yours Sincerely

Bjorn Jonshagen

Submission to the Federal Parliament's Public Accounts and Audit Committee
New inquiry on taxation, announced on 8 December 2005.
REFERENCE: Bjorn Jonshagen — Submission No 9, Amended 5 May 06

Dear Committee Secretary,

Please accept this as a submission addressing the Part A terms of reference:

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

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

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

o the operation and administration of the Pay As You Go (PAYG) system.

My submission is about the ATO administration of the so called mass marketed tax effective investments entered into by 40,000+ people from 1994 until 1998 and targeted by the ATO as "tax avoidance" from 2000.

Specifically my submission is about the Commonwealth Tax Ombudsman and his role to ensure fairness in the operation and administration of our tax system.

I ask the Committee to please answer one question:

Is it important that any investigations by the Tax Ombudsman are carried out in an open way and without any conflicts of interest?

Yes ☐ No ☐

In 2001 the tax commissioner used public resources to carry out an unprecedented campaign to paint the ATO actions on tax effective investments in a positive light. The so called "FACTS" newsletters were produced and circulated to all investors. Remember, this was prior to the ATO dictated settlement hitting the investors the following year.

The settlement was in essence a "gun to the head" approach by the ATO. The ATO had a very big stick and all the resources to ruin an investor with tax debt growing exponentially with severe penalties and interest.

The settlement (removing the penalties) was conditional on accepting the dictated terms, accepting to have committed tax fraud, giving up rights to justice and paying up. The taxpayers were given only weeks to make this decision.

In light of this situation would the Committee consider it important that the

Submission to the Federal Parliament's Public Accounts and Audit Committee
New inquiry on taxation, announced on 8 December 2005.
REFERENCE: Bjorn Jonshagen — Submission No 9, Amended 5 May 06

"FACTS" issued by the Tax Commissioner should only be referring to Ombudsman investigations that have been carried out without any obvious conflicts of interest?

Yes ☐ No ☐

I have enclosed a copy of the June 2001 FACTS on 'tax effective' investments newsletter *[ATO June 2001 FACTS. PDF]* and marked with a red square the Ombudsman's budplan investigation is referred to as an argument why the ATO actions are not retrospective application.

I put it to the Committee that the FACTS sheet was used to coerce taxpayers to accept the ATO dictated settlements.

Can it be accepted that the Tax Commissioner uses this clearly partial report to press gang taxpayers into accepting his dictated settlement under extreme duress?

Yes ☐ No ☐

The Committee must recommend to the Government that the taxpayers be offered to have the settlements put aside, and the original assessments be re instated.

The taxpayers were clearly coerced in writing, directly by the tax commissioner himself, and with a very dodgy investigation used as leverage. Good enough?

The taxpayers must be compensated for financial losses, personal stress and

other suffering endured over the many years that this has been dragging on.

I hereby ask to give evidence in front of the full Committee and look forward to your answers to my questions.

Yours Sincerely.

Bjorn Jonshagen

Submission to the Federal Parliament's Public Accounts and Audit Committee
New inquiry on taxation, announced on 8 December 2005.
REFERENCE: Bjorn Jonshagen — Submission No 10, Amended 5 May 06

Dear Committee Secretary,

Please accept this as a submission addressing the Part A terms of reference:

- o the impact of the interaction between self-assessment and complex legislation and rulings;
- o the application of common standards of practice by the ATO across Australia;
- o the level and application of penalties, and the application and rate of the General Interest Charge and Shortfall Interest Charge; and
- o the operation and administration of the Pay As You Go (PAYG) system.

My submission is about the ATO administration of the so called mass marketed tax effective investments entered into by 40,000+ people from 1994 until 1998 and targeted by the ATO as "tax avoidance" from 2000.

Specifically my submission is about the interaction between self-assessment and complex legislation and rulings.

I ask the Committee to please answer one question:

Is it acceptable that our Tax Commissioner is misleading taxpayers to coerce them into accepting ATO dictated settlements?

Yes ☐ No ☐

In 2001 the tax commissioner used public resources to carry out an unprecedented campaign to paint the ATO actions on tax effective investments in a positive light. The so called "FACTS" newsletters were produced and circulated to all investors. Remember, this was prior to the ATO dictated settlement hitting the investors the following year.

The settlement was in essence a "gun to the head" approach by the ATO. The ATO had a very big stick and all the resources to ruin an investor with tax debt growing exponentially with severe penalties and interest.

The settlement (removing the penalties) was conditional on accepting the dictated terms, accepting to have committed tax fraud, giving up rights to justice and paying up. The taxpayers were given only weeks to make this decision.

Submission to the Federal Parliament's Public Accounts and Audit Committee
New inquiry on taxation, announced on 8 December 2005.
REFERENCE: Bjorn Jonshagen — Submission No 10, Amended 5 May 06

In light of this situation would the Committee consider it important that the "FACTS" issued by the Tax Commissioner be correct, complete and impartial?

Yes ☐ No ☐

I have enclosed a copy of the June 2001 FACTS on 'tax effective' investments newsletter [ATO June 2001 FACTS. PDF] and marked with a blue square where it is stated that only **five** rulings had been issued.

I have enclosed as a separate document a list of **EIGHT** separate Private binding Rulings issued by the ATO between 1992 and 1998 *[ATO PBR's.PDF].* There may be many more. Several are NOT mentioning the anti-avoidance provision.

In the blue box is further stated that "Above all, those rulings only applied to those individual taxpayers". I put it to the Committee that this statement is NOT correct and at best something that is not very clear cut. At least it appears our Inspector General on Taxation and the Minister responsible for the ATO at the time does NOT agree;

*"PBR's are an important part of the self-assessment system particularly as they are legally binding on the Commissioner of Taxation if they are favourable to a taxpayer whose circumstances are comparable to those dealt with by the ruling." (Inspector General position paper issued by Senator Coonan)*

It does make a lot of sense that an ATO ruling should apply for all. We are after all supposed to be treated equally by the law and by the ATO. It would reasonable for a taxpayer to expect a PBR issued for one investor to be applicable to all investors in the same project.

The Commissioner is in effect, with his statement, suggesting that investors in these projects should have known better than a Deputy Commissioner of taxation, and two years earlier and that they deserve a penalty for having made the investment and declared it in their tax returns!

I put it to the Committee that the Commissioners FACT sheet is misleading. The ATO issued more than five PBR's and PBR's are legally binding to all in the same circumstances.

I put it to the Committee that the FACTS sheet was used to coerce taxpayers to accept the ATO dictated settlements.

Submission to the Federal Parliament's Public Accounts and Audit Committee
New inquiry on taxation, announced on 8 December 2005.
REFERENCE: Bjorn Jonshagen — Submission No 10, Amended 5 May 06

Can it be accepted that the Tax Commissioner uses deliberate misinformation to press taxpayers into accepting his dictated settlement under extreme duress?

Yes ☐ No ☐

The Committee must recommend to the Government that the taxpayers be offered to have the settlements put aside, and the original assessments be re instated.

The taxpayers must be compensated for financial losses, personal stress and other suffering endured over the many years that this has been dragging on.

I hereby ask to give evidence in front of the full Committee and look forward to your answers to my questions.

Yours Sincerely

Bjorn Jonshagen

Submission to the Federal Parliament's Public Accounts and Audit Committee
New inquiry on taxation, announced on 8 December 2005.
REFERENCE: Bjorn Jonshagen — Submission No 11, Amended 5 May 06

Dear Committee Secretary,

Please accept this as a submission addressing the Part A terms of reference:

- o the impact of the interaction between self-assessment and complex legislation and rulings;
- o the application of common standards of practice by the ATO across Australia;
- o the level and application of penalties, and the application and rate of the General Interest Charge and Shortfall Interest Charge; and
- o the operation and administration of the Pay As You Go (PAYG) system.

My submission is about the ATO administration of the so called mass marketed tax effective investments entered into by 40,000+ people from 1994 until 1998 and targeted by the ATO as "tax avoidance" from 2000.

Specifically my submission is about the application of penalties. I put it to the Committee to please answer a question:

Should general principles of justice be adhered to when it comes to administration of tax in Australia?

Yes ☐ No ☐

United Nations Universal Declaration of Human Rights:

*Article 11(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.*

I put it to the committee that it did NOT constitute an offence at the time, to submit a tax return declaring one of these investments and claiming tax deductions accordingly. It was at least not possible to find out, at the time that this act was an offence. Several people asked the tax office and got private binding rulings written by deputy tax commissioners and stating that the deductions were valid.

The investors have been given a penalty (with interest) for the act of submitting the returns.

Can it be considered an offence at the time, to claim a tax deduction if an ATO

deputy commissioner, at the time considers the expense tax deductible and puts his name to a ruling with this effect?

Yes ☐ No ☐

The issue of the penalties and how the penalties were used is important. The penalties were not removed, even though the Senate Committee recommended this.

The penalties were only removed if investors accepted the ATO settlement that involved giving up rights to justice and NOT having the tax deductions accepted.

I put it to the Committee that it was not a crime at the time to enter into and declare these investments.

If the Committee agrees that general principles of justice should be followed, in Australian tax administration the Committee must recommend to the Government that the taxpayers be offered to have the settlements put aside, and tax deductions, that were valid at the time re-instated. The taxpayers must be compensated for financial losses, personal stress and other suffering endured over the many years that this has been dragging on.

The alternative for the Committee is to state that general principles of justice need not be adhered to when it comes to administration of tax in Australia.

I hereby ask to give evidence in front of the full Committee and look forward to your answers to my questions.

Yours Sincerely

Bjorn Jonshagen

Submission to the Federal Parliament's Public Accounts and Audit Committee
New inquiry on taxation, announced on 8 December 2005.
REFERENCE: Bjorn Jonshagen — Submission No 12, Amended 5 May 06

Dear Committee Secretary,

Please accept this as a submission addressing the Part A terms of reference:

- o the impact of the interaction between self-assessment and complex legislation and rulings;
- o the application of common standards of practice by the ATO across Australia;
- o the level and application of penalties, and the application and rate of the General Interest Charge and Shortfall Interest Charge; and
- o the operation and administration of the Pay As You Go (PAYG) system.

My submission is about the ATO administration of the so called mass marketed tax effective investments entered into by 40, 000+ people from 1994 until 1998 and targeted by the ATO as "tax avoidance" from 2000.

These taxpayers have not been given the fairness and justice they deserve. They have not been dealt with according to principles of procedural fairness.

<u>The facts are</u>

These taxpayers did nothing wrong. The typical investor fulfilled the duty Of care under the self-assessment regime. Before investing they were provided with a Securities Commission registered prospectus containing financial forecasts of profits, details of the promoters, reports from technical and marketing experts, as well as a tax opinion from leading tax lawyers and accountants. Most got additional advice from accountants, other financial advisers or direct from the ATO help line. What more could they have done?

By contrast, ATO completely failed in its duty of care to inform the market of its 1990 concerns, a reasonable person would conclude that the allowance of deductions since at least 1988 was a real indication by the ATO that these investments complied with the tax laws, in line with the advice and the prospectuses.

The ATO now says they had concerns from the early 1990'ies but did nothing until 1997/98. I hear that in May 1998 senior tax officers held a meeting in Castleden Place, Melbourne to review their failure to act earlier and try to ensure that this would never happen again. The likely impacts of the retrospective campaign they engaged on, such as marital breakdowns, personal stress and small business devastation were anticipated and discussed. The outcomes canvassed by these officers have proven accurate time and time again and we have seen several suicides.

Submission to the Federal Parliament's Public Accounts and Audit Committee
New inquiry on taxation, announced on 8 December 2005.
REFERENCE: Bjorn Jonshagen — Submission No 12, Amended 5 May 06

Traditionally, a taxpayer could confidently rely on expert advice, usually supported by decisions of the courts, to predict the likely outcome of any deduction claimed for their business expense. This campaign ignores all of this. It also seriously ignores the taxpayer's charter of rights - chief among them to be treated fairly and as an individual. This campaign reaches the lowest level of tax administration in Australia's history.

Under Self Assessment the ATO has a Duty of Care to provide timely, accurate and consistent advice to all taxpayers. Their lack of communication not only to investors but also to The Financial Planning/Taxation and Accounting Industries re the position they held on these investments is an absolute disgrace. We all know the truth is they didn't have a position and decided along the way. The ATO reversed the risk from themselves to the taxpayer under the introduction of Self- Assessment and used the full 6-year time frame to cover for their own inadequacies and indecisiveness on what their interpretation was. The precedence they set in accepting these deductions for ten years, their issuing of private rulings and acceptance of 221 D variations is far from consistent, timely and accurate.

<u>Why should this committee take action</u>

It is the responsibility of the parliament and our government to ensure that justice prevails. This committee must take action and can not leave it to the ATO, the courts and our Ombudsman — it is now clear that the system have failed these investors!

You often here comments from our parliamentarians along the lines that the government can not tell the ATO or the ombudsman what to do. This is of course all fairy stories for grownups. The ATO is the government's tax collector and ultimately it is the responsibility of the government and the people's parliament to ensure that justice prevails.

What has happened can not be allowed to pass just because the ATO have managed to force it through the court system using the anti avoidance provisions. Frankly, if the law can be used like this - it is the responsibility of parliament to take action.

It is extremely important that swift action is taken and that the process of re building confidence in our system can start

Submission to the Federal Parliaments Public Accounts and Audit Committee
New inquiry on taxation, announced on 8 December 2005.
REFERENCE: Bjorn Jonshagen — Submission No 12, Amended 5 May06

<u>What can the Committee do</u>

The committee should simply condemn the ATO's actions as unjust. The Government must be asked to request the ATO to retract all actions taken against these taxpayers.

The ATO's actions go to the very heart of the integrity of the tax system and if allowed to prevail, will only increase the distrust in both the tax system and the ATO now so evidently clear.

I hereby ask to give evidence in front of the full Committee and look forward to your action.

Yours Sincerely

Bjorn Jonshagen