

Submission

I make this submission and while happy for any part of it to be published or made public I ask that any reference to myself personally, be removed.

I am a 56 year old financial planner and have been so for some 20 years. I work at the basic levels of the industry serving retirees and potential retirees and dealing in particular with their access to Centrelink benefits etc.

I invested in what has commonly now be termed mass marketed investment schemes. One was an internet service for accounting firms to access company , land and other government department services. This investment was made in 1995 and while now defunct, the idea is now in full and general practice throughout Australian Accounting and business firms.

The other investments were two films in 1996 and 1997.

In all cases I had, as a financial planner been unsure of these forms of investment, especially films, from their inception in about 1988 to 1990. I realised the higher investment risk involved but did not fully understand the taxation implications.

I had sat on the fence with regard to film and various agricultural investments for some time and kept gathering information as best I could and assessing these, watching for outcomes.

By 1994 I had formed the view that perhaps I had a wrong idea of these investments. Many financial Planning groups were selling these investments. The ATO was not denying tax deductions and in fact was accepting and approving form 221D income tax amendment notices from investors.

Investment researchers employed by my Dealer Principle were providing quite favourable opinions, given that the investments carried higher risks than the average investment. I was being provided with copies of ATO rulings that were indicating acceptance of this type of investment and confirming the tax deductibility. Senior QC and Accounting opinions were also very favourable to my mind and readily available.

I had sought counsel with several practising accountants including my own CPA and two solicitors associated with my Dealer Principle who all gave favourable views as to the taxation elements within the investments and also pointed to the favourable opinions expressed by QC's and large Accounting firms contained in prospectus.

My Dealer Principle had, since 1990, also had these products listed on his Approved Product Lists. This indicated to the Dealer's authorised representatives, such as myself, that they had completed all the necessary investment research and due diligence and the investments were approved for use by us with clients.

It is important to note that an authorised representative can not recommend any investment, unless it is authorised by the Dealer either on his Approved Product List or as a special one off case.

I had also rang the ATO to try and gain some insight and was told that, in general terms, the ATO did not have a problem with any of the investments but advising that individual's circumstances needed consideration and suggesting I should consult with solicitors and accountants before investing.

By 1994 I had come to the conclusion that I had got it wrong and was too conservative. Having done all the ATO had suggested and in view of the QC's, Accounting and the opinion of my Principle's research and that I should change my view.

I invested in 1995 into the computer network services without involving any clients. Feeling that before I could recommend such investments to client's I should go through the process myself. The concept was that this service also included an internet referral site for potential clients seeking financial planning services and that was an additional opportunity and reason for me to invest.

In 1996 I was very interested in a film investment "Liar Liar". It looked to be one of those films that would probably succeed. So I invested personally. I commenced recommending the Computer Network opportunity to about 5 or 6 of my clients who invested.

In 1997, bouyed by the, apparent success of the Liar Liar film release and the indications that it may become a record breaking enterprise I invested and refcommended several clients to invest into a Village Roadshow production "Tarzan and Jane". The Tarzan adventures were part of my boyhood and I felt that, if well produced, such a film might also have some success.

Early in 1998 I first became aware of the ATO's concern with these type of investments after they commenced denying applications or not renewing for form 221D. Then came the Tax Commissioner's speech on about 12 June 1998.

Subsequently income tax amendments were issued from the ATO. Personally my 1995 return amendment arrived in about September 1999. Some 4 years and 2 months after lodgement in July 1995 and the assessing in August 1995 of my 1995 Income tax return.

It was apparent that the Tax Commissioner had now changed his view on how he was going to deal with these investments. He was going to do so retrospectively either under the four year rule, or if that had lapsed, then apply Part 1VA so that he could go back 6 years if needed to ensure capture. A factor that has prompted Treasury, in it's report to the Federal Treasurer in July 2004, to indicate that legislation was needed to rectify this issue and ensure where a change of interpretation was made it could only be done prospectively, NOT RETROSPECTIVELY.

We now have the ROSA Bills being presented to Parliament to rectify this systemic problem PROSPECTIVELY. I wholeheartedly agree with introduction of these Bills. However the problem is only being partially rectified. To be completely fair and equitable it should be made retrospective to the introduction of the Self Assessment System as the problem identified is a systemic problem.

The impact on myself personally has been total devastation.

- Firstly and foremost I have, over some years now, being publicly labelled a Tax Cheat.
- Secondly, that I got it so wrong when conducting my research etc, or did I. There seems still to be conflicting legal and accounting opinions still. Apparently the ATO took some years from at least 1990 to 1998 before it could form a view. With my limited resources it seems that, - according to the ATO, I knew all along that these investments were wrong !
- Thirdly, that I have failed in my duty toward my clients who also invested. That is even after I had acted with what I thought was proper care and consideration not only of the investments themselves but how they would fit into assisting clients fulfill their personal objectives and needs.

I have lost ownership my business, suffered declining health due to the stress this posiiton has imposed on me. It has caused the near breakdown of my marriage. I have not been able to take any holidays as my time is taken up with both work and trying to deal with the ATO to attempt to find a resolution to this problem that is realistic, fair and manageable.

The ATO basically, in dealings to date, refuse to accept any portion of fault and insist that I must repay all taxes, penalties and penalty interest plus GIC.

I was heading for total physical breakdown with the interest bill alone rising by \$3,000 per month when I realised how hopeless and ridiculous the whole position was. It is just a totally unmanageable position.

Especially as the ATO was not prepared to discuss the situation with me I ceased making voluntary payments and attempted to try and regain some composure and some semblance of self respect. I came to the realisation that it was impossible for me to ever pay the amount sought by the ATO and that eventually the system would correct the anomaly and impose a fairer settlement. This action has at least eased pressure on my marriage and myself for a while.

I question the fairness of the ATO in these dealings because I am not being offered any chance to settle as others have had.

My boss, who took half of the commissions I generated from these investments and who was the entity who encouraged me to market these products, has told me that he received a full remission of penalty, interest and deduction for cash transactions as an "eligible investor", as did many other investors.

Another financial planner I know personally, has told me that they stopped lodging tax returns about 8 years ago after not being able to reconcile the problem. Even with the introduction of GST they did not submit one quarterly BAS. This person has now been asked, after having to lodge all these returns, to pay the same level of tax as me ie. no deduction for cash, full penalty and interest.

In comparison I have religiously submitted my Tax Returns before the end of July every year and all my BAS lodgements are extremely prompt, usually within the first week after end of the quarter. Yet I receive the same treatment as my non compliant friend.

Accountants, including my own accountant who advised me that these investments were OK, was able to settle with an allowance for cash transactions, full remission of penalty and half the interest applied up to June 2002 with 2 years interest free period to pay. These persons have far better understanding of the income tax laws than I. Why I am treated differently in comparison?

There seems to be no application of a common standard in these arrangements. Why am I being asked to pay full rate when, according to Senator Andrew Murray who specifically wrote about me to the ATO and said, that the settlement terms and conditions were not meant exclude persons like myself from the full terms of the original settlement. I can produce a copy of this letter if required.

Yet I still sit here wanting to settle but not being able to do so. Wanting to discuss settlement terms but not being able to do so. The ATO has received several offers to settle from me but does not respond other than to say I owe them so much and these are my repayment options.

I have lost my trust with the ATO over this issue and they have also lost my respect to a large degree. I understand that they have a difficult job but they have a Charter to do that job with equality and fairness and that is all I ask they do.

It is most unfair that the ATO can adjust one's tax bill, after changing an interpretation, and then back date interest costs over 4 years as is the case here. I have been given no prior opportunity to protect myself from this action. If I had deliberately set out to avoid tax I could accept the actions more readily but that is not the case here. I acted with what I thought was care and with the right intentions. Now I am being punished for that.

The Federal Treasury Department says that what has happened to me and others like me, is wrong but everyone with the power or ability to correct this just stands back and ignores our plight.

I feel discriminated against on the basis of my occupation. As a natural process I should be given the opportunity to settle the matter **as an eligible investor**, as per the 2002 general settlement offer.

If the ATO then feels that I have committed some felony in regard to the carrying out of my occupation, or as a conspirator with the promoters, ( being the managers or constructors of the schemes), then they should pass that evidence to the Federal Police to lay the appropriate charges against me.

I have been charged with Tax Avoidance by the Tax Commissioner and found guilty by him without having my rights read to me. Under laws applicable I am guilty until I prove myself innocent. I believe this aspect is UNAUSTRALIAN. With the limited resources I have in comparison to the ATO that is an almost impossible task to prove my innocence.

I am so frustrated by the whole mess. Even given that Treasury says I should not have been treated like this, I would gladly settle the matter, if allowed as an eligible investor. It would be settled on that basis just to be able to have my life back. I can at least afford that, with some difficulty, and be able to retain some dignity and momentum toward saving a small amount for my eventual retirement.

The ATO actions will see me ruined totally, financially, personally and then totally reliant on the welfare system in my retirement, if I live that long. It may even see me join the unemployment queues as I would be precluded from acting in my present profession.

I am amazed that this type of activity is allowed. It must cost millions, not to mention tying up Court Rooms and the AAT, with people seeking justice. Surely the better financial option is to negotiate an arrangement.

I have no comments regarding the PAYG System other than I have no problem in complying with it.

I can not comment on Part B as I have no experience in that area.

I can add no further comment and feel that these issues have all been raised before. That includes having been raised at the initial and subsequent Seante Inquiries into this matter.

Thank you for receiving my submission and giving it consideration.

Yours sincerely,