

CHAPTER 1

INTRODUCTION

1.1 The Committee originally decided to issue an interim report as a matter of urgency due to mounting concerns about the economic, social and personal impact of current ATO recovery action on taxpayers caught up in mass marketed tax effective schemes. At the time, the Committee believed that the evidence received raised serious questions of the appropriateness and fairness of the ATO's approach to the tax affairs of mass marketed scheme (MMS) participants, who number close to 65,000.¹

1.2 Although recent ATO initiatives have addressed to a certain extent several of those concerns, the Committee still believes there are grounds for issuing an interim report.

1.3 The crux of the matter before the Committee at this point is whether the level of the tax burden imposed on scheme participants, many of whom were caught unwittingly in what are said to be tax avoidance arrangements, is justified. In approaching this question, the Committee has taken into account the following key issues:

- The time delay between the growth of the MMS market and the ATO's decision to disallow deductions associated with mass marketed arrangements;
- The circumstances in which participants made their investment and tax claim decisions; and
- The ATO's handling of the individual circumstances of scheme participants since making the decision to disallow deductions.

1.4 In issuing this interim report, the Committee wishes to be clear that it is not reaching any conclusions at this stage on the soundness of the ATO's position at law. This is a matter that must be tested in the courts and is for the courts to decide. Nor is the Committee deflecting attention from other underlying issues (such as the generally weak understanding of self assessment by taxpayers and sections of the tax industry) or other actors implicated in the MMS problem (namely, scheme architects and promoters, as well as financial and legal advisers). These factors are also important and the Committee intends to continue to explore them in future hearings and the final report.

¹ While some estimates indicate participants in mass marketed schemes at over 100,000, ATO data show that it has taken action involving over 57,000 participants with more than 8000 participants also expected to be subject to ATO measures. ATO Submission No. 845, p.1.

1.5 Therefore this report concentrates mainly on the ATO's handling of MMS – both its historical approach to the market and its current handling of deductions that it has disallowed – and the impact that is having on taxpayers.

1.6 At the outset, the Committee acknowledges the complexity of the issues involved and the difficulty faced by the ATO in distinguishing the levels of tax mischief and risk posed by different investors and different schemes. Profiles of participants range from unsophisticated investors who seem to have been captured unawares by aggressive marketing and bad advice, to high wealth individuals with a history of tax evasion and an interest in reducing their taxable incomes to very low levels.

1.7 Furthermore, it should be clear at the outset that the Committee is not in a position to, and can in no way endorse any of the schemes involved in the dispute with the ATO. Indeed, it is the view of the Committee that a large number of these schemes appeared to be designed specifically to defraud the tax system and to use ordinary taxpayers in that process. Not only have they left many taxpayers with large tax bills, but many of these schemes have ceased to exist. The Committee is of the view that few schemes represented 'a good investment' in the ordinary meaning of the term, and that without the 'tax deductibility' factor, very few would have got off the ground.

1.8 For these reasons, the Committee emphasises that, while there have been attempts to paint a picture that attributes sole blame to the ATO for the difficult circumstances in which many people now find themselves, the Committee does not accept such a blanket explanation. While the Committee believes that the ATO contributed to the problem (and will explore that issue in the body of this report), promoters and advisers bear a significant share of the blame. It is clear to the Committee that elements of the tax, legal and financial planning professions, and at least some of the taxpayers involved, have sought to exploit loopholes in the taxation law in a way never intended by Parliament.

1.9 In its final report, the Committee intends to more closely examine whether legislative change is required to prevent the tax system from being exploited in this way in the future and what sanctions should be developed against persons who seek to promote such tax avoidance schemes. The Committee will also examine more closely what it believes may be serious flaws in the self assessment system.

1.10 However, the main issue before the Committee at this stage of the inquiry is the effects of ATO actions on investors who entered into mass marketed schemes, unaware of their exposure to the risk of later charges of tax avoidance.