CHAPTER 5

CURRENT ATO HANDLING OF MMS: PART IVA, SETTLEMENTS AND DEBT COLLECTION

5.1 When the Committee reported on mass marketed schemes in March 2000 it believed that the ATO had moderated its original hardline stance on participant culpability and was moving to take individual circumstances, among other things, more into account. The Commissioner had indicated that the ATO had reviewed its approach to handling the MMS issue and learnt a number of lessons.[1]

5.2 The Committee's view at the time was strongly influenced by the ATO's development of a draft code of settlement guidelines specifically for mass marketed schemes. The Committee saw these guidelines as an important sign that the ATO was willing to address participants according to their circumstances and to make concessions.[2]

5.3 During this inquiry, the Committee has received considerable evidence to cause it to reconsider its earlier impression of a shift in the ATO's handling of the matter. While the Committee acknowledges that the ATO has shown flexibility in some cases by way of entering into settlement negotiations,[3] it remains concerned about the ATO's approach towards individual circumstances and advising taxpayers of the settlement provisions, debt recovery policy and hardship relief measures.

5.4 These are operational matters which will be discussed in more detail in the following sections. Before turning to these issues, however, the Committee addresses the question of the relationship between consideration of individual circumstances and the application of the Part IVA provisions. There is evidence of considerable confusion among scheme participants about this relationship.

Individual circumstances and application of Part IVA

5.5 The Taxpayers' Charter commits the ATO to treating taxpayers fairly and reasonably under the law, a commitment that implies that individual circumstances are recognised and taken into account. Likewise, Part IVA of the Income Tax Act requires the Commissioner to make determinations on an individual basis. While the requirement to address taxpayers' circumstances appears unambiguous, its implementation in practice is not straightforward. In particular, the question of what kind of individual circumstances are relevant to the determination of the application of Part IVA provisions needs to be clarified.

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1 Senate Economics References Committee, *Inquiry into the Operation of the Australian Taxation Office*, pp.37-38.

2 *Inquiry into the Operation of the Australian Taxation Office*, pp.39-40.

3 ATO Supplementary Submission No. 845A, p.19.

5.6 As outlined earlier, whether or not Part IVA provisions apply to particular mass marketed schemes depends upon features of the schemes themselves. These features include matters such as the financing arrangements, the involvement of participants in the business, the size of up-front management fees relative to the scale of investment in the proposed activity, and so on.[4] The ATO advised the Committee that determining whether Part IVA provisions apply is 'an objective test'[5] and involves a judgement about the extent to which the presence and combination of various features of a particular arrangement work such that the 'objective dominant purpose'[6] of the scheme is deemed to be that of tax avoidance. What that means is that whether or not individuals who participated in certain schemes were *subjectively* motivated by the desire to avoid paying tax is basically irrelevant to the application of Part IVA provisions to them.

5.7 In other words, the circumstances of individual motivation are not the kind of individual circumstance to which the ATO must attend in its treatment of taxpayers. Rather, the individual circumstances that would make a difference to the application of Part IVA provisions would be things such as financial arrangements in which the investor really did bear the risk of the investment.

5.8 Mr Michael O'Neill, Acting First Assistant Commissioner, ATO, explained:

> The way Part IVA works is that it sets out these eight factors … and it calls for the determination of an objective dominant purpose. In a sense, the person's subjective intention is not the key trigger for the application of Part IVA. So while individual facts are important … there is very little in these standardised mass marketed schemes. It is very rarely the case that there is any exception to the scheme – very rare indeed.[7]

5.9 In a similar vein, Mr Peter Smith, Assistant Commissioner, Small Business, ATO, said:

> Generally, the individual circumstances of the taxpayers will not affect the conclusions that Part IVA applies. There might be some instances, as I mentioned before, of where taxpayers put their own money in rather than use the round robin non-recourse or whatever financing technique was used to inflate the deductions. But having come to a view that Part IVA does apply, the statute imposes the penalty at 50 per cent.[8]

5.10 In the light of this explanation of the rules governing the application of Part IVA provisions to individuals, two kinds of question arise. The first concerns the

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4 See Chapters 2 and 3.

5 Evidence, p.493.

6 Evidence, p.497.

7 Evidence, p.497.

8 Evidence, p.493.

policy issue of whether the subjective motivations of individuals *should* be deemed irrelevant to a Part IVA determination.

5.11 This is a matter which the Committee intends to take up in its final report, and which cannot be fully canvassed here. The basic issue, however, turns on the question of the point at which a taxpayer's due diligence should enter as a consideration that mitigates liability under Part IVA. At present, a taxpayer can seek advice in good faith from financial professionals, tax experts, and so on about the tax propriety of an investment scheme. If the advice leads that individual into actions which are subsequently deemed by the ATO to fall foul of the Part IVA provisions, the taxpayer's 'due diligence' has no effect upon the application of those provisions. It may affect the amount of the penalty imposed, but it cannot protect the taxpayer from the initial determination. In this, the taxpayer's situation contrasts unfavourably with that of a company director under Corporations Law, whose liability for 'failure' is wholly waived by considerations of due diligence. The question arises as to whether this feature of the current arrangements imposes an undue burden of risk upon the individual taxpayer.

5.12 The second kind of question that arises concerns the ATO's application of the Part IVA provisions to particular cases. The following two matters have been raised under this heading:

- the ATO's failure to communicate the distinction between individual circumstances that are relevant and those that are irrelevant; and
- the ATO's apparent failure to take full account of *relevant* individual circumstances.

Failure to communicate the distinction

5.13 Evidence of the ATO's failure to communicate the distinction between individual circumstances that are relevant and those that are irrelevant is discussed in the Ombudsman's report of the ATO's handling of the Maincamp scheme.

5.14 The Ombudsman noted that the ATO invited scheme participants 'to provide information about their individual circumstances which would help ensure the ATO resolved their case in a fair way'.[9] Many Maincamp participants took up this invitation, but then found themselves issued with assessments 'which did not appear to take into account the information they had provided'.[10] According to the ATO, the features of the Maincamp arrangement relevant to the Part IVA determination were common to all participants and, as such, only participants who did not use the limited recourse loan facility would have been treated differently.[11]

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9 Commonwealth Ombudsman, *The ATO and Maincamp*, January 2001, p.19.

10 Commonwealth Ombudsman, *The ATO and Maincamp*, January 2001, p.19.

11 Commonwealth Ombudsman, *The ATO and Maincamp*, January 2001, p.19.

5.15 While the Ombudsman accepted this explanation for the common treatment of participants, it criticised the ATO for its failure to inform individuals of the reasons that additional personal information was unlikely to have changed its view of the application of Part IVA. The Ombudsman also stated:

> It is the Ombudsman's opinion that, irrespective of the numbers of participants involved, the principles of fairness and accountability remain paramount. This includes requiring the ATO to explain fully the basis of its decisions. This lack of explanation to the individual participants, in the Ombudsman's opinion, amounts to a breach of the Taxpayers' Charter.[12]

Failure to take full account of relevant circumstances

5.16 Many witnesses to the inquiry, including participants and their tax advisers, have complained that their efforts to have individual circumstances addressed have been met with standardised pro forma ATO correspondence that glosses over or simply ignores personal factors. This style of treatment indicates a process-driven 'broad brush' approach to dealing with scheme participants – an approach that the ATO claims to have moved away from in recent years because of its inherent inability to take individual factors into account.

5.17 As a sign of the inconsistencies that a blanket approach to schemes and participants can introduce, the Committee notes the recent case of a vineyard scheme in which all participants received the same ATO notice to disallow deductions, despite some participants having not availed themselves of the limited recourse loan facility.[13]

5.18 The Committee also heard of a further situation where the ATO disallowed deductions for a scheme on the grounds that it involved non-recourse financing, although the scheme appears structured on the basis of full recourse financing.[14] The Committee considers that these examples of indiscriminate treatment probably stem from a tendency to tar most schemes with the same brush.

5.19 The Committee finds it hard to reconcile, on the face of it, the claim that the ATO 'always' considers individual circumstances with the evidence presented to the inquiry. It seems to the Committee that the ATO's overall handling of many scheme participants is more influenced by the view that variations are 'relatively minor' across schemes and participants than the requirement to treat taxpayers on an individual basis. This view tends towards prejudging scheme participants and appears to have introduced a bias in the ATO's approach that marginalises individual circumstances.

5.20 In view of the tax burden participants face and the mitigating circumstances in which many invested unwittingly in schemes, the Committee considers that it is

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12 Commonwealth Ombudsman, *The ATO and Maincamp*, January 2001, p.19.

13 Submission No. 864 and Evidence, pp.139-141.

14 Evidence, p.448.

incumbent upon the ATO to adapt its operating procedures to address individual circumstances in a manner consistent with the Taxpayers' Charter. This is necessary for the ATO to meet *its* obligations under the Charter and the Income Tax Assessment Act. As the last two sections of this chapter show, avoiding the tendency to broad brush taxpayers is also important to ensure the ATO adheres to its own settlement guidelines and provisions relating to debt recovery and hardship relief.

Reducing interest for 'some investors'

5.21 On 26 April 2001, the ATO announced that it intended to reduce the interest on tax debts for 'some mass marketed "tax effective" schemes debts' to assist some taxpayers caught up in these arrangements.[15] It foreshadowed reducing the level of interest to an amount that more closely approximates the 'time value of money', a reduction that could see the level go from the current 13.86 per cent to 5.86 per cent. At the time of writing this represented the most recent development in ATO treatment of scheme participants. In the Committee's view it reflects a shift in the right direction towards taking the individual circumstances of taxpayers more into account.

5.22 In announcing the measure, the ATO indicated in general terms the profile of scheme participants likely to be considered for a reduction in interest. Such participants would, in the ATO's view, 'not be categorised as typical scheme investors' but rather be seen as 'unwitting captives of aggressive marketing techniques and what we consider bad advice, often from those who stood to profit from gaining their participation'. The ATO pointed to four features distinguishing these participants:

> This approach would be appropriate for what might be called unsophisticated investors with generally good tax records who have been caught by misleading claims made in respect of these investments and suffered a real financial loss.[16]

5.23 The announcement also signalled those participants who would not receive concessional treatment, with the ATO citing as a nominal example a high wealth individual ('gross income of $170,000 to $200,000') with a track record of aggressive tax income minimisation (reducing taxable income to '$3000 in one year') via scheme participation.

5.24 The ATO also stated that eligibility for an interest reduction would be subject to participants entering into either a settlement and/or an agreed payment arrangement. Participants who have already paid their tax liability or who already have entered into

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15 ATO, 'Tax Office reduces interest applying to some mass marketed "tax effective" schemes debts', Media Release Nat 01/30. See also Michael Carmody, Commissioner of Taxation, 'Taxation…Current Issues and Future Directions', Speech to the Australian Institute of Company Directors, Perth, 1 May 2001.

16 Backgrounder to Media Release Nat 1/30, reproduced in ATO Supplementary Submission No. 845B, p.5.

a settlement would benefit from the measure, provided they fit the criteria mentioned above.

5.25 While the Committee welcomes this as potentially a significant breakthrough in the stand off between the ATO and scheme participants, it also foresees some difficulties possibly arising unless both sides take care in their approach to the measure. The potential stumbling block is the proposed guidelines for determining who should be entitled to the interest charge reduction.

5.26 The ATO's indication that it will consult community representatives and stakeholders is a positive sign in its own right. A consultative approach is not only appropriate in view of the widespread interest at the community level but should also check any tendency for the ATO to adopt a rigidly legalistic or predetermined view (as outlined above in this chapter). By the same token, scheme participants and their representatives should be open to understanding the ATO's position in relation to the integrity of the tax system. If approached in a constructive spirit, the consultative process could itself play a role in bridging the differences between the ATO and participants and their representatives.

5.27 Nonetheless, the Committee believes that deciding upon the appropriate criteria for determining entitlement will be difficult. The general criteria the ATO has already nominated – 'unsophisticated investors', 'generally good tax records', 'captives of aggressive marketing techniques' and/or 'bad advice' and facing 'real financial loss' – are not without problems. For one, it is not clear whether to be entitled to an interest reduction a participant must satisfy all four criteria. Basing entitlement on all four criteria would, in the Committee's view, be too restrictive. It would be unfair, for instance, if a participant with a sound tax record who acted in good faith on the basis of poor advice were ineligible for the reduction because he or she was deemed not to be facing a real financial loss. This would result in inconsistent treatment of participants. The Committee believes that those with good tax histories who acted in good faith should be entitled to the interest concession irrespective of their level of loss or tax debt.

5.28 How each criterion is to be defined also raises questions. What will constitute 'aggressive marketing techniques' or 'bad advice'? Would this mean that those participants, who acted in good faith on professional advice that was well intentioned but ultimately mistaken, would be excluded from the interest cut?

5.29 In determining whether scheme participants have 'good tax records' or a history of involvement in abusive arrangements, the Committee considers that it would be inappropriate if the ATO were to decide that participation in schemes over successive years during the 1993-1998 period amounted to a 'history' of scheme participation. As this period was marked by the lack of certainty coming from the ATO over its position on Part IVA and schemes, it would be unreasonable for the ATO to deem a taxpayer as a serial scheme participant on the basis of involvement during this time. Other factors might count against such a taxpayer, but involvement

in schemes over successive years during this period should not, in itself, be seen as a mark against a taxpayer's record.

5.30 Neither should participants be condemned for acting on the advice of tax professionals. Seeking and following professional advice does not categorise a scheme participant as a 'sophisticated' investor or tax 'game player'.[17] Under a self assessment tax system characterised by complex law, many taxpayers including those with relatively straight forward financial affairs feel compelled to seek the advice of tax agents and financial advisers. This is a prudent step in many cases. While there is doubtless an element among the community who seek advice in order to beat the system, many go to tax professionals because they *are* unsophisticated investors and dependent on experts. This fact of the self assessment tax system should be taken into account in defining whether investors are sophisticated or not.

5.31 The Committee also notes that the ATO's announcement is silent on the time period to which the interest reduction would apply. Is it to be based on the compromise formula adopted in the context of the Ombudsman's investigation of Maincamp or will a different basis be used? Furthermore, will the interest period be decided upon on a case by case basis as specified in the Addendum to the Code for Settlement Practice (in particular paragraph 6.3.3)? Or will a blanket approach be used based on a set time period?

5.32 How these questions are resolved will have an important bearing on the outcome of this initiative. All parties involved in the consultations on the guidelines will need to approach those discussions with the goal of seeing the measure implemented uppermost in their minds. It should not be used as a point scoring exercise by any party. A spirit of compromise will be needed to ensure the interest concessions come to fruition and to avoid the measure being derailed as the test case program has been until recently (see chapter 6).

Settlements

5.33 As mentioned above, the Committee originally interpreted the Commissioner's decision to introduce a specific code of settlements for mass marketed schemes as signalling a move towards resolving the matter with participants in a conciliatory way. As the guidelines state:

> The ATO is now at a stage where formally settling with an increasing range of promoters and scheme participants may be appropriate as a broad strategy to consolidate the gains made in the ATO's overall strategy [towards mass marketed schemes]…[18]

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17 See the Commissioner's discussion of the emergence of 'game playing' by those who 'see the ATO as someone to be beaten through smart moves and reliance on grey areas of the law' in his 1 May 2001 speech, 'Taxation…Current Issues and Future Directions'.

18 Addendum to the Code of Settlement Practice, p.5. See Attachment I in ATO Submission No. 845.

5.34 While the ATO advised the Committee that it has entered into settlement negotiations and arrangements in some cases, there is little indication of this approach in the evidence to the inquiry. This may reflect that those engaged in settling with the ATO are satisfied with the process and outcomes and therefore felt no need to approach the inquiry. On the other hand, some witnesses indicated that the ATO approach to settlements needed to be more flexible,[19] while others complained that the ATO notices to disallow deductions referred to possible settlement arrangements in 'vague and unnecessarily bureaucratic' terms.[20]

5.35 One witness recommended that '[i]f the Taxation Office is prepared to settle, then a full and open proposal should be offered uniformly to all growers'.[21] Likewise another said:

> It is extremely unfair that the ATO are trying to differentiate projects in the way they allow or disallow settlement. We have the ludicrous situation of having most clients in one or more of six projects. Of these, the tax office will not agree to settlement for three but will agree to a cash basis settlement for the other three, with a penalty of 10 per cent for one of those and five per cent for the other two. To the taxpayers, there were no differences between these projects from a tax perspective. The ATO should be required to allow consistent settlements on all projects.[22]

5.36 These remarks reflect a view broadly similar to the Ombudsman's, that the ATO should advise taxpayers upfront about the scope for settlements in relevant cases:

> The Ombudsman is of the opinion that it is vitally important that the Commissioner provide the community with a general indication of his views and his preparedness to settle cases.[23]

5.37 The Ombudsman goes further in also warning that it would be ill-advised of the ATO not to inform taxpayers in a timely manner of the potential to settle:

> Taxpayers should not be threatened with amendments and large tax bills, only to find out later the Commissioner was always prepared to consider a settlement offer for a significantly lesser amount.[24]

5.38 The ATO says that it is, however, cautious about making public offers to settle where the primary tax to be settled is for a lower amount than if there was no

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19 Submission No. 852. See the ATO's response to this point in ATO Supplementary Submission No. 845A, p.12.

20 Submission No. 864, p.1.

21 Submission No. 864, p.1.

22 Evidence, Perth, p.70.

23 Commonwealth Ombudsman, *The ATO and Maincamp,* January 2001, p.23.

24 Commonwealth Ombudsman, *The ATO and Maincamp,* January 2001, p.23.

settlement. This reflects concerns about the possible legal ramifications following a recent Federal Court decision (Young versus Commissioner of Taxation). The ATO indicated to the Ombudsman that its preferred approach is to write to taxpayers notifying them of the settlement provisions and encouraging them to approach the ATO with an offer.[25]

5.39 The Committee is strongly of the view that the ATO should seek to be proactive in promoting its code on settlements to participants. It sees the code as a key mechanism for taking individual circumstances into account, particularly for the many taxpayers that invested in good faith and whose culpability seems negligible.

Debt recovery and hardship provisions

5.40 The Committee heard evidence suggesting that there was a general lack of awareness among participants of the ATO's debt recovery measures and hardship relief provisions. In view of the heavy tax burden many participants face, the Committee would expect that a sound administrative approach would include notifying participants of ATO measures designed to assist taxpayers manage their tax bill. Such an approach would not only help taxpayers meet their tax debts and minimise the risk of financial ruin and other personal stress, but would also increase the chances for repayment and the ATO's ability to recover large-scale debt.

5.41 The Committee takes particular note of the Ombudsman's findings and perspective on the ATO's debt recovery procedures for Maincamp participants. As with the evidence to this inquiry, many of those who complained to the Ombudsman's investigation expressed concerns about their ability to repay the tax debt raised by the ATO. Although ATO correspondence to participants included information about standard ATO recovery procedures while debts remain in dispute, the Ombudsman stated that 'it provides no guidance about the possibility of considering longer-term settlement of debt'.[26] The Committee heard similar criticism which suggested that notices to disallow deductions did not reflect ATO public statements regarding repayment schemes and other debt recovery options.[27]

5.42 In response to these criticisms, the ATO informed the Committee that taxpayers are first notified of outstanding debt through a Notice of Assessment. The ATO conceded that, while this Notice includes payment details and a contact number if the taxpayer is unable to pay by the due date, it does not explicitly outline advice about alternative payment options, possible release from the debt in cases of hardship and the Taxpayers' Charter. These are provided in the Final Notice, issued when an assessment is not paid by the due date.[28]

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25 Commonwealth Ombudsman, *The ATO and Maincamp,* January 2001, p.23.

26 Commonwealth Ombudsman, *The ATO and Maincamp,* January 2001, p.24.

27 Evidence, p.216.

28 ATO Supplementary Submission No. 845B, Attachment 6, pp.5-6.

5.43 However, the ATO did advise that before it issues the first Notice of Assessment 'there will often be prior communication with the taxpayer or their representative'.[29] In the specific case of mass marketed schemes, the ATO sent more than 49, 000 investor packages to taxpayers which gave individuals the opportunity to take up voluntary disclosure provisions and which discussed the availability of payment and hardship relief options.[30]

5.44 Nevertheless, the ATO acknowledged that it:

> has recognised that the communication strategies to date may not have met the needs of all taxpayers. In response to this, additional and improved communication strategies are being introduced to help taxpayers caught up in tax effective scheme arrangements.[31]

5.45 The Ombudsman's recommendation, in the Maincamp inquiry, that the ATO adopt an 'empathetic' approach to payment arrangements was based partly on the Commissioner's assurance that such an approach would be adopted for businesses making reasonable efforts to implement the New Tax System, to ensure that tax debts did not lead to bankruptcy. The Ombudsman considered that this attitude should be extended to Maincamp participants:

> In the Ombudsman's opinion it should be an extraordinary case for the Commissioner to commence bankruptcy proceedings against a taxpayer with a tax debt from investment in this scheme. He is also of the view that an investor should not be forced to sell his or her principal place of residence to pay off such debts, where that is the only asset, except where it can be shown that there is an unacceptable risk to collection.[32]

5.46 The Committee has heard of several cases of participants in other schemes having to sell off major assets including their homes and cars in an attempt to meet scheme-related tax debts. Equally disturbing, some evidence suggested an aggressive ATO approach to chasing debt, including threats of garnisheeing wages.[33] The Committee also notes that some scheme promoters and managers are placing duress on participants to pay loan commitments, regardless of the fact that the 'loan' was financed wholly from now disallowed tax deductions (ie, the loan was contrived and contingent on participants' tax refund).

5.47 Evidence from the ATO, on the other hand, maintained that it does not take such an aggressive approach to recovering tax debts. Ms Erin Holland, Acting Deputy Commissioner, Client Account Management, ATO, said: 'We manage debt collection

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29 ATO Supplementary Submission No. 845B, Attachment 6, p.5.

30 ATO Supplementary Submission No. 845B, Attachment 6, p.5 and Attachment 3.

31 ATO Supplementary Submission No. 845B, Attachment 6, p.11.

32 Commonwealth Ombudsman, *The ATO and Maincamp*, January 2001, p.24.

33 Evidence, p.211.

on a case by case basis taking into account the individual circumstances of the client. We try to take a fair and reasonable approach'.[34] She continued:

> On the issue of bankruptcies and the issue you raised about people's homes, where the taxpayer is genuinely cooperating with us and the only tax that is outstanding is disputed, we will not take bankruptcy or liquidation action, nor will we require the sale of a person's home or assets … Where there is genuine hardship involved in relation to a taxpayer being able to make those payments, we suggest that they approach the Tax Relief Board for release of that debt. Basically, the criterion there is one of hardship. A fundamental interpretation would be where there would be some inability to pay for the necessities of life.[35]

5.48 The ATO defined 'genuinely cooperating with us' in the following terms:

> That is if the taxpayer is prepared to meet with us, talk to us about their financial situation and the difficulties they are having and come to some arrangement with us around the payment of their debt.[36]

5.49 It further categorically rejected the suggestions that it had initiated bankruptcy action against any participants in mass marketed schemes, initiated action to sell homes or other assets, or engaged private debt collectors to pursue debts.[37]

5.50 Nevertheless, the Committee received evidence indicating that some of the actions of the ATO are not so conciliatory on the ground. For example, Mr Lawrence Ryper told the Committee:

> On 1 October 1999, I had an interview with tax officer Mr Mark Beadle from the ATO's small business section in Cannington. The ATO were extremely reluctant to see me in person. My wife, me and my two children aged six and four had driven the 1¼ hours from south Mandurah to the ATO in Cannington. When we arrived at the ATO the security guards refused to let my son use the lavatories unless were were met by an ATO officer first. After some debate, my son and I were escorted to the facilities by a security guard … After this we were interviewed by Mark Beadle, who, when face to face, was far more helpful than over the telephone. He said he was concerned as well, but this was being driven from high up and he could offer no real solutions. I detailed to him all the facts that I have previously detailed. Our only option was to pay or go voluntarily bankrupt. We were offered no clemency.[38]

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34 Evidence, p.487.

35 Evidence, p.488.

36 Evidence, p.488.

37 ATO Supplementary Submission No. 845B, Policy Announcement by Commissioner, p.8. The ATO noted that it 'is aware of approximately 45 individual participants in mass marketed schemes that have filed for bankruptcy themselves'. Answer to question on notice E 489-490, p.3.

38 Evidence, Perth, p.120.

5.51 In information recently provided to the Committee, the ATO said that it had informed Mr Ryper on 10 April 2001 that the interest accrued on his debt from the due date of assessment until 10 April 2001 would be remitted 'in full due to personal hardship, stress, efforts to repay debt, working two jobs and selling personal assets'.[39] Future remission of interest is to be based on the circumstances at the time. The Committee notes that Mr Ryper's request for remission was granted after his appearance before it, and after the Committee raised his case directly with the ATO at its hearing on 3 April 2001.

5.52 Based on evidence of this kind, the Committee is of the view that, at the very least, there seems to be a significant gap between the ATO's stated policy and its implementation by regional offices.

5.53 The Committee notes the recent announcement by the Commissioner of Taxation of a new communication strategy designed to address this 'gap'. The strategy involves sending tax officers to towns where mass marketed schemes have been heavily promoted, such as Kalgoorlie, so that affected investors will be able to get appropriate advice 'face to face'.[40] It further involves:

- allocating a case manager to each taxpayer with scheme related debts;
- sending information to all investors addressing misinformation and informing investors of the ATO's processes; and
- increasing people's awareness of the ATO's helplines for investors.[41]

5.54 While the Committee welcomes this announcement, it is critical of the fact that the ATO's original letters to investors do not appear to have addressed some of these basic issues and have thus allowed confusion and fear to take root. The new communication strategy has seemingly been implemented late in the day, after a significant personal and emotional toll has already been taken of investors caught up in the ATO's actions and after the establishment of this inquiry. The Committee is concerned that this more conciliatory and helpful approach is being taken only in reaction to this inquiry rather than as part of the coherent and consistent implementation of the ATO's stated policies.

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39 ATO Supplementary Submission No. 845B, Attachment 6, p.51.

40 ATO Media Release, 5 April 2001.

41 ATO Media Release, 5 April 2001.