

ADDITIONAL COMMENTS

SENATOR WINSTON CRANE

LIBERAL SENATOR FOR WESTERN AUSTRALIA

Whilst I find myself in agreement with my Government colleagues who have appended a minority report to this report, I have a number of additional comments I wish to make in respect to the level of concessions being offered to affected investors.

I have listened to many constituents who have made representations and attended the Committee's pivotal public hearing in Kalgoorlie and read many of the submissions and letters sent to the inquiry. As a result, I have come to the conclusion that the vast majority of people caught up in the ATO's crackdown on tax effective investment schemes are not professional tax avoiders. Rather, they are just everyday Australians who were trying to secure their futures and that of their children. They should be treated as such, not as tax avoiders and rorters.

My comments should not be interpreted as being intended to give tax avoiders a way of avoiding their obligations. That is not my intention or that of any of my colleagues on the Committee. My intention is simply to try and help find a way of handling a delicate and difficult situation, of helping ordinary, everyday Australians whose lives have been destabilised, whose livelihoods, health and marriages have been threatened. Some have even felt that their situations are so beyond repair that they have threatened to commit suicide – it is alleged some already have. This is too high a price to pay.

In my view, the real villains in this affair are those promoters who marketed schemes they knew were just tax avoidance rorts; and members of the legal fraternity who provided irresponsible and incomplete opinions. This gave dishonest and dubious schemes the appearance of respectability

One of the more important tasks facing regulatory authorities such as ASIC is bringing these people to account and charging them where there has been any breach of the law.

The ATO has announced that it will offer reduced penalties and interest to some investors using guidelines yet to be determined. Drawing the line between the innocent and those who deliberately avoided tax will be very difficult. The potential for getting it wrong and excluding people who should be offered the concessions is high. While I appreciate the concessions that have been made by the ATO, I do not believe they go far enough and I am concerned that they leave many people uncertain about their futures.

I am also concerned that these people may be being penalised now when ultimately they might win their cases. I do not consider it appropriate that the ATO pre-empt the findings of the courts by imposing penalties or interest on disallowed deductions. The

ATO should freeze all penalties and interest from the denial of assessment until such time as the court cases have been heard and ultimate findings have been handed down. Further, it may be applicable for this issue to become part of the arrangements of the new assessment body being proposed next.

After the test cases, matters will become clearer. If judgement is with the ATO, and there is expert legal opinion that it has a strong case, we will still have a situation where many people will have difficulty meeting their liabilities. It is my view that the ATO should not force people into bankruptcy or to sell their houses and possessions in order to pay any resulting tax debts. The ATO has advised the Committee it will work with people who have difficulties paying, in order to establish suitable repayment arrangements over an appropriate period. The ATO also told the Committee that people who face serious financial hardship could apply to the Taxation Relief Board for release from payment. While I appreciate the intent of these arrangements, I am of the view that since so many people are now distrustful of the ATO, these arrangements are insufficient.

I believe that the Government should remove hardship assessment functions from the Tax Office and establish an independent authority to undertake the task. The independent authority should also be charged with the responsibility for assessing fair payments that taxpayers could make while maintaining a reasonable standard of living for themselves and their families.

The evidence presented to the Committee is that some, perhaps many of the schemes are nothing more than tax avoidance devices and of no merit. Other evidence suggests, however, that some arrangements may have legitimate underlying businesses and the ATO may have disallowed them because of a limited range of features it considers unacceptable. (I note that the ATO itself distinguishes between schemes, classifying them according to the level of tax mischief). A further function of the independent authority proposed in the previous paragraph could be to identify schemes that might lend themselves to restructuring that would make them acceptable. If this proved feasible, the authority could then perform a mediation function between the ATO and scheme designers who undertook to restructure.

I emphasise that in putting forward this suggestion, I do not intend to give any comfort to designers and promoters of schemes that have set out to blatantly defraud the tax system or exploit investors. Rather, I intend that the initiative is taken to ensure as many investors as possible are rescued from the circumstances in which they are currently embroiled, and to ensure any project with real underlying merit proceeds. However, the Authority would have to approach its task cautiously to ensure investors' problems were not compounded.

In conclusion, I believe that the ATO should agree to a freeze on penalties and interest accrual and support the establishment of the independent hardship assessment authority to deal with the very large number of individuals who are now in very harrowing and difficult circumstances.

It is my personal view that had the ATO been more vigilant and proactive, the spread of schemes that led to this disaster could have been nipped in the bud.

Senator Winston Crane

Participating member and Liberal Senator for Western Australia

