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Sent: Friday, 27 May 2005 2:54 PM  
To: Economics, Committee (SEN)  
Subject: Senate Inquiry into ROSA Legislation

The Secretary  
Senate Economics Legislation Committee  
Suite SG.64  
Parliament House  
Canberra ACT 2600

Inquiry into the Tax Laws Amendment (Improvements to Self Assessment) Bill (No. 1) 2005 and the Shortfall Interest Charge (Imposition) Bill 2005

Dear Sir,

I am grateful for the opportunity to make a submission to a very necessary Senate Inquiry.

My Position

For several years now, the spectre of financial ruin has loomed over my family I as I try to deal with conduct by a government instrumentality that has now been recognized as improper.

When I heard of the commissioning of the Treasury's review of Self-Assessment, I was cautiously hopeful that the investigators would recognize the faults in the system that allowed the ATO to impose 2 penalties:

1. Additional tax as a penalty for conduct that the ATO retrospectively determined was improper and,
2. Additional tax masquerading as interest within the General Interest Charge.

Apart from the shock of receiving my own amended assessments, issued nearly 3 years after my investment decision, I found that the immense impact of the GIC was particularly galling. In essence, it seemed the initial purpose of an interest charge on disputed amounts was to recompense the revenue. A rate that has averaged 7 percentage points above the treasury bond rate cannot be merely considered recompense. It has been an additional penalty and, I believe, has acted as inducement for the ATO to take it's time with reviews of the investments concerned.

I note that The Inspector-General of Taxation has dealt with this matter in some detail in his review of the GIC last year.

The results of the Treasury review first elated and then disgusted me. Firstly, I recognized that the views I have consistently expressed in correspondence with the ATO, the Ombudsman, the previous Senate Inquiry, the Inspector-General of Taxation and my Federal MP's have been thoroughly vindicated, and that by the nation's primary economic body.

In short, the ATO did contribute to the community view that deductions for tax effective investment products available to the market at the time were appropriate and properly tax effective as indicated by professional accounting and legal opinions.

It did this by failing to issue warning signs to the public, despite having unrestricted access to the best quality legal and accounting advice available.

In large measure, investor's decisions were verified by the granting of such instruments as Section 221d Tax Variations, received, considered and approved by the ATO. The recommendations of the ROSA report identified faults in the system that enabled taxpayers to justifiably make decisions on the strength of public advice from respected tax professionals, in the absence of anything contrary from the ATO. That in itself, is a level of uncertainty that cannot be laid at the feet of taxpayers.

#### The New Legislation

I have closely read the report of the Treasury Department on it's Review of Self-Assessment, along with the subsequent Explanatory Memorandum. Clearly the way the Commissioner has applied the GIC over the past few years is now recognized officially as being unfair. In his covering letter to the Treasurer, Dr Henry noted that the recommendations of the report shifted the balance of fairness in somewhat in favour of taxpayers. After close, unbiased examination, he had concluded therefore that the balance of fairness was too much the Commissioner's way and need to be adjusted by legislation.

However, and this is the part that disgusts me - in practical terms, the legislation will not impact on the ATO's application of the GIC for several years. For any amendments made to returns up to and including 2003/04, the old rules will apply and the GIC will continue to be used as an additional penalty. Only for amendments to 2004/05 and later years will the interest on late tax be restored to it's honest and original purpose - recompensing the revenue for unpaid tax.

Surely with the clarity of Treasury's assessment, leaving the balance of fairness unchanged for some is in itself, unfair?

In fact, Senators, if say in 3 years time the ATO examines your tax affairs for the 2004 and 2005 tax years and concludes that in each year you claimed deductions that it now considers were not deductible, your amended assessment for 2004 will include GIC at around 12.5%, calculated from the date of the original 2004 assessment. But your amendments for 2005 will have a different statutory interest rate, at 4 percentage points lower!

Accordingly I am bitterly disappointed that the legislation relating to the GIC will prevent the ATO from applying punitive rates of GIC to amendments to years forward, but will not restrain the Commissioner from penalizing me and forcing me to pay amounts that the Treasury has concluded should not be applied.

The focus of this legislation is not as it should be. For the next 4 years, the ATO will be able to amend and charge GIC under rules which the Treasury, the Government, the Parliament and taxpayers recognize as wrong.

If the legislation remains as it is, a great injustice will have been committed. For reasons of bureaucratic convenience and revenue, a law will be created which will be compromised from it's birth. By deferring application of the measures in this law, the government is falsely claiming to have fixed a fault.

I am well aware that at times, the government of the day will introduce tax measures that, due to revenue considerations, will be phased in over a period of time, perhaps years in some cases. It has been suggested to me that this is similar to the legislation in question.

This view ignores the fact that this bill is remedial in nature. It is not a measure that reflects a change in government policy, or a shift in taxation emphasis. It is specifically and purposely constructed to rectify a fault. Government action to correct an injustice, where existing victims of that

injustice continue to be abused, fined, pursued and harassed, is dishonest and un-Australian.

From an initial hope, I am deeply offended by the fact that the current bill has been drafted to leave me with the same "spectre of financial ruin (looming) over my family" that has haunted me since July 2000.

As it stands, this law is bad law because it is compromised by it's appeasement of administrative and financial pressures. It must encompass the problem entirely.

I request that the committee restores fairness and equity to it's proper place - above revenue and public service niceties - and recommend the legislation be amended to incorporate taxpayers penalized by the measures it seeks to correct.

Yours faithfully,

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