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Dear Sir/Madam

Please find attached our submission in response to the Senate Economics Legislation Committee's inquiry into the proposed ROSA legislation.

Please do not hesitate to call me if you require any further assistance.

Regards

John Ravasini
Director – Tax Consulting
Nexia Court & Co

SUBMISSION IN RESPECT OF THE SENATE INQUIRY INTO THE TAX LAWS AMENDMENT (IMPROVEMENTS TO SELF ASSESSMENT) BILL (NO. 1) 2005 AND THE SHORTFALL INTEREST CHARGE (IMPOSITION) BILL 2005

Reference is made to the legislation commonly referred to as ROSA which was recently referred to the Senate Economics Legislation Committee for further consideration prior to being referred back to the Senate for debate. In response to the Committee's invitation to the public for submissions in relation to the proposed legislation, we now provide the following submission.

Over the years we have provided tax and accounting services to a significant numbers of clients who have been involved in mass marketed schemes which in some cases have been attacked by the ATO on the basis that they have not been effective for tax purposes and to which, in the majority of cases, were considered by the Commissioner of Taxation (the Commissioner) to be tax avoidance schemes to which Part IVA of the Income Tax Assessment Act 1936 applied.

In recent years the Commissioner has implemented a strategy to deal with the vast number of scheme cases on the basis of a unilateral offer by the Commissioner to settle the outstanding scheme claims on terms and conditions which varied with the particular type of scheme. As a result, the final tax outcomes varied greatly between taxpayers depending on the particular scheme or schemes in which they had been involved. This inconsistency has led to a high degree of unfairness among groups of taxpayers simply because they happened to have been in a particular scheme rather than one that was given preferred settlement concessions by the Commissioner.

We note that the ROSA legislation is proposed to have effect from the 2004-05 and future years of income. As you may be aware the vast majority of mass marketed schemes were marketed well before 2004 and, in fact, most were being promoted in the mid nineties and most of the reassessments raised by the ATO were in respect of years prior to 2000. Therefore, the vast majority of scheme investors will be disadvantaged if the date of effect of the ROSA legislation is not made retrospective to a date which at least coincides with the introduction of the self assessment regime.

It is noted that the self assessment system places an unfair burden on taxpayers to ensure the accuracy of their returns. This is so because the Commissioner may choose not to address the claims made in a taxpayer's return for up to 6 years. During this period the Commissioner is able to reopen a taxpayer's assessment to increase a taxpayer's tax liability and impose substantial penalties and the general interest charge (GIC) which is calculated on a compounding basis on both the penalty and GIC components. In these situations it is common to see the total tax bill more than double in a very short time period which creates a crippling financial burden on most taxpayers affected by these reassessments. Needless to say the burden imposed by the imposition of the additional tax imposts causes very real loss and damage to affected taxpayers in terms of stress and financial difficulties.

The Treasury, in recommending the ROSA legislation, clearly had in mind the people who were affected by the marketing strategies of promoters who canvassed the public at large to invest in the varied schemes with the backing of many legal opinions. It is

obvious that the vast majority of such investors (most of which are “mums and dads”) are excluded from the benefits of the new law by virtue of the proposed commencement date of the ROSA legislation. This needs to be addressed as a matter of urgency.

Recent history clearly demonstrates that attitudes and the availability of information have vastly changed from that which existed even in the late 90’s. Taxpayers are now far more sophisticated in their understanding of the tax implications of their decisions. This is especially so given the wide publicity given to tax schemes in recent times. Therefore, taxpayers are far more prepared now to deal with any marketing propaganda that may come their way inviting them to invest in a particular investment scheme. As a recent development we can point to the availability of Product Rulings which have become a standard for the provision of information by the ATO for taxpayers intending to invest in particular projects. This luxury was rarely afforded to taxpayers prior to 1998.

The unfairness of the current penalty regime is also evident when one considers that the interest payable to a taxpayer who has overpaid tax is substantially less than that imposed in the case where the Commissioner has increased a taxpayer’s assessment (ie GIC). In some instances the effect of a mass marketed scheme claim is to defer the recognition of income for tax purposes until a subsequent year. Invariably the scheme is unwound by the Commissioner with the result that the taxpayer is required to pay GIC on the denied claim and receive a nominal amount of interest on the tax which has been overpaid for the year in which the income has been excluded. As the amendment process usually takes place some years later, the effect of the GIC can be quite dramatic, even though the taxpayer had effectively repaid the “real” tax liability in the subsequent year.

Although we could present some real client case scenarios which support the general observations discussed above, the time constraint imposed in submitting this submission prevents us from providing a more detailed analysis of these cases at this time.

We would be happy to provide any additional information or data prior to the completion of the Committee’s report to the Senate.

In the meantime please do not hesitate to contact John Ravasini, Director – Tax Consulting, on (02) 9251 4600, if you require any further information or assistance.

Nexia Court & Co
Chartered Accountants
Level 29
264 George Street
SYDNEY NSW 2000