



MEDIA RELEASE

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ATO Debt collection techniques Royal Commission urgently required

Whilst assisting an Australian with his outstanding business affairs and tax lodgements (which were outstanding for 5 years), an Australian tax payer has incurred an anomalous tax debt of \$457,000 (later increased to \$740,253.80 after applying penalties and interest), as an average rate of 56% was applied to the actual net income apportioned over those 5 years.

This outcome was created because the income derived is assessed on a cash basis in the years of receipt, but the expenses were paid in later years where little or no income was derived, thus creating large incomes for the early years, with fewer deductible expenses and losses, or small taxable incomes in the later years. The deductibility of the expenses in the latter years gives little tax relief to the earlier taxation burden as the losses are of little value without income.

Whilst the process of assessment on a cash basis is the correct application of the law, this also leaves no opportunity to object against the assessments as there are no grounds upon which to object in circumstances such as this, thereby creating an anomaly in tax legislation when dealing with entrepreneurs and self-employed Australians. Whilst agreeing to the anomaly, the ATO suggested the taxpayer lodge a "Proposal to Compromise Tax Debts" which was lodged, with supporting documentation supplied.

This has now been determined unfavourably with apparently no rights to review. The ATO stated in their decision that they are not obliged to give reasons, but then go on to advise that to their knowledge, the taxpayer's compromise offer did not include the full value of net assets. When queried further, the ATO advised that the "Proposal to Compromise Tax Debts" indicated a loan available to the taxpayer of \$600,000, that it's a loan to a related company and further indicated that the amount available to the taxpayer would be NIL. This was clearly stated to the ATO in the "Proposal to Compromise Tax Debts" so there's arguably a flaw in the decision-making process as the ATO have considered an irrelevant fact to be a material matter.

In reviewing the ATO processes, the taxpayer's accountant had recourse to the ATO's documents and specifically to PS LA2011/3 which gives the ATO position on "The compromise of undisputed tax-related liabilities and other amounts payable to the Commissioner." This document contains one extremely relevant point at para 19 being:

19. On the other hand, considerations which are not directly related to the Commissioner's function of collecting taxes cannot support the use of the power to compromise. For example, it would not be permissible to accept a compromise to: alleviate what may be perceived to be a harsh or unfair operation of a tax law in particular circumstances.

Essentially what this states is that a compromise is not the correct avenue in which to seek relief, and the taxpayers argument is that he is relying on the unjust outcome of the proper application of the laws and seeks the Commissioners discretion to compromise the debt, when quite clearly the Commissioner cannot use this discretion.

I'm therefore not sure why the ATO would have suggested this option as the appropriate path to proceed when they were made aware quite early on in the process that this was the basis of the taxpayers argument. Accordingly, the ATO should have been fully aware what is stated in their own Practice Statement, and that the Commissioner cannot apply a discretion to alleviate a harsh outcome from the unfair operation of the law.

PS LA 2011/3 does give insight into how compromise applications should be managed, and there are many comments made in the document that the taxpayer would be able to argue in his favour that the Commissioner should accept. However as noted above, the taxpayer's overall argument is unable to proceed as the Commissioner is not able to apply discretion to alleviate an unfair outcome from the operation of the law.

The avenue actually available is a waiver of taxation that is determined by the Finance Minister rather than the ATO Commissioner, and this is noted specifically in PS LA 2011/17. In his consideration the Finance Minister will seek advice from the Commissioner albeit the overarching reason for a waiver is hardship. Further and in this instance, the taxpayer was arguing that they had nothing personally to offer so hardship was not really a factor, albeit the taxpayer can enter into bankruptcy and this has no impact on his ability to pay the ATO, so it would be difficult to present a hardship argument.

In attempting to persuade the ATO as to the merits of the proposed compromise, unfortunately such things as the compliance history did not go in the taxpayer's favour. The ATO is now of the view that the taxpayer either pays the full amount, or they proceed with formal collection processes and ultimately judgement, which is arbitrary at best considering if the taxpayer goes bankrupt, then the proposed repayment of \$250,000 against the prime tax debt of \$457,000 (a 54.7% return to the commonwealth) will be lost.

This taxpayer is not alone in its dealings with the ATO, and nor in its proposed compromise proposal. There are numerous examples of problems with Australian taxpayers in dealing with the ATO, none more so than as reported in the Joint ABC Four Corners – Fairfax investigation. With a background in insolvency spanning over 20 years, I have seen firsthand these problems, and hear from colleagues frequently of similar issues.

Enough is enough Australia and its time for a complete overhaul and rewrite of the tax act to ensure it relevance to today's modern Australia and the challenges we face, particularly with the lack of tax receipts from large multinational companies as disclosed by the ATO themselves at

<http://www.philipcouper.com.au/news/article/index.php?articleID=20>

I'm also keen to hear from Australians and their stories/ problems regarding their dealings with the ATO as the problems seem to be far worse than first envisaged. I personally believe a Royal Commission is now warranted as only a Royal Commission with broad terms of reference will be able to get to the bottom of the issues within the ATO, and its dealings with Australian taxpayers.

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-ENDS-

Were Australian and we look after one another - It's time for change Australia and together we can do it.

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