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3 July 2014

The Secretary
House of Representatives Standing Committee on Tax and Revenue
By Email: taxrev.reps@aph.gov.au

Dear Sir

Inquiry into Tax Disputes

I am writing about various matters related to tax administration in Australia that arise from my personal experiences with the Australian tax office ("ATO") and other government agencies over the past year.

I am a tax practitioner, chartered accountant and fund manager of many years' standing, and the matters I seek to raise relate to the position of taxpayers.

Ultimately my hope is that the Australian Government will reform the law in order to improve the practices at the ATO. I believe my experiences should be of great concern to Government.

On 16 May 2011, companies for which I have acted as tax agent issued proceedings against the Commissioner of Taxation in the Federal Court in relation to adverse tax assessments made by the Commissioner to these companies for the years 2000 to 2010. These proceedings were heard before Mr Justice Perram in September/October 2013 in the Federal Court. To date no decision has been handed down.

My client and colleague for the past 30 years, Mr Peter Borgas, travelled from Switzerland to Australia to give evidence on behalf of the companies from 10 to 15 October 2013. At the conclusion of Peter's evidence he intended to fly home, although, while waiting at the airport, was arrested by the Federal Police. Simultaneously, I and my close friend and client, John Leaver, were also arrested on 15 October 2013. We were charged with conspiring to dishonestly cause a loss to the Commonwealth and conspiring to deal with property, intending that the property, namely a \$30 million loan, would become an instrument of crime.

These charges were later withdrawn unilaterally by the Commonwealth and the Commonwealth has agreed in principle to the payment of my costs which are presently being negotiated as to quantum.

To a significant extent, the fact that the charges were withdrawn speaks for itself. It is abundantly clear to me that insufficient attention was given to the tax laws which would apply to the transactions that were the subject of the charges. In particular, my involvement with offshore companies was certainly substantially less than was found to be in the position by the High Court of Australia in *Esquire Nominees*. In *Esquire Nominees* Mr Justice Gibbs found that no part of central management and control of the taxpayer company was located in Australia, notwithstanding that a firm of Australian chartered accountants was determining the actions of the directors of the taxpayer company.

Consequently, part of the problem that I faced was that the prosecuting AFP/ATO officers had no real knowledge of the relevant taxation principles governing the operation of non-resident companies. In short, the inference was that if someone had any involvement with a non-resident company this was some kind of criminal activity. This is particularly worrying because a large number of my colleagues would have such involvement and potentially would be at risk of being charged for offences similar to what I was charged with.

Following my very public arrest and damaging publicity in October 2013, I wrote to the Commissioner of Taxation and provided the ATO with sufficient information that should have seen the charges dropped immediately. To date I have never received a response from Mr Jordan which suggests that the information I supplied was not even considered.

Unfortunately it took seven months before the DPP withdrew the charges against me and my clients. It has been a very damaging period of my life during which I could not continue my involvement in things such as running schools and public companies.

Further, the detention in Australia of Peter Borgas – a UK solicitor resident in Switzerland – for seven months is a matter of great concern. He had voluntarily come to Australia to appear in the previously mentioned Federal Court case before Justice Perram concerning questions of corporate residency. Once he concluded his lengthy testimony he was dramatically arrested at the airport while about to leave Australia for home.

It may also be helpful for the Committee to listen to a recent interview between Alan Jones and my barrister, John Hyde Page, which was broadcasted on 2GB on Thursday, 26 June 2014 which discussed some of the issues mentioned in this letter. The following is a link to that interview: <http://www.2gb.com/article/alan-jones-john-hyde-page#.U8fxG8Llr78>.

Further, Australia is dependent upon foreign investment capital and this is an internationally competitive market with many countries endeavouring to secure investment. It should be appreciated that it is far easier for foreign investors to purchase listed shares in, say, either the UK or USA without any of the tax uncertainties present in Australia; not to mention the risk of dealing in Australian investments being seen as criminal because of the involvement of Australian advisors.

Another significant problem area relates to the ability of the ATO to issue an assessment and then demand payment. It can take many months, sometimes years, before a taxpayer has an opportunity of having his grievance heard by a Court or Tribunal. In general terms, a Judge has no authority to defer the debt collection process, even if the taxpayer has a strongly arguable case. Where a taxpayer has an arguable case, the Judiciary should have the right to defer recovery until after the hearing of the matter.

I would like the opportunity of speaking to the Committee as I have wide professional experience and believe the law needs to be reformed in a number of ways.

Yours faithfully



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13 January 2014

Mr Chris Jordan AO
Commissioner of Taxation
PO Box 900
Civic Square
CANBERRA ACT 2608

Dear Mr Jordan

The False Arrest of Taxpayers by ATO Application

As you may recall, we have met on several occasions at various meetings of tax professionals.

You may be aware from ATO press releases that I, along with Mr Borgas and Mr Leaver, was arrested on 15 October 2013 in connection with the allegation that I was involved in a loan to CVC Fund Managers Pty Limited ("CVCFM") of \$30 million which the ATO claims was an instrument of crime because it was a sham. This is untrue.

In simple terms, the changing of the overseas lender to CVCFM is not a sham if the investments funded by the original debt continue in existence, which they do. If one owns assets purchased with a \$30 million debt, the changing of the lender does not change the substance of the situation. The fact that CVCFM replaced CVC Investment Nominees Pty Limited ("CVCIN") - the original Australian borrower of the \$30 million - also does not change the substance of the transaction.

Unfortunately the ATO's Wickenby team (as against the previous ATO audit) only looked at half the transaction. Looking at both halves of the transaction shows that all that happened in substance was that a long-term loan from a UK company - Normandy Finance & Investments Limited ("Normandy") - was rolled-over to a new UK lender - Derrin Brothers Properties Limited ("Derrin") - and a new Australian borrower - CVCFM. The Wickenby team ignored the fact that the investments funded by the original loan from Normandy remained in place when the loan was re-financed. These investments were made for the purpose of generating assessable income, and hence interest on the borrowings that funded them was a legitimate tax deduction. Further, it is well-established that borrowing undertaken to replace ("refinance") earlier borrowing takes on the same character as the original borrowing (see *FCT v Roberts & Smith*). This means that the interest on the Derrin loan has the same tax-deductible character as the interest on the original loan from Normandy.

The ATO has always allowed a tax deduction for the interest paid to both Normandy and Derrin. Further, on 18 January 2011 the ATO commenced an audit of CVCFM (which specifically asked about the \$30 million now alleged sham loan) which resulted in a letter from the ATO dated 13 December 2011 confirming the appropriateness of CVCFM's tax accounting - see copy attached. (Also please note the ATO's confirmation of the taxpayer's co-operation with the audit.)

Whilst the ATO already holds all the relevant evidence, I would be pleased to send you a further copy of this material. In addition, if you examine the documents, you as a tax professional will appreciate the involvement in my clients' structure of Mr Justice Richard Edmonds who oversaw the implementation of the structure prior to being appointed to the Federal Court.

Accordingly, it is respectfully requested that you intervene in this matter in order to rectify the serious wrong carried out by your ATO Wickenby team resulting in three people being unjustly charged and falsely imprisoned. It is also important to note that if the ATO had further queries about the \$30 million loan arising from the evidence given in September/October 2013 in the five Federal Court cases in which the ATO is seeking to overturn the long-standing Full High Court principles based upon the *Esquire Nominees* case, the taxpayers and their representatives should have been given the opportunity to respond to these additional questions rather than the AFP arresting and imprisoning three people.

Further, the continued retention in Australia of Mr Borgas, an elderly Belgian citizen resident in Switzerland and the Managing Director and beneficial owner of Derrin, is morally wrong and damages Australia's reputation as a safe place for foreigners to do business. Mr Borgas came voluntarily to Australia to give evidence in the abovementioned Federal Court proceedings.

Anything you can do to rectify the injustice of the above issues would be greatly appreciated.

Yours faithfully

A solid black rectangular box used to redact the signature of Vanda Gould.

VANDA GOULD MCom FCA



Australian Government
Australian Taxation Office

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Reply to: PO Box 2025
TOWNSVILLE QLD 4810
Our reference: 1012039081600
Contact officer: Peter Treacy
Phone: 0747 537 139
Fax: 07 4753 7309
Your reference:
ABN: 96 120 950 110

13 December 2011

Dear Sir/Madam,

Decision of Income Tax Review
Years ended 1 July 2007 to 30 June 2011

We have now completed the review of your income tax affairs in relation to your international monetary transactions for the years ended 1 July 2007 to 30 June 2011.

We would like to thank you for your cooperation in responding to our request for information.

On the basis of the information that you have provided during the review, we do not propose to take any further action in relation to the company in its own right at this time. Should the Commissioner become aware of any further information in relation to your international monetary transactions, we may seek to undertake a further review.

If you have any questions or need more information, please contact Peter Treacy by phoning 13 28 69 between 8.30am and 5.00pm, Monday to Friday, and asking for extension 37139.

Yours faithfully

Greg L Williams
Deputy Commissioner of Taxation

Per

[Redacted Signature]
(Peter Treacy)