Re: Submission to the Joint Committee of Public Accounts & Audit.

I make the following comments pertaining to your terms of reference:-

Part A

- *the impact of the interaction between self-assessment and complex legislation and rulings:*

Six years ago we were given advice by our accountant and a representative of a professional financial planning organization regarding Executive Share Trusts and Employee Benefit Arrangements. We were given both verbal and written assurances that EBA's were legitimate and approved by the ATO and we acted on this basis. Subsequently we have been devastated by the consequences of the ATO's change of policy and applying that change retrospectively.

We have been issued with multiple assessments, interest charges and penalties and although we lodged an objection in 2004 no acceptable resolution has been reached. Under the self-assessment arrangement we believed that we were lodging a correct return and therefore had no input as to the interest arising from the backdated effect of the amended assessments.

We are a hardworking husband and wife business which has been seriously intimidated by the ATO issuing us with a massive tax bill. The retrospective application of the commissioner's change in view has caused us, our family and business enormous distress and pressure as well as very heavy unexpected financial consequences.

- *the application of common standards of practice by the ATO across Australia;*

We cannot understand how and why the ATO appears to have different methods of treating similar taxpayers in similar disputes. It has been brought to our notice that settlement offers differ for taxpayers in similar circumstances.

- *the level and application of penalties and the application and rate of the General Interest Charge and Shortfall Interest Charge;*

We note that there are presently three rates of penalty, 0%, 5% and 10% being applied to EBA taxpayers. There are also three rates of interest; full GI, currently 12.63%, 6.28% and 4.72%. The ATO seems to be able to create rates that suit it from time to time, either to maximize revenue or appease extensive criticism.

Surely penalties and interest are in the legislation to punish wrongdoing. This is not the case with EBAs where the ATO authored over 60 rulings in favour of the arrangements before changing its position.

Part B

The Committee shall examine the application of the fringe benefit tax regime, including any "double taxation" consequences arising from the intersection of fringe benefits tax and family tax benefits;

We were given multiple assessments by the ATO, including FBT assessments and consider that the Commissioner used this overlap to intimidate us into settling on his terms. Although he later claimed only one of the multiple assessments would apply, he failed to remove the assessments that wouldn't apply, leaving a legal liability in some cases 10 times the original tax benefit. His claim that he 'did not know which taxing point applied' underlines the injustice of penalties and interest in these circumstances.

FINALLY

On a personal note we have now been offered several options to settle with the ATO e.g. one taxing point, 5% penalty and 4.72% interest but we have to agree to give up our objection and appeal rights if we settle on these terms.

We still feel strongly that we should not have to pay penalties and interest charges because the ATO changed its ruling.

Had the ATO been prepared to make these concessions several years ago when the position was first changed, the interest that is now payable would not have accrued.

Submitted by Valerie and Ronald Stracey, RJV Employee Share Trust.