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Tax Advisor, Accountant and Financial Planner - Penalties imposed on promoters of tax schemes

In a Federal Court decision all 3 respondents had substantial penalties under s 290-50 of sch 1 to the Taxation Administration Act 1953 imposed on them in connection with an earlier finding on the 3 of them being considered promoters of tax exploitation schemes involving the sale of interests in carbon or “*Reducing Emissions from Deforestation and Degradation*” (REDD) credits.

Summary of Facts

1. Respondents:
 - a. The first respondent, Dr Rowntree, was a solicitor and tax specialist.
 - b. The second respondent, Mr Donkin, was a chartered accountant and registered taxation agent.
 - c. The third respondent, Mr Manietta, was a financial planner.
2. The respondents:
 - a. Promoted the REDD schemes to investors for the dominant purpose of enabling them to obtain a tax deduction, in the relevant tax year, of the full purchase price payable under an Emissions Reduction Purchase Agreement for a number of REDD credits on payment of a 15% deposit.
 - b. The court found it was done in circumstances where it was not reasonably arguable that any such payment or liability to pay was deductible under s 8-1 of the Income Tax Assessment Act 1997.
3. The effect of the schemes over the 4 years was that about 200 taxpayers could claim deductions exceeding \$58,000,000.00.
4. The respondents (directly/ indirectly) received \$6,408,911 (Dr Rowntree), \$194,320 (Mr Donkin) and \$1,152,863 (Mr Manietta) over the relevant tax years in relation to the schemes.
5. The ATO had spent approximately \$1,100,000.00 in legal fees in relation to the proceedings.

Arguments

6. The Commissioner argued:
 - a. principal purpose of a civil penalty was to achieve both specific and general deterrence; and

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- b. this was a case requiring a significant penalty for each of the promoters.
7. He submitted, penalties of about:
 - a. \$8,894,000.00 should be ordered against Dr Rowntree;
 - b. \$201,000 against Mr Donkin; and
 - c. \$1,384,000 against Mr Manietta,having regard to the respective degrees of culpability and need for deterrence.
8. The Commissioner contended:
 - a. all investors had been exposed to a significant detriment having relied on the advice received; and
 - b. the need to pay the resulting outstanding tax liabilities.

Decision

Rares J explained in his decision that it was important that the message be sent loudly and clearly that engaging in the promotion and marketing of tax schemes involving tax avoidance and tax evasion would not be tolerated by the community.

The Court determined that even though both Dr Rowntree and Mr Manietta were undischarged bankrupts, their contravening conduct and profits from the schemes required both general and specific deterrence.

The Court noted that the respondents continued marketing the schemes aggressively even when they knew they were under investigation. The respondents did not take any steps to avoid the contraventions and provided a limited degree of co-operation.

The Court held it was necessary to impose substantial penalties on Dr Rowntree and Mr Manietta in respect of their contraventions in each of the 4 years to ensure both general and specific deterrence.

Accordingly, the respondents were ordered to pay penalties in the amounts of \$7,750,000 (Dr Rowntree), \$1,455,000 (Mr Manietta) and \$210,000 (Mr Donkin).

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