

Kimberley capers: an outback “whodunnit”?

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Abstract: In November 2019, a sequel to the mass-marketed tax avoidance schemes of the 1990s appeared in the West Kimberley region of Western Australia. The Australian Broadcasting Corporation ran a series of articles revealing how hundreds of disaffected and isolated taxpayers engaged in a tax scam potentially involving tens of millions of dollars. In itself the scam was short, sharp and almost trivial, compared to the billion dollar mass-marketed tax avoidance schemes which involved over 40,000 taxpayers nationwide and took years to evolve and settle. The “sideshow” was over almost before it started, and nearly went unnoticed from a national perspective. However, the “when, what, where and how” are not the key elements of this article — it is the “who and why” that are investigated. This article is an overview of what can go wrong when taxpayers feel disaffected and isolated from their government.

Introduction

In 2013, Fullarton investigated the motivational factors which significantly influenced blue-collar workers engaged in the mining industry of the Pilbara region of Western Australia to participate in the mass-marketed tax avoidance schemes of the 1990s. He found “that a relationship existed between the degree of isolation and harshness of the physical environment, and their desire to engage in the mass-marketed tax avoidance schemes”.¹

While his research focused on the highly paid blue-collar workers and the fact that “[a]most all of those taxpayers interviewed referred to high tax rates as justification for engaging in the mass-marketed tax avoidance schemes”,¹ he found that “[e]ven some of those taxpayers interviewed, who were on lower incomes and associated income tax rates, expressed the opinion that it was fair for others to engage in the schemes”.¹

In the case of the Pilbara miners, “[i]t also became evident that increased physical isolation and heavy working conditions exacerbated a feeling of social distance and increased the influence of work colleagues towards engaging in the mass-marketed tax avoidance schemes”.¹

He concluded “that tax compliance was always unlikely to be wholly effective in the inhospitable climate encountered by the high income earners of the mining communities of Western Australia in the 1990s”.¹

By comparison, the participants of the Kimberley tax scams of 2019 were not

highly paid nor highly taxed. In some cases, they were not even employed, but rather on social security benefits. The majority were “self-lodgers”. While there is some indication that key individuals assisted in promulgating the method of lodging false income tax returns, there was very little involvement of professional promoters. Professional promoters played a key role in the case of the roll out of the mass-marketed tax avoidance schemes.

For clarification, Figure 1 is a map of Western Australia showing the Kimberly region which neighbours the Pilbara region to the south. The towns of Broome and Derby, at the bottom of King Sound, are considered to be in the West Kimberley, while Wyndham and Kununurra are considered to be in the East Kimberley.

Background – the earlier schemes

Since the 1990s, ATO compliance focus has been on high wealth individuals and corporations and promoters. The threat was perceived to come from the wealthy and the privileged.

That the ATO checks and balances did not detect the schemes prior to the refunds being issued is cautionary — but a long way from the “bottom of the harbour” schemes of the 1970s and the mass-marketed tax avoidance schemes of the 1990s.

The bottom of harbour tax avoidance schemes of the 1970s remained undetected for decades, the number of taxpayers and the sums involved were never really ascertained.² “The 1986-87 Annual Report

of the ATO stated that these [1970s] schemes involved some 6 688 companies and resulted in tax evasion of between \$500m and \$1 [billion].”³ “The numbers are significant but a casual glance at the range of financial estimates implies that the true loss is incalculable. ATO statistics are merely those detected; many schemes would have been undetected.”⁴

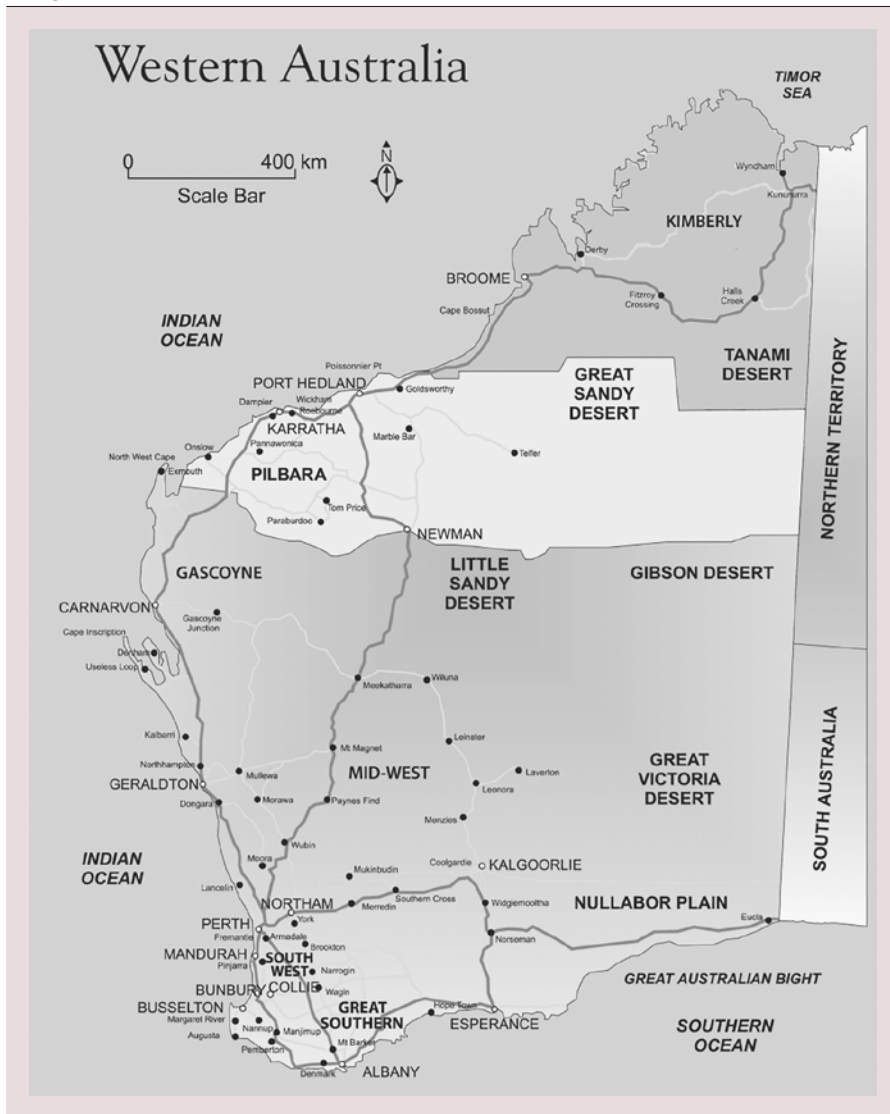
In the 1990s, the mass-marketed tax avoidance schemes ran for a few years, involved around 32 thousand taxpayers⁵ and loss of tax revenue was around \$1.5b.⁶ In 2019, the scam was detected within weeks, around 700 taxpayers attempted to lodge false income tax returns to the value of an estimated \$20m, but only 42 succeeded. Some refunds were as high as \$80,000, but the ATO has not disclosed the actual total sum paid out in false refunds.⁷ However, it is likely to be between \$1.5m and \$2m.⁸

The Kimberley capers

This article looks at the possible reasons why the extremely unsophisticated taxpayers of the West Kimberley embraced a tax scam with the enthusiasm demonstrated by their wealthier neighbours 20 years earlier.

It compares the taxpayer involvement and influencing factors identified by Fullarton in his research into the mass-marketed tax avoidance schemes of the 1990s, with the much smaller and short-lived false income tax return scam of the West Kimberley in 2019. It compares and contrasts the two events to eliminate or highlight influencing factors contributing to taxpayer

Figure 1. Map of Western Australia showing the adjacent Kimberley and Pilbara regions



enthusiasm to enter into tax avoidance/ evasion schemes in outback Australia.

The questions of “when, what, where and how” are simple:

- **when** — the late 2010s — that supports Fullarton’s observation “the cycles take around 10 years”;⁹
- **what** — contrivance of documents to generate false income, deductions or rebates of tax: a tax scheme;
- **where** — remote Western Australia. The regions are adjacent. The factors of climate, social influences, remoteness and isolation are, for the purposes of examination, almost identical. The dominant difference is that the blue-collar workers of the Pilbara are highly paid and highly taxed, whereas the taxpayers of

the West Kimberley are generally poorly paid and include a high proportion of disadvantaged people suffering from over 100 years of almost colonial rule; and

- **how** — falsification of income tax returns. The mass-marketed tax avoidance schemes of the 1990s used complex corporate structures to disguise the validity of the deductions claimed. The Kimberley caper was much more brutal and unsophisticated. Participants simply completed their income tax returns with false data.⁷

Fullarton predicted that “each cycle produce[d] a new set of schemes that are a little more complex than the previous ones”.⁹ He was wrong, this scam was brutally simple — just fill the form in with false data.

That method of falsifying records was detected relatively quickly, if not instantly, by the ATO’s information processing system. The scam was identified and action taken to prevent the practice from continuing.

As reported in the ABC news article,⁷ according to the ATO, only 42 individuals succeeded in receiving false refund payments out of over 700 participants. Fullarton pointed to administrative delays or “bureaucratic inertia” as being a major factor in the growth of tax schemes.¹⁰ Delays in reaction time, and the success of some participants, emboldened others to join the schemes.

It was reported that “amounts approaching \$80,000 were paid out in some cases”.⁷ Detection by the ATO has certainly improved from the days of the bottom of the harbour schemes and the 1990s, but refunds of that magnitude perhaps could have been investigated prior to release of the funds. That is a matter for the ATO to investigate.

Accordingly, this article looks at the “who and why”.

- **who** — unsophisticated, individual, low income earning taxpayers. The article quoted that “[the] people who actually got this thing, they’re on low incomes, they’re on Newstart or paying child support, so financially they’re not on big wages anyway”.⁷ It is noted that the dominant numbers of participants were from remote indigenous communities in the Derby district; and
- **why** — the people of the Kimberley are some of the most remote, isolated and dislocated peoples in Australia. The ATO conceded that “[s]ome of the people involved live in isolated communities with limited mobile phone use, and are proving difficult to locate with their newly acquired, taxpayer-funded assets”.⁷

It is somewhat amusing to note that limited mobile phone use is identified by the ATO as an indication of disadvantage. One could readily add to that: medical services; education facilities; roadways; housing; postal services; and a relatively endless list of what modern urban dwellers come to expect. The scenery of the wilderness is spectacular and recreational fishing is superb. It is a much sought-after destination for adventurous tourists of the nation and the world in general. However, if you are living there — you are camping out.¹¹

To add to a feeling of ill will towards the federal government is the treatment of the indigenous peoples of the region from the

colonial past and modern paternalistic “interventions” such as the “cashless cards” for social security payments. These were introduced in a bid to curb social ills, largely created by unemployment, such as alcoholism and drug abuse. This article suggests that a combination of key influencing factors for those taxpayers to engage in the scheme is that they live in an extremely harsh and isolated environment and they feel they are poor and abandoned.

This article suggests that a key influencing factor, identified in Fullarton’s research — residence in extremely harsh and isolated environments — has been unaddressed by governments and taxation authorities for 20 years.¹²

The ATO suggested that there was some evidence of promoter activity in relation to the scheme. An ATO spokesperson said “that at least one person started charging people money to show them how to commit the fraud. ‘Some of these people were approached by a promoter of this scheme’, she said. ‘And they were charged an up-front fee in order to get this information on how to get a bigger refund’”.⁷

Posts on Facebook indicate that the Broome Chamber of Commerce placed a warning of a tax scam on the internet and referred to an ABC news article on 24 September 2019.¹³ A search of Facebook posts emanating from the ABC Kimberley Facebook page shows that a post of 3 October attracted 15 comments and 61 webpage shares.¹⁴ A further post from the ABC Kimberley Facebook page on 25 October attracted a further nine comments and 65 webpage shares.¹⁵

The comments and referrals provide a useful insight into the attitudes of the community. Predominantly they are indigenous people, many are referrals to their friends and they are not sympathetic towards the ATO. One comment was: “That’s two types of scammers right there, first one is the ATO”. Another stated: “If you ask me it’s the ATO fault for letting this thing happened not the people’s fault”. Yet another queried: “is this the same money everyone was saying they were getting in derby [sic] that Juney was talking about?”.

To follow the posts emanating from 126 Facebook web pages is a challenging task. However, it is likely that the development of social media is a significant factor in facilitating the rapid growth of the awareness of the scheme, and perhaps contributed to the speed at which it was disseminated. Further, that the community

held feelings of government injustice and abandonment added to the acceptance of the scheme.

The role of promoters, as in the bottom of the harbour schemes of the 1970s and the mass-marketed tax avoidance schemes of the 1990s, was not all that significant in the 2019 Kimberley scheme. Further, those participants had been able to use the ATO “myGov” income tax lodgment internet facility. That means that the false documents could be lodged by the taxpayers themselves. Sophisticated compilation by tax professionals was not an essential element in this case, though apparently some individuals charged a fee to instruct taxpayers on how to use the myGov system to lodge their income tax returns.

The value of the zone tax offset concession

A further contributor to the influencing factor of social distance and isolation from an uncaring government could have been the Productivity Commission’s review of zone tax offsets (ZTO) occurring at that time.¹⁶

It is noted that Broome and Derby are in ordinary Zone A (\$338 pa) and taxpayers in the Eastern Kimberley are in the significantly higher tax rebate zone of special area Zone A (\$1,173 pa). Figure 2 shows the existing ZTO regions which have remained unaltered since 1981.

The commission’s draft report, recommending the almost insignificant concession of \$6.50 per week to the taxpayers of Broome and Derby to be scrapped, was released on 4 September 2019.¹⁷ The commissioners had visited Broome on 3 May 2019, which was one of the only two public community forums held in Western Australia. ABC Kimberley and ABC Pilbara radio had covered the ZTO review relatively extensively from its announcement in 2018.

The differing tax ZTO rebate zones of the Kimberley may not have been of particular significance to the participants of this scheme. The disparity may not have influenced taxpayer perception of equity or fairness, but that the concession was recommended to be abolished may have encouraged participation in the scheme to “square-off”.

Conclusion

This article argues that a significant influencing factor which contributed to taxpayers embracing the Kimberley

tax scam of 2019 was the underlying dissatisfaction of the West Kimberley people due to the feelings of isolation and abandonment by a distant and unresponsive government.

That feeling of isolation, coupled with a harsh living and working environment, caused them to move to defrauding the tax system in recompense. That the role of promoters was less significant in enabling this scheme than it was in previous schemes, and that the impact of social media facilitated community awareness of the scheme, goes in a small way to reveal that it is taxpayers who demonstrate a willingness to engage in tax avoidance/evasion activity, regardless of the influence of promoters.

While legislators, commentators and researchers have focused on the role of tax professionals and promoters of mass-marketed tax avoidance schemes in the construction and development of tax avoidance activity, it is the taxpayers who really drive the demand to avoid tax.

This case study illustrates that it was the taxpayers themselves that, when given the capability of falsifying income tax returns by way of modern electronic means, were more than willing to avail themselves of that opportunity. Tax professionals had no part in this event. However, the other influencing factors, as illustrated by Fullarton,¹⁹ remained as the key motivating forces.

Tax professionals are more likely to be the facilitators of the schemes, however generally they are only performing a service. Ultimately it is taxpayers who have the propensity to avoid tax and create the demand for such schemes.

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Figure 2. Portion of the Australian tax rebate zones in 1981



Source: NATMAP G 8961.E74 1984¹⁸

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