

Submission No:4.3.....

95 Waller Place
Campbell ACT 2612
7 December 2006

Committee Secretary
Joint Committee of Public Accounts and Audit
Department of the House of Representatives
Parliament House
Canberra ACT 2600

by Email jcpa@aph.gov.au

Dear Secretary

Re: Inquiry reviewing a range of taxation issues within Australia

I have made a major submission to your enquiry concerning imposition of penalties, failure of the Commissioner to comply with Public Rulings (e.g. TR97/4 compensating adjustments), an uncompromising stance taken on GIC by failing to remit GIC even when the Commissioner has not been out of pocket of funds and inconsistent technical interpretations involving for example reading the wording of Section 50(a) into the former deductible section 51(1).

Despite my supplemental submission dated 5 September 2006 the Commissioner still has not remitted the GIC and penalty which he had advised he would do in his letter dated 23 August 2006. Mr. Nash, Assistant Commissioner Personal Tax emailed me on 9 November 2006 to confirm figures for the remission of GIC, made no mention of the remission of the additional tax on the compensating adjustments and again failed to address the Section 50(a) wording interposed in interpreting Section 51(1).

I responded to Mr. Nash 10 November 2006 and still there has been no refund forthcoming or explanation to why the wording of Section 50(a) was read into the administration of Section 51(1) when that has never been the manner in which the Commissioner has applied the law.

I am afraid the experiences that I have had with the ATO highlights the appalling administrative stance taken by the Commissioner regarding small taxpayers and the difficulty they have in arranging their affairs under a self assessment regime and supposed administrative safeguards including the Ombudsman, The Taxpayers' Charter and the public rulings system. If the public rulings system can be ignored in the manner that the Ombudsman alludes to, (that is, that the Commissioner has the right to challenge the content of his own stated interpretational policy) and taxpayers penalized as a result, then the Ombudsman needs a refresher course in the purpose he is there for and should be educated regarding the Commissioner's obligations under the public rulings system.

Considering the substantial funds expended by the Commissioner in pursuing this matter it highlights the farcical nature in his exercise of his administrative powers.

Recently I have been advised that professional advisers understand that the Commissioner is not going to maintain the findings of the AAT in my case concerning the necessity for a

direct trace of funds when applying Section 51(1) (now Section 8-1 of the new Act). Professionals cannot provide solid advice to clients on how the Commissioner intends to treat the deductibility of interest on borrowed funds (including bank overdrafts) where any co-mingling of funds is involved in light of the AAT decision in my case. The Commissioner strenuously argued in my case the requirement for a direct trace of funds which he asserted could not be established where there was one cent of co-mingled funds involved. If the view expressed by professionals to me is correct then I am even more appalled by the lack of professional integrity by the Commissioner in my case in maintaining a direct trace of funds is required without any tainting whatsoever to establish deductibility under Section 51(1). That position is untenable in today's commercial world.

Surely the Commissioner must act consistently regarding any insistence on a direct trace of funds and equally act consistently in applying the remission guidelines on imposing any penalty tax. The criterion set down in TR 94/4 of the public ruling on remission of penalties is clearly met in my case and no penalty should have been imposed let alone an adjustment made in the first place. How can anyone be penalized for not following a public ruling that had not even issued at the time of lodging my 1997 to 1999 returns of income?

At to why one taxpayer is adjusted and penalized on an inconsistent application of administrative policy drives right to the heart of my understanding of the terms of reference of the Committee's enquiries. As evidenced with the correspondence between myself and the Commissioner that I have made available to the Parliamentary Committee it should be more than evident of the complete lack of professional attention given by the Commissioner to address my representations. Mr. Nash has expressed to me that I should go away and accept the treatment his officers has afforded to me. That more than highlights his attitude not to address matters that have been under his scrutiny and his practice over a prolonged period has been merely dismissive and he refuses to act in a timely manner and continually puts me to more expense.

I have enclosed a copy of the email dated 9 November 2006 from the Commissioner (Mr. Nash) and my response dated 10 November 2006. I sincerely hope that this Parliamentary Committee insists on the Commissioner explaining his actions in my case and if the decision by the Administrative Appeals Tribunal in my case is not going to be followed by the Commissioner generally then he has an administrative responsibility to make that position publicly known and act consistently in administrating the law.

Yours faithfully


W. D. Domjan

Attachment

Email from P. Nash Assistant Commissioner Personal Tax 9 November 2006 August 2006
My response dated 12 November 2006
CC

Mr. David Vos, AM Inspector- General of Taxation

Mr. Damien Browne, Special Tax Adviser, Commonwealth Ombudsman

Mr Michael D'Ascenzo, Commissioner of Taxation

Mr. P. Nash, Acting Assistant Commissioner Personal Tax