

95 Waller Place  
Campbell ACT 2612  
5 January 2007

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](mailto:jcpa@aph.gov.au)

Dear Secretary

Re: **Inquiry reviewing a range of taxation issues within Australia**

I refer to my representations to the Committee dated 7 December 2006, in which I drew attention to the Commissioner not actioning his words to remit GIC and additional tax imposed as a result of compensating adjustments and his continual refusal to clarify the direct trace of funds approach of interpreting Section 51(1) by relying on the wording of an unassociated section of the Act Section 50(a).

The Commissioner remitted on 14 December 2006 both the additional tax and the GIC on the compensating adjustment and in effect has now followed his unambiguous policy set down in TR 97/4.

If I had not persisted with my concern regarding disparity of long standing ATO policy and the treatment afforded to me I would have been out of pocket because of the blatant disregard of ATO policy by senior ATO officers relating to compensating adjustments.

However the Assistant Commissioner has again chosen not to clarify the ATO policy concerning the relationship of Section 50(a) on the interpretation of Section 51(1). The penalty and GIC imposed in disallowing interest reliant on a direct trace of funds (Section 50(a) approach) has not been remitted and the tax collected resulting from adjustments made relying on Section 50(a) remain unaddressed.

The Assistant Commissioner commented to me sometime ago that he would not action my concerns as he was required to abide by the AAT decision. The Commissioner's representative submitted to the AAT that the Section 50(a) approach was how the ATO interpreted and administered Section 51(1). Yet the Assistant Commissioner advised me that was not the Commissioner's policy and the ATO officers were not authorized to argue for that interpretation. Tax agents are currently advising clients that the Commissioner has not decided to apply the decision in my case across the board which is consistent with the view expressed to me by the Assistant Commissioner. So what actually is the Commissioner's position and where was it clearly spelt out for a self preparing taxpayer to follow to justify a 25% penalty? I reiterate that the wording of Section 50(a) has nothing

whatsoever to do with the interpretation or application of Section 51(1) of the Act, now Section 8-1.

Public Ruling TR 2000/2, the ruling that had not issued when my 1997 -1999 were lodged, and for which I was penalized for not following, supports deductibility of interest where co-mingling of funds is involved in a mixed purpose accounts, it also supports the apportionment of interest on a mixed purpose account on a reasonable basis and rejects the requirement for a direct trace of funds as previously addressed in my submission. The Assistant Commissioner acknowledges that is the ATO view, yet will do nothing to rectify the contrary and unannounced position that was first raised by the Commissioner at the AAT hearing and that was argued to be the long standing administrative policy of the Commissioner.

The Commissioner prides himself on being a model litigant but his continual disregard of representations to clarify his position is appalling and a total disregard of the Taxpayers' Charter. To maintain before the AAT that the interpretation applied to me represents long standing ATO lacks substance and is erroneous and to mislead the Member in that manner is completely unprofessional. The imposition of penalty and GIC given the situation cannot be regarded as fair and reasonable treatment. These aspects directly relate to the first three points of the Terms of Reference to which your Committee is enquiring into and highlights substantive variation in consistency in application of penalties, GIC and application of the law by the Commissioner who also ignored my request for a test case.

Surely the Commissioner, if there is any substance to the position taken in my case, must clarify how he is going to apply the law to an every day expense such as interest and not just lay in waiting to ambush any taxpayer he chooses by again arguing the unsupportive position of a direct trace of funds under Section 50(a) when applying Section 51(1). The stance on co-mingling of funds just does not stand commercial scrutiny as I have previously addressed.

I am sure if you were to review the substantial number of aspects I raised in my initial submission that highlighted several examples of blatant disregard of ATO positions in administering my case you would without doubt fully appreciate the difficulties an individual taxpayer has in complying with the law under self assessment.

I conscientiously believe the ATO officers involved in my case also have an equal difficulty in interpreting and applying the law under a self assessment regime. If they do not have such a difficulty then their conduct is unexplainable and their stubbornness in completely disregarding clearly stated ATO policy expressed in TR 97/4 regarding remission of penalty involving compensating adjustments really goes to the foundation of why I made a submission to the committee in the first place. Further the initial disallowance of interest on the acquisition of shares that I had held for some 6 years on the basis that they were acquired solely for capital profit neglects any understanding of basic tax technical knowledge. Then to have the disallowance of that interest penalized at 50% because I was reckless was an absolute charade in administering the penalty provisions of the Tax Act.

I look forward to the outcome of your Committee's review and hopefully I have highlighted to you that there is not only an interpretational problem but a reluctance to impose penalties

in a fair and reasonable manner and a failure of the review processes both within the ATO and external bodies such as the Office of the Commonwealth Ombudsman in the sound administration of the Act.

Yours faithfully

W. D. Domjan

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, Assistant Commissioner, Micro Enterprises and Individuals