

Dear Committee Members,

I would like to make a submission in regard to the impact of the Commissioner's withdrawal of rulings and the retrospective application of the decision by the Commissioner on me personally.

In the year ended 30 June 2000 I was arranging my business affairs with the assistance of my accountant and I also sought legal advice prior to investing in a retirement village.

At the time I had other options available to me such as investing in a negatively geared property investment or shares.

However after considering the prospectus for the retirement village investment, the ATO Taxation Ruling 94/24 and legal advice from a tax lawyer and barrister that the proposed retirement village complied with the Taxation Ruling 94/24 I elected to proceed with that investment in regard to the other options available to me.

At the time I already had some investment in shares so the proposed income stream from the retirement village investment appealed to me.

The retirement village investment was established prior to 19 April 2000. On that day the Commissioner issued a draft ruling TR2000/D5 advising that TR94/24 was to be withdrawn.

My tax return for the year ended 30 June 2000 was assessed on the basis that the retirement village investment was in place prior to the withdrawal of TR94/24 and therefore the deductions in accordance with the ruling were allowed.

I received no further communication from the Commissioner until late in 2004 when he issued an amended assessment and imposed interest and penalties dating back to approximately April 2001 when payment was due on the original assessment.

I lodged a notice of objection to the amended assessment and I also requested the Commissioner to provide me with a statement of reasons for his refusal to remit penalty tax. I have not received any response from the Commissioner to date.

The amended assessment required the immediate payment of in excess of \$100,000 including the penalties and interest imposed. Further I was advised that the GIC would continue to be applied to the outstanding balance.

In order to attempt to reduce the amount of the GIC accruing on the amended assessment I paid 50% of the disputed amount. I did this by refinancing my home and having to make provision for the possible payment of a further \$60,000 which is still subject to the continuation imposition of interest by the Commissioner.

While the dispute remains unresolved the Commissioner reserves the right to issue proceedings to recover the disputed balance at any time.

Due to the continuing uncertainty as to my financial position I have been unable to embark on important repairs to my home as these are likely to cost a further \$30,000 and with the potential tax liability I am unable to risk going further into debt to attend to these repairs at this time.

I was put in this position as a consequence of the Commissioner's ability to withdraw his rulings and apply his altered position retrospectively and to apply penalties and interest at a rate significantly above the market rate. The Commissioner considers myself and other investors in retirement villages to be tax cheats when I was relying on the Commissioner's ruling TR/94 and legal advice that the investment complied with the conditions set out in the Commissioner's own ruling.

The problems with the system of self assessment have been recognized and the ROSA legislation has attempted to rectify the problems. However to date the ROSA legislation has not been given any retrospective application. It is said that this would be unfair as it would require the Commissioner to further amend the assessments of a large number of taxpayers.

With respect I do not accept this argument as in virtually all cases where the Commissioner has altered his position and issued amended assessments in regard to retirement villages, EBA's , Equity Linked Bonds & Stapled Stock etc it has been the taxpayer that has been adversely affected therefore it is unlikely that any taxpayer would be adversely affected by the retrospective application of the ROSA legislation.

The Commissioner has not been consistent in regard to his application of penalties and interest. The Commissioner applies various rates of penalty interest and GIC charges to EBA taxpayers. The Commissioner is able to create rates that suit him from time to time either to maximize revenue or to appease criticism.

The purpose of penalties and interest in the legislation is to punish wrongdoing. It is therefore ironic that a person such as myself can be acting in accordance with the Commissioner's ruling and legal advice one day and following the Commissioner change in position based on the vast resources available to him I am suddenly a wrongdoer and my future well being and livelihood are jeopardized by the Commissioner's retrospective flick of a pen.

I urge the Committee to advocate strongly for the retrospective application of all the ROSA legislation.

Regards,

David Mark Robinson