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21st November 2016

Standing Committee on Tax and Revenue
Parliament House
Via My Parliament account

Dear Committee,

Issue.

Commissioner ability to effectively ignore an Inspector General of Taxation decision.

The IGoT made an adverse decision in respect of the conduct of the Commissioner in choosing a six year audit period for an individual tax payer as opposed to the recognised amendment period of two years. The Commissioner has failed to provide reasons as to why the auditor chose six years, and how his decision to audit six years is fair and reasonable as opposed to the two year period (afforded under legislation).

Background.

My client, _____ self-assessed himself as a non-resident of Australia, and therefore did not lodge a Income Tax Return (for over ten years while working overseas). At the commencement of an Audit, the Commissioner requested six years of tax returns to be lodged otherwise 75% penalties would be imposed. Under this duress _____ lodged six years of tax returns declaring himself as a non-resident. The audit determined _____ was a resident, and issued amended assessments for the six years. The debt raised with penalties and interest charges is some \$283,000, to which _____ has no ability to pay in full without selling his home.

The question of residency and foreign exempt income have been the subject of review by the Administrative Appeals Tribunal and Federal Court, upholding the Commissioner's assessments. This legal matter is now with the Full Federal Court.

This legal matter is NOT the subject at hand.

The matter of the six year audit period is NOT a reviewable decision in the Tribunal or Court.

A complaint was made to the IGoT regarding the auditor's choice of six year audit period. The IGoT found on the 29th October 2015;

“ the ATO should have, in our view and as a matter of fairness, limited its review and its requirement to the two-year period leading to _____ employment in Australia.”

The Commissioner has not provided a reason why 6 year period was chosen instead of another period, anywhere between 10 and 2 years. A Freedom of Information request of the audit papers did not enlighten any submission or notes of to how the six years was chosen, or if any manager or superior sanctioned the action.

The Commissioner on the 4th October 2016 confirmed he was not altering his position of 6 year amendments. The Commissioner referred to prior advice by a Senior Case Manager to of;

"I advised that the IGT was entitled to their opinion but that the ATO didn't have to agree with it; that we could disagree with it,..."

Request

It is requested the Committee openly test the veracity of the Commissioner being able to simply ignore the IGoT opinion.

consents to the release of personal information by the Commissioner relevant to this matter to the assistance of the Committee.

In the event you would like further information or documents on the matter please contact me.

Yours sincerely,

(Richard Wytkin)
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