



Administrative  
Appeals Tribunal

DECISION AND  
REASONS FOR DECISION

[2016] AATA 662

Division TAXATION & COMMERCIAL DIVISION

File Number(s) 2011/2923-2927; 2012/3060-3062

Re Lian Zhang

APPLICANT

And Commissioner of Taxation

RESPONDENT

**DECISION**

Tribunal Deputy President S E Frost

Date 31 August 2016

Place Sydney

Each objection decision (or deemed objection decision) is set aside.

For primary tax and administrative penalty in relation to the 2001, 2002 and 2005 income years, the Tribunal substitutes a decision that in each case the objection is allowed in full.

For primary tax in relation to the 2003, 2004, 2006, 2007 and 2008 income years, the matters are remitted to the Commissioner for reconsideration, with a direction that the reconsideration have regard both to the Commissioner's concessions already made, and to the Tribunal's conclusions and reasons.

For administrative penalty in relation to the 2003, 2004, 2006, 2007 and 2008 income years, the Tribunal substitutes a decision that in each case the objection is allowed in part, to reflect the revised shortfall amount for each year, and the reduction in penalty rate from 50 per cent to 25 per cent.



.....[sgd].....

Deputy President S E Frost

## **CATCHWORDS**

*TAXATION AND REVENUE – income tax – unexplained deposits to bank accounts – some deposits now explained – reduction in assessments – Commissioner's opinion that the taxpayer had evaded tax – Tribunal satisfied on the balance of probabilities that evasion was not present – some amended assessments therefore out of time – administrative penalties reduced from 50 per cent to 25 per cent – objection decisions set aside*

## **LEGISLATION**

*Taxation Administration Act 1953 ss 14ZYA, 14ZZK*

*Income Tax Assessment Act 1936 ss 170(1), 170(2), 171A(1)*

## **CASES**

*Re Zhang and Commissioner of Taxation [2016] AATA 117*

*Gauci v Federal Commissioner of Taxation [1975] HCA 54; 135 CLR 81*

*Federal Commissioner of Taxation v Dalco [1990] HCA 3; 168 CLR 614*

*Danmark Pty Ltd v Federal Commissioner of Taxation; Forestwood Pty Ltd v Federal Commissioner of Taxation (1944) 7 ATD 333*

*R v Meares (1997) 37 ATR 321*

## **REASONS FOR DECISION**

**Deputy President S E Frost**

**31 August 2016**

## **INTRODUCTION**

1. The applicant in this case is one of four taxpayers who are, or were, connected in some way with one or more companies in the High Trade group, including:
  - High Trade Company Pty Ltd (High Trade Company);
  - High Trade Constructions Pty Ltd (Constructions);
  - Brightfull International Pty Ltd (Brightfull);

- Auschintle Pty Ltd (Auschintle);
  - Resort Hunter Valley Pty Ltd (RHV).
2. This particular applicant, Lian Zhang, is the brother of one of the other taxpayers, Li Zhang. Li Zhang was a director and, it seems, the controlling mind of the companies in the High Trade group. The remaining two taxpayers are Tao Bai, who was married to Li Zhang; and Song Chang, who was an employee of the High Trade group.
  3. Following tax audits that commenced in 2007, the Commissioner formed the view that the taxpayers had understated their income over a period of years. He made a number of amended assessments in relation to each of the taxpayers, and he also made some original assessments for some of them. Those original and amended assessments were largely – and in Mr Lian Zhang’s case, entirely – based on the total quantum of unexplained deposits to the taxpayers’ bank accounts. The taxpayers objected against the assessments. While in some cases the Commissioner allowed their objections in part, the assessments were largely upheld. The taxpayers have sought review of the objection decisions in this Tribunal.
  4. The applications were heard consecutively over a period of seven days in September and October 2012. After the hearings, the Commissioner engaged in the time-consuming task of preparing spreadsheets seeking to summarise the adjustments made by the Commissioner in the assessments. Those spreadsheets allowed the Tribunal to determine Ms Bai’s and Mr Chang’s applications but not the applications of the other two taxpayers.
  5. In the case of the current applicant’s brother, Li Zhang, and following a request from the Tribunal, the Commissioner’s officers undertook a detailed review of the spreadsheet. The officers then engaged with the taxpayer’s representative in an attempt to narrow the items in dispute between the parties. Eventually, when it became clear that the dispute could not be narrowed any further, the parties were invited to make further submissions on their respective positions. Written submissions were provided and then the hearing was resumed. The Tribunal finalised Li Zhang’s applications in March 2016: *Re Zhang and Commissioner of Taxation* [2016] AATA 117.
  6. Meanwhile, Lian Zhang’s applications had been held over, pending resolution of those of his brother. Once Li Zhang’s applications were disposed of, the Tribunal re-engaged with Lian Zhang’s representative, Ms Luk, and the Commissioner’s representatives to discuss the best

way to progress these current matters. Ms Luk indicated that the Tribunal should determine the applications on the basis of material currently before it.

7. That material includes a very comprehensive spreadsheet with 1,584 line items, divided into different categories to reflect the claims made by Mr Zhang as to the characterisation of each entry. The Commissioner's officers are to be commended for the tireless work they have put into the creation and updating of that spreadsheet, and the very careful consideration they have given to Mr Zhang's claims. Without that effort the Tribunal's task would be bordering on the impossible, rather than being merely exceptionally difficult.

## **THE ISSUES**

8. The main question for the Tribunal is whether Mr Zhang has shown that the assessments are excessive. This is the burden that he bears under s 14ZZK of the *Taxation Administration Act 1953* (TAA). A subsidiary question, which will arise if his case falls short to any extent, is whether he is liable to administrative penalties.
9. The excessiveness of the amended assessments now boils down to a consideration of whether any, and if so which, of the 1,584 identified amounts in the spreadsheet are not properly treated as income in Mr Zhang's hands. The Commissioner now accepts that some of them are not income amounts but maintains that many of them are (or at least Mr Zhang has not demonstrated on the balance of probabilities that they are not).

## **BACKGROUND**

10. The tax years in dispute are the 2001 to 2008 years inclusive. The amounts that the Commissioner says Mr Zhang failed to declare as assessable income are very substantial. In some years they are in the hundreds of thousands of dollars; in others they are in the millions. The total further tax claimed by the Commissioner is almost \$4 million. On top of that there is administrative penalty of almost \$2 million, imposed at the rate of 50 per cent for recklessness.
11. Mr Zhang's objections against the amended assessment for 2001, 2002 and 2005 were allowed in part. In relation to the remaining years, the objections had still not been determined almost two years after they were lodged. Mr Zhang accordingly required the Commissioner, under s 14ZYA(2) of the TAA, to make a decision on each of the objections. The Commissioner's failure to do so within the 60-day time limit imposed by s 14ZYA(3) resulted in the objections being taken to have been disallowed.

12. Decisions in relation to administrative penalty followed the primary tax, so that the penalty was reduced in part for the 2001, 2002 and 2005 years but deemed to have been affirmed in respect of the remaining years.

### **WHY DOES MR ZHANG SAY THE ASSESSMENTS ARE EXCESSIVE?**

13. Mr Zhang's notice of objection against the assessments provides the following reasons for objection<sup>1</sup>:

1. *Each of the assessments are excessive because [the amounts added to the declared taxable income] are not assessable income. In each case they are capital in nature, comprising:*
  - (a) *reimbursements of amounts paid on behalf of the builders, developer and sub-contractor.*
  - (b) *repayment of loans;*
  - (c) *Transfers between my bank accounts, including redraws from my loan account.*
  - (d) *Rental income already declared in my Individual Tax Return.*
  - (e) *Interest has been declared in my Individual Tax Return.*
2. *Further, the assessments for the years of income ended 30 June 2001 to 2006 are excessive because there was no power to issue them, there being no fraud or evasion.*

14. The 'no fraud or evasion' ground in item 2 is beside the point in relation to the 2003, 2004 and 2006 income years, for the following reasons:

- for each of the 2003 and 2004 years the Commissioner issued a 'no tax payable advice' on 9 June 2006, and therefore the assessments, notice of which issued on 29 April 2009 (and against which Mr Zhang objected) were not out of time, even in the absence of fraud or evasion – see table item 1 in s 171A(1) of the *Income Tax Assessment Act 1936* (ITAA 1936) – unless the 2003 and 2004 returns were lodged before 29 April 2005, and Mr Zhang has failed to satisfy me that that is the case;
- for the 2006 year a notice of assessment issued on 23 July 2008 and notice of the amended assessment issued on 29 April 2009, well within the 2-year amendment period – see table item 1 in s 170(1) of the ITAA 1936.

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<sup>1</sup> T15-58 and T16-65 (the latter assumed to follow from the former despite not having been filed that way)

15. In relation to administrative penalty, Mr Zhang argues<sup>2</sup> that there was ‘no tax shortfall upon which a penalty could be imposed’ and that, in any event, he took reasonable care when lodging his tax returns.

### **THE TAXPAYER’S BURDEN OF PROOF**

16. Under s 14ZZK of the TAA a taxpayer has the burden of proving that an assessment is excessive.
17. The Commissioner provided very detailed and helpful written submissions on this issue. Those submissions correctly point out that there is no obligation imposed on the Commissioner to show that an assessment can be sustained or supported by evidence: *Gauci v Federal Commissioner of Taxation* [1975] HCA 54; 135 CLR 81. It is also the case that the Commissioner is entitled to ‘rely upon any deficiency in proof of the excessiveness of the amount assessed to uphold the assessment’: *Federal Commissioner of Taxation v Dalco* [1990] HCA 3; 168 CLR 614 at 624 per Brennan J.
18. In *Danmark Pty Ltd v Federal Commissioner of Taxation; Forestwood Pty Ltd v Federal Commissioner of Taxation* (1944) 7 ATD 333, Latham CJ said at 337:

*... upon an appeal the onus rests upon the taxpayer of establishing the facts upon which he relies and if it is necessary for him to establish a particular fact in order to displace the assessment he must satisfy the Court with respect to that fact.*

### **Fraud or evasion**

19. A taxpayer who asserts the absence of fraud or evasion<sup>3</sup> also bears the burden of proving that absence. In that respect it is helpful to recall Gleeson CJ’s explanation in *R v Meares* (1997) 37 ATR 321 at 323:

*Although on occasion, it suits people for argumentative purposes, to blur the difference, or pretend that there is no difference, between tax avoidance and tax evasion, the difference between the two is simple and clear. Tax avoidance involves using, or attempting to use, lawful means to reduce tax obligations. Tax evasion involves using unlawful means to escape payment of tax. Tax avoidance is lawful and tax evasion is unlawful. Although some people may feel entitled to disregard that difference, no lawyer can treat it as unimportant or irrelevant. It is sometimes said that the difference may be difficult to recognise in practice. I would suggest that in most cases there is a simple practical test that can be applied. If the parties to a scheme*

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<sup>2</sup> T16-64

<sup>3</sup> In this case, only ‘evasion’ needs to be addressed since it was never part of the case against the taxpayer that there had been fraud.

*believe that its possibility of success is entirely dependent upon the revenue authorities never finding out the true facts, it is likely to be a scheme of tax evasion, not tax avoidance.*

20. To the extent that Mr Zhang relies on his contention that the Commissioner was out of time to make the amended assessments for the 2001, 2002 and 2005 years, he must satisfy me on the balance of probabilities that there had been no evasion in the relevant years.

## **THE EVIDENCE**

21. Mr Zhang made a written statement in these proceedings on 2 April 2012<sup>4</sup>. The statement is 294 pages long and it has four full folders of annexures. Included among the annexures are pages from the general ledger of Constructions; pages from the general ledger of Ida Control Pty Ltd, a company under Mr Zhang's control; pages from various bank account statements; and several miscellaneous documents.
22. There are also 2,796 pages of documents lodged with the Tribunal under s 37 of the *Administrative Appeals Tribunal Act 1975*. Those documents include an affidavit affirmed by Mr Zhang on 19 February 2010<sup>5</sup> and the eight volumes of attachments to it. There is some repetition between these documents and those that accompany his 2 April 2012 statement.
23. Mr Zhang first came to Australia in February 1997 on a subclass 456 business visa<sup>6</sup>. He applied for a subclass 457 visa in August that year, and when his application was declined, he applied to the then Migration Review Tribunal (MRT) for review of that decision. The MRT conducted its review in 2000 and found in Mr Zhang's favour in January 2001.
24. At the time of the hearing in this Tribunal Mr Zhang was in China. He had been there for some time. The Tribunal had been told that his Australian visa had been revoked because the Commissioner's action in making amended tax assessments had taken away Mr Zhang's income earning opportunities and, effectively, his entitlement to remain in the country. His solicitor asked the Tribunal if Mr Zhang could give oral evidence by video link. That application was refused. The Tribunal (constituted for the purposes of that application by Deputy President Deutsch and me) took the view, given the extent of the documentation that Mr Zhang wished to rely on, that requiring the Commissioner's counsel to cross-examine Mr Zhang on that documentation by video link – with the added complication of the need for an

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<sup>4</sup> Exhibit A3-1

<sup>5</sup> Commencing at T20-73

<sup>6</sup> Exhibit A3-1, Annexure volume 1, page 269 [11]

interpreter – would have been neither efficient nor fair. At one stage it was indicated that Mr Zhang would apply for a visa to attend the hearing in person but that became impossible because his Chinese passport had expired and could not be renewed in a timely fashion. A further application for Mr Zhang to give evidence by video link was made during the hearing of the related matters but I refused that application as well, for the same reasons as those that led to the rejection of the initial application.

## **DEALING WITH THE APPLICATION**

25. The only efficient way to deal with the application is to focus on the spreadsheet provided by the Commissioner, which summarises the deposits initially in dispute.
26. In column AY of the spreadsheet there is a notation on most lines recording the Commissioner's current position according to the following key:
  - 1 – No explanation;
  - 2 – Explanation but no new supporting documentation;
  - 3 – Explanation with new supporting documents that do not discharge the burden of proof;
  - 4 – Explanation accepted;
  - 5 – Was to be allowed at objection.
27. Those entries with a '4' or '5' notation do not require any analysis on the part of the Tribunal because the dispute between the taxpayer and the Commissioner is now resolved. The Commissioner's revised position will be reflected in the final decision of the Tribunal.
28. The focus of the Tribunal's analysis needs to be directed to those entries with a notation of '1', '2' or '3', or with no notation at all.
29. The entries have also been divided into distinct categories. These are:
  - Loans made by taxpayer;
  - Li Zhang's money;
  - Wages;
  - Interest;



- Transfers from the taxpayer's own accounts;
- Payments made by Lian Zhang on behalf of other entities;
- Reimbursement of payment/expense made/incurred by Lian Zhang on behalf of others;
- Repayment of loan from Lian Zhang;
- Other;
- Mixed classification.

30. I will deal with each category in turn.

**The first category – Loans made by taxpayer**

31. There are six entries in this category during the relevant period. Three – Unique Identifier Number (UIN) 20, 23 and 24 – have been accepted by the Commissioner as amounting to repayments to Mr Zhang of money previously advanced – he says lent – to one or other of the companies in the High Trade group. To those three entries should be added UIN 25, in the amount of \$140,000, for the reasons given by Mr Zhang in his affidavit of 19 February 2010<sup>7</sup>.

**The second category – Li Zhang's money**

32. The four entries in this category are amounts Mr Zhang says were paid from China by his brother, Li Zhang, during the period 1992 to 1996, 'as a loan in order to fund his construction business'<sup>8</sup>. I accept Mr Zhang's explanation.

**The third category – Wages**

33. All of the entries in this category have now been accepted by the Commissioner as wages, as claimed by the taxpayer. No further analysis by the Tribunal is required.

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<sup>7</sup> T20-78 at [29]

<sup>8</sup> T20-75 at [12]

#### **The fourth category – Interest**

34. All but five of the 22 entries in this category have been accepted by the Commissioner as interest. Three have not been accepted because of missing bank statements. These are UIN 1522, 1524 and 1526. Given the amounts involved and their quantitative similarity to other entries in the list, they are accepted as interest amounts. The remaining two entries are UIN 1474 and 1475. For these there is no satisfactory explanation. There should be no adjustment to the amended assessments on account of these two entries.

#### **The fifth category – Transfers from the taxpayer's own accounts**

35. There are 379 entries in this category. In respect of all but 14 of them the Commissioner has accepted the taxpayer's claim that they are simply transfers of the taxpayer's own money from one account to another. Four further deposits should be accepted as meeting that description – UIN 749 for \$2,500.00, UIN 768 for \$1,270.00, UIN 783 for \$1,100.00 and UIN 1458 for \$50,000.00. The explanation given at page 9 of Mr Zhang's statement of 2 April 2012 (Exhibit A3-1) for the first two of those entries is supported by the bank statements at T22-683 and T22-702 respectively. The explanation for the third, at page 61 of Exhibit A3-1, is supported by the bank statement at T21-562 and the explanation for the fourth, at page 23 of Exhibit A3-1, is supported by the bank statement at T22-751.
36. For the remaining 10 entries the taxpayer's explanation is not borne out by the bank statements on which he relies, as follows:
- UIN 712 – explanation at page 35 of Exhibit A3-1 – MasterCard statement for 3 May 2001 is missing; see T25-1543/1544;
  - UIN 819 – explanation at T20-257 – MasterCard statement for 17 September 2001 is missing; see T25-1545/1546;
  - UIN 890 – explanation at T20-268 – not supported by T26-1907;
  - UIN 1218 – explanation at T20-350 – not supported by T28-2196;
  - UIN 1224 – explanation at T20-351 – not supported by T28-2195;
  - UIN 1291 and 1292 – explanation at T20-360 – bank account at 'Vol 3 Tab 25' (T23-1142 and following) is not an HSBC account as claimed;
  - UIN 1352 – explanation at T20-380 – not supported by T22-768;
  - UIN 1357 – explanation at T20-381 – not supported by T22-756;

- UIN 1494 – explanation at T20-411 – not supported by T28-2209.

### **The sixth category – Payments made by Lian Zhang on behalf of other entities**

### **The seventh category – Reimbursement of payment/expense made/incurred by Lian Zhang on behalf of others**

37. There are 687 entries in the sixth category, and the Commissioner has accepted Mr Zhang's explanations in only 177 cases.
38. There are 372 entries in the seventh category, and the Commissioner has accepted Mr Zhang's explanations in only 8 cases.
39. The background to these categories is explained in Exhibit A3-1:

...

- [116] *During the period I was in Australia, I was the project manager for numbers of the property development projects. As project manager I engaged number of sub-contractors to work for the development projects were undertaking.*
- [117] *The biggest development project that I worked on was the Resort Hunter Valley which was developed by HT & LI4 Pty Ltd (known as Resort Hunter Valley Pty Ltd herein refer to as 'Developer'). During the period I was involved with the construction projects, the only shareholder of Resort Hunter Valley Pty Ltd was 'High Trade Company Pty Ltd'. Four different builders were engaged on that project: Hightrade Construction Pty Ltd, Auschintle Pty Ltd, Andian Group Pty Ltd, and Ferro Construction Pty Ltd.*
- [118] *When the developer or builder could not afford to pay for materials on time due to tight cashflow, I would draw a personal cheque or use my personal credit card to pay for them on their behalf at first and then get re-imburement in later stage.*
- [119] *I had several discussions with the developer and builders who were involving the construction projects, during which we agreed that I would be reimbursed for expenses I paid on behalf of them and they would re-reimburse me when the cashflow is available.*
- [120] *I was rarely reimbursed immediately. Often it took 6 to 12 months and was dependant on their cashflow movement, small claims were generally paid quickly, large claims would take longer.*
- [121] *In order to claim reimbursement I would fill in a claim form and attach all the original receipts. I only have limited copies of receipts in my possession but not all. The developer and the builder's accounts department would then approve the expenses and draw a cheque to me. Sometimes I was paid by direct deposit.*
- [122] *Given the lapse of time since the transactions occurred I can no longer recall each and every payment I made on behalf of the developer and builders. I describe the payments I can recall below.*

[123] *I also became a personal guarantee for a number of loans from overseas and local and suppliers, as I was confident the business would be successful, I was willing to scarify to make the dream came true.*

...

40. There are instances where the documentation supports Mr Zhang's assertions, and in those cases the Commissioner has accepted the explanations. At the same time there are multiple instances where the explanations provided are not supported by the documents, and in some cases the documents are quite inconsistent with the explanations. In those cases it is not possible to make findings in Mr Zhang's favour. Therefore, in the sixth and seventh categories I will accept those spreadsheet entries the Commissioner has accepted, but none otherwise.

#### **The eighth category – Repayment of loan from Lian Zhang**

41. All 48 entries in this category suffer from the same problem – a lack of documentation to support Mr Zhang's claim that they represent repayments of amounts previously lent by him.

42. One of the entries, UIN 688 for \$260,000, has an explanation of sorts<sup>9</sup>:

...

[130] *After I was completed my hearing at MRT for my visa 457 approval (this was one of the requirement for Immigration to have an asset value of \$250,000, so I placed \$260,000 in my personal account in order to fulfil the requirement.) I cannot remember the month, but it was in Mid-2000. The decision was finalised in Jan 2001.*

[131] *Enclosed is the MRT decision dated in January 2001 in Vol T39-273 paragraph 38, stating that I have \$260,000 in my personal bank account.*

[132] *On 5 July 2000, I transferred the sum of \$260,000 into my Westpac 958.*

[133] *On 10 July 2000, High Trade Group required to attend the Kogarah Council contribution in order to complete the Kogarah Town Square projects, so I withdrew \$258,000 (cheque no 000001) to High Trade Co in order to assist them to complete the construction projects.*

[134] *The auditor treated the sum of \$260,000 as income when it was shown as deposit in Westpac 958.*

...

43. The glaring omission from those paragraphs of Mr Zhang's statement is any reference to the source of the \$260,000 deposited into his Westpac account. And without knowing the source I cannot be satisfied that it is not his assessable income.

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<sup>9</sup> Exhibit A3-1

44. There is a regularity about some of the other entries. For example, UIN 949-959 are payments of \$5,000 each during the period 1 August to 30 October 2003, generally either every week or every second week. They look like receipts of income. Without any corroborative contemporaneous documentation I cannot accept any of the entries in this category as not representing income receipts.

#### **The ninth category – Other**

45. Of the 22 entries in this category, the Commissioner has conceded eleven – UIN 698, 722, 727, 731, 885-887, 1144, 1305, 1312 and 1331. A further six – UIN 732, 744, 745, 817, 822 and 1442 – are for such insignificant amounts that they should be conceded as well.
46. That leaves five entries – UIN 1065, 1067, 1424, 1425 and 1448. The third and fourth of those are adequately explained by Mr Zhang<sup>10</sup> as the capital proceeds of the sale of a property in Sylvania. The remainder have inadequate explanations and cannot be removed from the assessments.

#### **The tenth category – Mixed classification**

47. The only entry in this category that is adequately explained is UIN 1038, which has already been conceded by the Commissioner. The others must remain part of the assessments.

#### **FINAL ISSUE – ARE ANY OF THE AMENDED ASSESSMENTS OUT OF TIME?**

48. The amended assessments for 2001, 2002 and 2005 would have been out of time but for the Commissioner's opinion that there was evasion in each of those years.<sup>11</sup> The relevant legislative requirements are:
- For the 2001 and 2002 years – that 'there has been an avoidance of tax' and 'the Commissioner is of the opinion that the avoidance of tax is due to fraud or evasion': the then s 170(2) of the ITAA 1936; and
  - For the 2005 year – that the Commissioner 'is of the opinion there has been fraud or evasion': item 5 in the table in the current s 170(1) of the ITAA 1936.

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<sup>10</sup> T20-78 at [26]-[27]

<sup>11</sup> T5-163 (2012 applications) for 2001; T12-185 (2012 applications) for 2002 and 2005

49. Mr Zhang has satisfied me, on the balance of probabilities, that evasion was not present in any of those years. His failure to satisfy me as to the non-income nature of many of the entries on the spreadsheet is much more likely to have been the result of poor record-keeping or the unavailability of records from periods so far in the past, than tax evasion on his part.

**ADMINISTRATIVE PENALTY**

50. I am satisfied that Mr Zhang was not reckless as to the operation of the taxation laws. I find instead that the shortfall amounts have resulted from a failure to take reasonable care to comply with the law. The penalty amounts should be reduced from 50 per cent of the shortfall amount to 25 per cent.

**DECISION**

- 51. All the objection decisions will be set aside.
- 52. For primary tax and administrative penalty in relation to the 2001, 2002 and 2005 income years, the Tribunal will substitute a decision that in each case the objection is allowed in full.
- 53. For primary tax in relation to the 2003, 2004, 2006, 2007 and 2008 income years, the matters will be remitted to the Commissioner for reconsideration, with a direction that the reconsideration have regard both to the Commissioner's concessions already made, and to the Tribunal's conclusions and reasons.
- 54. For administrative penalty in relation to the 2003, 2004, 2006, 2007 and 2008 income years, the Tribunal will substitute a decision that in each case the objection is allowed in part, to reflect the revised shortfall amount for each year, and the reduction in penalty rate from 50 per cent to 25 per cent.

I certify that the preceding 54 (fifty - four) paragraphs are a true copy of the reasons for the decision herein of Deputy President S E Frost

.....[sgd].....  
Associate

Dated 31 August 2016

Date(s) of hearing	<b>24-28 September and 2-3 October 2012; 6 April 2016</b>
Solicitors for the Applicant	<b>Luk and Associates Solicitors</b>
Counsel for the Respondent	<b>B C Kasep</b>
Solicitors for the Respondent	<b>ATO Review and Dispute Resolution</b>