GPO Box 9990 IN YOUR CAPITAL CITY

Australian Government
Australian Taxation Office

Mr Roderick Douglass
……

Reply to: PO Box 1130
PENRITH NSW 2740
Our reference: ……..
Contact officer: ……..
Phone: ……
Fax: ……

7 March 2017

We have made a decision on your objection

Dear Mr Douglass

On 13 January 2017 you lodged an objection against the administrative penalty for the following years:

Years ended	Issued to you on:
30 June 2013	3 November 2015
30 June 2014	3 November 2015

We have considered your objection and disallowed it. The enclosed *Reasons for Decision* statement explains this decision.

Payment of liability
You need to pay any amounts owing on your notices of amended assessment within 14 days of the issue date of the notices. The enclosed fact sheet *Paying your tax liability* explains this in more detail.

If you disagree
You have 60 days to apply to the Administrative Appeals Tribunal or Federal Court for a review of our decision on short fall penalty of $12,211.40 for the 2013 tax year and $12,295.35 for the 2014 tax year.

You can find more information about your review rights on our website **ato.gov.au/externalreview.**

You can seek a review of the SIC remission decision by the Federal Court or the Federal Magistrates Court under the *Administrative Decisions (Judicial Review) Act 1977*. Fees will generally apply. Applications for a review of a written decision must be lodged with the Court within 28 days of the date of this letter. If you do not lodge your review application within the 28 days, you will need to apply to the Court for an extension of time to lodge the application.

For more information
If you have any questions, please phone **13 28 69** between 8.00am and 5.00pm, Monday to Friday, and ask for …… on extension …….. or direct on **……..**

Yours sincerely

Debbie Hastings
Deputy Commissioner of Taxation

Per
……..

Reasons for decision

Roderick G Douglass

Objection Reference Number:

The periods covered by this report:

Years ended	Issued to you on:
30 June 2013	3 November 2015
30 June 2014	3 November 2015

Date of Objection:
We received your objection against the administrative penalty on 13 January 2017.

Background Information:
You are a qualified engineer and the sole provider of engineering services and operated your business for the past 20 years. Your business has been carried on through partnerships other than the period from 1 July 2008 to 30 June 2010 where it was run through a private company (with you as the sole director/shareholder).

You declared 50% of the PSI from your engineering business in your income tax return for the years ended 2013 and 2014. You were subject to an audit for these years which found that the net PSI derived by your partnerships over this period needed to be attributed to you, the main service provider. Your assessments were amended for each of these years to include the attributed PSI.

An administrative penalty for recklessness was imposed at a rate of 50% for all periods subject to amendment.

What you have argued:
You have made some statements to support your objection to the administrative penalty. A summary of your statements is set out below.

- You contend that the ATO has erred in the manner of assessing your liability for taxation, in particular, you contend that the ATO has failed to apply the appropriate tests specified in *Income Tax Assessment Act 1997* (ITAA 1997).
- You argue that the ATO has shown no evidence of considering section 87.18 (4).
- For the purposes of paragraph (1)(a), (b) or (c) or (3)(a), (b) or (c), regard is to be had to whether it is the custom or practice, when work of the kind in question is performed by an entity other than an employee:
    a) For the * personal services income from the work to be for producing a result; and
    b) For the entity to be required to supply the * plant and equipment, or tools of trade, needed to perform the work; and
    c) For the entity to be liable for the cost of rectifying any defect in the work performed; as the case requires.
- Accordingly, you contend that the ATO has erred at law, making the revised assessment invalid.
- You advise that further:
    a) You relied on communications and materials produced by the ATO that indicated that the tax treatment he adopted was correct; and
    b) The tax treatment adopted by the Applicant follows a reasonably arguable or alternatively a possible interpretation of the relevant law.

Questions raised and our response:
We consider your objection raises the following questions. These questions and our answers are set out below.

Question 1
Are the assessments of the amount of administrative penalty for the tax years ended 30 June 2013 and 30 June 2014 correct?

Answer:
Yes, the administrative penalties imposed for the tax periods ended 30 June 2013 and 30 June 2014 totalling $24,506.75*,* are correct.

Question 2
Are there sufficient grounds to remit the shortfall interest charge (SIC) applicable to the net income tax shortfall of $49,013.50?

Answer:
No, you are not entitled to further remission of the shortfall interest charge (SIC) applicable to the income tax shortfall of $49,013.50.

What we have decided:
We have made the following decision on your objection:

- Administrative penalty for the year ended 30 June 2013 – disallowed.
- Administrative penalty for the year ended 30 June 2014 – disallowed.
- Shortfall interest charge – refused.

Why we have made this decision:

Are the assessments of the amount of administrative penalty for the tax years ended 30 June 2013 and 30 June 2014 correct?

Division 284 of Schedule 1 to the *Taxation Administration Act* (TAA) sets out the administrative penalty regime that applies to matters required to be reported on activity statements from 1 July 2000.

An entity is liable to an administrative penalty if:

(a) the entity or their agent makes a statement to the Commissioner or another entity exercising powers or performing functions under a taxation law, and

(b) the statement is false or misleading in a material particular, whether because of things in it or omitted from it.

A statement is false or misleading in a material particular if it affects a decision regarding the calculation of an entity's tax liability or entitlement to a credit or refund. Most information provided in an income tax return will be material particulars.

In this case, you made statements to the Commissioner in income tax returns. The statements were false and misleading because you understated assessable income.

Subsection 284-80(1) of the Schedule 1 to the TAA states that you have a shortfall amount if an item in the table in that subsection applies to you.

A shortfall amount arises where –

- a taxpayer's tax liability worked out on the basis of the false statement is less than it would have been if the statement was not false or misleading, or

- the amount the Commissioner must pay or credit a taxpayer worked out on the basis of the false statement is more than it would be if the statement was not false or misleading.

As a result of the statements you made shortfall amounts arose as your tax liability was less than it should have been if the statements were not false or misleading.

Your shortfall amounts for penalty purposes are:

Tax Year	Issue	Shortfall $
30 June 2013	Personal services income	$24,422.80
30 June 2014	Personal services income	$24,590.70

The base penalty amount under section 284-90 of Schedule 1 to the TAA, where the false or misleading statement results in a shortfall amount, depending on the behaviours applicable at the time the shortfall occurred is:

- 75% of the shortfall amount if the shortfall resulted from an intentional disregard of a taxation law
- 50% of the shortfall amount if the shortfall resulted from recklessness as to the operation of a taxation law, or
- 25% of the shortfall amount if the shortfall resulted from a failure to take reasonable care to comply with a taxation law.

The Commissioner's views on the concepts of reasonable care, recklessness and intentional disregard are contained in Miscellaneous Tax Ruling 2008/1 – *Penalty relating to statements: meaning of reasonable care, recklessness and intentional disregard* (MT 2008/1) which is available on our website at www.ato.gov.au.

In coming to our decision, we have taken into consideration Law Administration Practice Statement 2012/5 – *Administration of penalties for false and misleading statements that result in shortfall amounts* (PS LA 2012/5) which explains how the Commissioner administers the administrative penalty for shortfall amounts from 1 April 2004. We will refer to paragraphs in PS LA 20012/5 where they are relevant to the context of MT 2008/1.

Subsection 284-75(5) of Schedule 1 to the TAA states that you are not liable to an administrative penalty under subsection 284-75(1) of Schedule 1 to the TAA for a statement that is false or misleading in a material particular if you and your agent (if relevant) took reasonable care in connection with the making of the statement.

Former subsection 284-215(2) of Schedule 1 to the TAA stated that you do not have a shortfall amount for statements made prior to 4 June 2010 as a result of a statement that is false or misleading in a material particular to the extent that you or your agent (if any) took reasonable care in making that statement.

Reckless Behaviour

In relation to the meaning of recklessness, PS LA 2012/5 states that

107. Recklessness is behaviour which falls significantly short of the standard of care expected of a reasonable person in the same circumstances as the entity. It is gross carelessness.

108. Recklessness assumes that the behaviour in question shows a disregard of the risk, or indifference to the potential consequences of taking the risk, that are foreseeable by a reasonable person. However, the entity or agent does not need to actually realise the likelihood of the risk for it to be reckless.

Further MT 2008/1 states that:

101. Behaviour will indicate recklessness where it falls significantly short of the standard of care expected of a reasonable person in the same circumstances as the entity. Although the test for determining whether recklessness is shown is the same as that applied for testing a want of reasonable care, it is the extent or degree to which the conduct of the entity falls below that required of a reasonable person that underscores a finding of recklessness.

102. Recklessness assumes that the behaviour in question shows disregard of or indifference to a risk that is foreseeable by a reasonable person. The Full Federal Court in *Hart v. FC of T* (2003) 131 FCR 2003; [2003] FCAFC 105 *(Hart*) at paragraphs 33 and 43 endorsed the following comments of Cooper J in *BRK (Bris) Pty Ltd v. FC of T* [2001] FCA 164; 2001 ATC 4111; (2001) 46 ATR 347 (*BRK*) at paragraph 77:

> Recklessness in this context means to include in a tax statement material upon which the Act or regulations are to operate, knowing that there is a real, as opposed to a fanciful risk that the material may be incorrect, and a reasonable person in the position of the statement-maker would see there was a real risk that the Act and regulations may not operate correctly to lead to the assessment of the proper tax payable because of the content of the tax statement. So understood the proscribed conduct is more than mere negligence and must amount to gross carelessness.

103. This was the same approach to interpreting the notion of recklessness as was taken in *Shawinigan Ltd v. Vokins & Co Ltd* [1961] 2 Lloyd's Rep 153 at 162; [1961] 1 WLR 1206 at 1214; [1961] 3 All ER 396 at 403 where Megaw J said:

> Recklessness is gross carelessness - the doing of something which in fact involves a risk, whether the doer realises it or not; and the risk being such having regard to all the circumstances, that the taking of that risk would be described as 'reckless'. The likelihood or otherwise that damage will follow is one element to be considered, not whether the doer of the act actually realised the likelihood. The extent of the damage which is likely to follow is another element...

104. Megaw J further noted that the degree of the risk and the gravity of the consequences need to be weighed in forming a conclusion about whether conduct is reckless. He observed at 403:

> If the risk is slight and the damage which will follow if things go wrong is small, it may not be reckless, however unjustified the doing of the act may be. If the risk is great, and the probable damage great, recklessness may readily be a fair description, however much the doer may regard the action as justified and reasonable. Each case has to be viewed on its own particular facts and not by reference to any formula.

During the audit it was determined that your behaviour demonstrated recklessness for the following reasons:

1. You were able to report PSI correctly in your income tax returns and PSI schedules in 2005 and again in 2008 to 2010 which demonstrated you had an understanding of the application and intent of the PSI rules, the consequence of income splitting and potential tax ramifications.
2. The character of the business essentially remained the same for the past 20 years and in all that time you were the sole service provider undertaking the principle work.
3. You omitted 50% of the PSI from your 2006, 2007, 2011, 2012, 2013 and 2014 income tax returns. The size of the shortfall was significant.
4. You said you understood splitting PSI income was not appropriate until you read a High Court decision which made you form the view that splitting PSI from a husband and wife partnership was lawful. You cannot provide further detail of the High Court case nor identify it by name.
5. Despite the decision in the unidentified High Court case contradicted to your previous understanding of the PSI attribution rules and other ATO publications on PSI, you failed to make any effort to clarify with the ATO or consult a tax specialist or other authoritative reference.

Grounds for objection

You contend the following in respect of the penalty imposition:

- You contend that the ATO has erred in the manner of assessing your liability for taxation, in particular, you contend that the ATO has failed to apply the appropriate tests specified in ITAA 1997.
- You argue that the ATO has shown no evidence of considering section 87.18 (4).
- For the purposes of paragraph (1)(a), (b) or (c) or (3)(a), (b) or (c), regard is to be had to whether it is the custom or practice, when work of the kind in question is performed by an entity other than an employee:
    a) For the * personal services income from the work to be for producing a result; and
    b) For the entity to be required to supply the * plant and equipment, or tools of trade, needed to perform the work; and
    c) For the entity to be liable for the cost of rectifying any defect in the work performed; as the case requires.
- Accordingly, you contend that the ATO has erred at law, making the revised assessment invalid.
- You advise that further:
    a) You relied on communications and materials produced by the ATO that indicated that the tax treatment he adopted was correct; and
    b) The tax treatment adopted by the Applicant follows a reasonably arguable or alternatively a possible interpretation of the relevant law.

We have reviewed the original audit decision and your contentions regarding the characterisation of your behaviour and have had regard to the following factors:

- You were running the business for more than 20 years and it is reasonable to expect you to have taken reasonable care when reporting business income. This included seeking professional advice or contacting the ATO regarding the taxation issues surrounding the nature of your business income.

- You demonstrated an understanding of the application and the intent of the PSI rules by previously correctly completing your tax returns and the PSI schedules with correct attributions.

- You changed your business structure twice into partnerships with the intention of splitting your personal services income. The tax consequences of these changes were significant as you paid tax at a lower rate. The character of the business essentially remained the same and in all that time you were the sole service provider undertaking the principle work.

- You contend your decision to set up a partnership and split income was based on a High Court decision that husband and wife partnerships could legally split income regardless of workload sharing. However, you were unable to provide any details of the court case. You knew the reference to income splitting contradicted how the PSI rules were explained in all other ATO publications, yet you did not seek further professional advice for clarification.

- The attribution rule of the PSI is not an overly complex area of the relevant law. There was readily available information on the operation of the PSI rules set out on the ATO website. It was also explained in the Partnership tax return instruction and in the Personal services income schedule instruction that accompanied the tax return guide for companies, partnerships and trusts. You did not make further enquiries to check the correct tax treatment of your PSI.

From the evidence provided, and in accordance with the explanation of recklessness in MT 2008/1 and PS LA 20012/5, it is determined that your behaviour did demonstrate recklessness as to the operation of a taxation law for the following reasons:

- You have the necessary skills and experience to report your PSI correctly and this is evidenced by your correct reporting of this income in previous income tax returns for the years ended 30 June 2000, 2001, 2002, 2003, 2004, 2005, 2008, 2009 and 2010.

- The character of the business essentially remained the same for the past 20 years and in all that time you were the sole service provider undertaking the principle work. We consider that it was unreasonable for you to change your tax treatment and split your income without making detailed enquiries as to the correctness of this, especially given the size of tax benefit to you.
- You advised during the audit that you understood that splitting PSI income was incorrect until you read a High Court decision which gave you the view that splitting your PSI income between a husband and wife partnership was lawful.
- We consider that your decision to split your PSI income with your partner showed little concern or indifference towards the reasonably foreseeable consequences there was a real risk that 100% of your income was PSI as you were the sole service provider for the income years 2013 and 2014.

Your objection to the base penalty amount of $24,506.75 ($49,013.50 x 50%) is therefore disallowed.

Treating the law as applying in an accepted way

Where you make a statement which treats an income tax law as applying to a matter in a particular way that is not reasonably arguable and the resulting shortfall amount exceeds the applicable threshold, you will be subject to a penalty under subsection 284-75(2).

We consider that you did not have a reasonably arguable position because, when having regard to the relevant authorities, the position you have taken in preparing your income tax returns was more likely to be incorrect that correct.

For there to be a reasonably arguable position, the position must be on a contentious area of the law where the relevant law is unsettled, or where the principles of the law are settled but there is a serious question about the application of those principles to the circumstances of the particular case. Generally, where the shortfall amount was caused by a primary error of fact or error of calculation, penalty for not having a reasonably arguable position will not apply.

Reasonably arguable position imposes a higher standard than that required to demonstrate reasonable care. A reasonably arguable position is not a question of whether you think or believe your position is reasonably arguable but simply whether it is reasonably arguable considering the existing authorities. Miscellaneous Taxation Ruling MT 2008/2 *Shortfall penalties: administrative penalty for taking a position that is not reasonably arguable* has more detail.

In your case the shortfall amount exceeds the applicable threshold which is the greater of $10,000 or 1% of income tax for an individual or company.

You contend that you adopted a reasonable arguable interpretation of the relevant law as you considered the law worked to allow you to split PSI with your partners when you were married.

We consider that you did not have a reasonably arguable position in splitting your PSI income having regard to the relevant authorities; the position you have taken in preparing your income tax return was likely to be incorrect.

We have made this decision based on the following factors:

- You have not demonstrated you have consulted 'relevant authorities' in failing to correctly apply the PSI rules.
- The PSI rules are not a contentious area of the law. The ATO has a number of publications and videos available on it's website, including the *PSI basic information you need to know (NAT 72468), PSI avoiding common mistakes (NAT 71560), PSI for sole traders (NAT 72511)*

and PSI for companies, partnerships and trusts (NAT72510) that provide guidance on the application of the PSI rules which you have failed to take notice of. You have not followed this information or considered the alienation measures contained in Part 2-42 of the *Income Tax Assessment Act* (ITAA 1997*)* which applies to individuals or personal service entities (company, partnership or trust) whose income includes an individual's PSI.

- The reasonably arguable position test applies to shortfall amounts caused by an entity treating an income tax law in a particular way. Where there is an error of fact you were unaware of, or could not have been reasonably expected to know the true facts which resulted in an application of law in a certain way the reasonably arguable test may be satisfied. We consider there were no errors of primary fact in your case rather an incorrect conclusion of facts has been made.

Remission

Section 298-20 of Schedule 1 to the TAA gives the Commissioner the discretion to remit all or part of an administrative penalty.

The Commissioner's policy on remitting administrative penalties following the introduction of the New Tax System is contained in Law Administration Practice Statements PS LA 2000/9, PS LA 2002/8 and PS LA 20012/5.

Section 298-20 of Schedule 1 to the TAA enables us to remit all or part of the penalty in appropriate circumstances. To guide us in making these decisions, the Commissioner has issued several Law Administration Practice Statements.

Law Administration Practice Statement PS LA 2012/5 Administration of penalties for false or misleading statements that result in shortfall amounts outlines the circumstances in which the Commissioner considers it fair and reasonable to remit penalties applying to false or misleading statements resulting in a shortfall and outlines that the discretion to remit penalties should be administered in a fashion which ensures the objectives of the penalty regime (i.e. to effect improvements in future compliance and to provide certainty to taxpayers) are achieved without causing unintended consequences or unjust results.

In your case there are no facts that warrant any remission of penalty.

Question 2
Are there sufficient grounds to remit the shortfall interest charge (SIC) applicable to the income tax shortfall of $49,013.50?

A taxpayer (you) may object using the provisions in Part IVC of the TAA against a decision of the Commissioner not to remit an amount of SIC where the amount not remitted is more than 20% of the additional amount of income tax on which it is calculated (section 280-170 of Schedule 1 to the TAA).

We have treated your correspondence as a request for a review of the SIC remission decision as the unremitted SIC is less than 20% of the shortfall amount for the 2013 and 2014 income years.

Imposition

Section 280-100 of Schedule 1 to the TAA imposes SIC on the additional amount of tax that becomes payable as a result of your assessment being amended. SIC is intended to restore a fair balance between taxpayers, ensuring that taxpayers who have paid tax on time are not disadvantaged relative to those who had the benefit of the tax shortfall until the amended assessment. It does not necessarily follow that a reduction or remission in shortfall penalty will automatically mean a reduction or remission of the interest charge.

Under the self-assessment system of taxation, tax returns are not subject to technical or other scrutiny before assessment. In making an assessment, the Commissioner is authorised to accept, without examination, statements made by or on behalf of the taxpayer in the return or in any other relevant document. In other words, mistakes made by the taxpayer, unless they render the return incomplete or substandard, may remain undetected at the time the return is lodged. It is the responsibility of the taxpayer to ensure that all the information they enter is true and correct.

At a later date we may check some of the details on your tax return more thoroughly. Under the law, we are generally allowed two or four years, depending on your circumstances, to review your tax return and if necessary increase or decrease the amount of tax payable.

Remission

The policy for remission of SIC is contained within the Law Administration Practice Statement PS LA 2006/8 – *Remission of shortfall interest charge and general interest charge for shortfall periods*. Full or partial remission of SIC may be warranted where:

- There were Tax Office delays in the issue of the amended assessment;
- Tax Office advice or action contributed to the tax shortfall;
- The shortfall arose due to change in legislation with retrospective effect;
- You relied on a judicial interpretation in the preparation of your tax return which was subsequently overturned after lodgement;
- There are special circumstances where it would be fair and reasonable to do so.

Your circumstances

Your 2012-13 and 2013 -14 tax returns were subject to an audit and it was determined that you had a tax shortfall. As a result, your assessment was amended to reflect this tax shortfall of $160,447.15 upon which SIC was imposed of $6,348.03.

In your case, at audit your SIC was reduced to the base rate due to delays by the ATO in completing the audit, resulting in an overpayment of tax by an associated taxpayer.

Bearing in mind that the purpose of the SIC is to restore a fair balance between taxpayers, ensuring that taxpayers who have paid on time are not disadvantaged relative to those who had the benefit of the tax shortfall until the amended assessment, and in the absence of any special circumstances that warrant remission, it is considered that there are no reasons to further remit SIC.

After considering the issues you raised, we have decided not to further remit the SIC amount of $4,522.76 for the 2013 income year and $1,825.27 for the 2014 income year.

We considered these to be the relevant facts:
You have been conducting your engineering business in essentially the same manner for the past 20 years. You are the sole engineer and service provider of your business.

Your business was carried on through a partnership, Roderick G & Sally E Douglas (T/A RG & SE Engineering) up until 30 June 2007.

You completed your 2000, 2001, 2002, 2003, 2004 and 2005 income tax returns to include 100% of the partnership distributions from Roderick G & Sally E Douglas.

You completed your 2006 and 2007 income tax returns to include 50% of the partnership distributions from Roderick G & Sally E Douglass.

Your business was carried on through a company, Douglass Engineering Services Pty Ltd, between 1 July 2007 and 30 June 2010.

You completed your 2008, 2009 and 2010 income tax returns to include 100% of the income from Douglass Engineering Services Pty Ltd as attributed PSI.

Your business has been carried on through a partnership, R G Douglass & M L Galvis, since 1 July 2010.

You completed your 2011, 2012, 2013 and 2014 income tax returns to include 50% of the partnership distributions from R G Douglass & M L Galvis. Your tax returns also indicated that you answered 'N' to the question did you received any personal services income in your tax returns over this period.

You did not seek professional advice or make enquires with the ATO prior to lodging your income tax return for the years ended 30 June 2006, 2007, 2011, 2012, 2013 and 2014.

Audit
On 30 January 2015 we issued a letter informing you that we were undertaking a review of your income tax return for the years ended 30 June 2011, 2012, 2013 and 2014.

On 22 June 2015 during a phone conversation with the auditor you provided, among other things, the following information:

- You have been in business for over 20 years and it has always been the same business over this period. You started the business in partnership with your ex-wife. You have always been the only service provider as you are the only engineer in your business.
- You are aware of the rule that you cannot split income; however many years ago the ATO said that it was ok to split income with silent partners at 20% then down to 15% then down to nil. You didn't split income with your old partnership and reported 100% of the PSI. After you divorced you started trading as a company and also reported 100% of the PSI until you saw on the ATO website about the High Court case and at this point you started splitting as you believed it was lawful to do so.
- You did not seek any professional advice on your tax affairs and did not contact the ATO for any advice as the publication and website information was sufficient for you to do your tax.

On 29 June 2015 we issued a letter advising you that we had extended our PSI audit to include the years ended 30 June 2006 and 2007.

During the audit you provided the following information in relation to your engineering business:

- It was paid for the work you performed on an hourly basis
- the payments were not contingent on achieving specific results
- the work was not able to delegated work without the consent of the end service acquirer, and
- all of the PSI generated came from one source.

On 30 July 2015 we issued the interim position paper which indicated that the proposed adjustments would result in the following liabilities:

Year ended	Tax shortfall amount	Tax paid by associates	Net tax shortfall amount	Tax shortfall penalty
30 June 2006	$54,145.62	$37,704.61	$16,450.01	$8,225.01
30 June 2007	$53,481.61	$36,990.15	$16,491.46	$8,245.73
30 June 2011	$53,074.31	$36,355.66	$16,718.65	$8,359.33
30 June 2012	$82,872.91	$52,480.86	$30,392.05	$15,196.03
30 June 2013	$81,155.52	$56,732.69	$24,422.83	$12,211.42
30 June 2014	$79,291.67	$54,700.96	$24,590.71	$12,295.36
Total	**$404,021.64**	**$274,964.93**	**$129,065.71**	**$64,532.88**

* For the years ended 2008, 2009 and 2010 you were not married and had no partner to split your income with.

The interim position paper also indicated that you would be liable to SIC which would be calculated when the assessments were amended.

On 29 October 2015 we issued the notice of PSI audit decision which provided that the net PSI derived by your partnerships over this period needed to be attributed to you, the main service provider. The adjustments carried out to your assessments resulted in the following liabilities:

Year ended	Tax shortfall amount	Tax shortfall penalty	SIC
30 June 2006	$54,154.62	$8,225.00	$27,111.42
30 June 2007	$53,481.61	$8,245.73	$21,464.27
30 June 2011	$53,074.31	$8,359.33	$7,453.99
30 June 2012	$82,872.91	$15,196.03	$7,633.10
30 June 2013	$81,155.52	$12,211.41	$4,522.76
30 June 2014	$79,291.67	$12,295.36	$1,825.27
Total	**$404,030.64**	**$64,532.86**	**$70,010.81**

The audit decision also indicated that the Commissioner formed the opinion that there was a blameworthy act or omission made on the part of you and that the avoidance of tax was due to evasion for the years ended 30 June 2006, 2007, 2011 and 2012.

During the audit, you provided consent to extend the period within which the Commissioner could amend your assessment for the year ended 30 June 2013.

On 3 November 2015 we issued the amended assessments for the years ended 30 June 2006, 2007, 2011, 2012, 2013 and 2014. We also issued the notices of assessment of shortfall penalty for each of these years for recklessness.

Since then, the Commissioner has withdrawn his opinion that there was evasion and has reversed the amendments for the years ended 30 June 2006, 2007, 2011 and 2012. The Commissioner has also cancelled the administrative penalties for the same years.

Objection

On 12 January 2017 we received your objection to the administrative penalty for the following years:

Year ended	Notice of assessment issued	Notice of amended assessment issued
30 June 2013	19 August 2013	3 November 2015
30 June 2014	27 October 2014	3 November 2015

You contend that the ATO has erred in the manner of assessing your liability for taxation, in particular, you contend that the ATO has failed to apply the appropriate tests specified in Income Tax Assessment Act 1997 (ITAA).

You advise that further:

c) You relied on communications and materials produced by the ATO that indicated that the tax treatment he adopted was correct; and
d) The tax treatment adopted by the Applicant follows a reasonably arguable or alternatively a possible interpretation of the relevant law.

We took these laws into account:

Taxation Administration Act 1953 Section 284-90 of Schedule 1

Taxation Administration Act 1953 Section 280-100 to Schedule 1

Taxation Administration Act 1953 Section 280-160 to Schedule 1

Other references (non ATO view):

Law Administration Practice Statement 2012/5 – *Administration of penalties for false and misleading statements that result in shortfall amounts*

Law Administration Practice Statement 2006/8 – *Remission of shortfall interest charge and general interest charge for shortfall period*.

Miscellaneous Tax Ruling 2008/1 – *Penalty relating to statements: meaning of reasonable care, recklessness and intentional disregard*