



**Administrative
Appeals Tribunal**

**DECISION AND
REASONS FOR DECISION**

Waters and Commissioner of Taxation (Taxation) [2024] AATA 1211 (27 May 2024)

ReviewNumber: 2020/7620, 2020/7605

Division: TAXATION AND COMMERCIAL DIVISION

File Number(s): 2020/7620 2020/7605

Re: Tristan Waters & Sian Waters

APPLICANTS

And Commissioner of Taxation

RESPONDENT

DECISION

Tribunal: Deputy President Bernard J McCabe

Date: 27 May 2024

Place: Brisbane

The decisions under review are affirmed.

.....**[SGD]**.....

Deputy President Bernard J McCabe

Catchwords

TAXATION – onus case – whether the applicants have satisfied the burden of proof under s 14ZZK(b) of the Taxation Administration Act 1953 (Cth) – whether the evidence could establish taxpayers' true taxable income – whether it is necessary and appropriate to remit penalties and shortfall interest charge – decisions affirmed.

Legislation

Income Tax Assessment Act 1936 (Cth)

Taxation Administration Act 1953 (Cth)

Cases

Anglo American Investments Pty Ltd (Trustee) v Commissioner of Taxation [2022] FCA 971

Binetter v Commissioner of Taxation [2016] FCAFC 163

Bosanac v Commissioner of Taxation [2019] HCA 41; (2019) 93 ALJR 1327

Buzadzic and Commissioner of Taxation [2021] AATA 4820

Chhua and Commissioner of Taxation [2022] AATA 2593

Federal Commissioner of Taxation v SNF (Australia) Pty Ltd [2011] FCAFC 74; (2011) 193 FCR 149

Ma v Commissioner of Taxation [1992] FCA 359; (1992) 37 FCR 225

Rawson Finances Pty Ltd v Commission of Taxation [2013] FCAFC 26; (2013) 93 ATR 775

Re Imperial Bottleshops Pty Ltd and William John King Egerton v Commissioner of Taxation [1991] FCA 276

Stone v Federal Commissioner of Taxation [1918] HCA 67; (1918) 25 CLR 289

REASONS FOR DECISION

Deputy President Bernard J McCabe

27 May 2024

1. Tristan and Sian Waters are each applicants before the Tribunal in linked proceedings. They are a married couple. Their financial affairs are, to some extent, intermingled. Those affairs attracted the attention of the Commissioner of Taxation. The Commissioner suspected a good deal of money going through various accounts connected with either or both of them should have been reported as assessable income. After a covert audit that concluded in 2017, the Commissioner issued the following assessments in relation to Mr Waters:
 - amended assessments in respect of the years ended 30 June 2013 through 30 June 2016 pursuant to s 167 of the *Income Tax Assessment Act 1936 (Cth)* (ITAA36);
 - a special assessment in respect of the year ended 30 June 2017 pursuant to s 168 of ITAA36; and
 - assessments of administrative penalties in respect of the 2013-2016 income years.
2. The amended assessments in respect of the 2013 and 2014 years of income were made after the Commissioner made a finding of fraud or evasion that would (if sustained) permit him to ignore the usual time limits.
3. Mrs Waters was also issued with amended assessments and penalty assessments in respect of the 2014-2016 years of income and a special assessment in respect of the 2017 year of income. There was also a finding of fraud or evasion in respect of the 2014 year of income.
4. The decisions under review must be affirmed. I explain my reasons below.

The background – and observations about onus

5. The proceedings have a tortured history. They were commenced in 2020, around the time the Covid pandemic took hold. Mr Waters languished in gaol throughout the proceedings. He had been arrested overseas and then extradited in connection with a drug importation. (Media reports since the hearing confirm Mr Waters was acquitted of the importation charges although he pleaded guilty in relation to possession charges.) I mention his involvement with the criminal justice system only because his detention during the pandemic created logistical challenges that hindered the timely preparation of his case in the Tribunal. Mr and Mrs Waters were ultimately represented in those proceedings by their tax agent, Mr Oliver. Mr Oliver had difficulty obtaining instructions from Mr Waters in the face of covid lockdowns that affected prisons. Mr Oliver also pointed out he had limited experience in dealing with taxation disputes of this nature.
6. After the hearing concluded, there was a significant delay in providing further submissions in relation to Mrs Waters.
7. The logistical difficulties were an issue in a case like this one because s 14ZZK(b) of the *Taxation Administration Act 1953 (Cth)* (the Administration Act) says a taxpayer bears the onus. The Commissioner does not have to establish his assessments were correct. The Commissioner is certainly not required to defend the reasoning or calculations that went into the assessments, nor is he required to defend what happened during the audit. The onus lies on each applicant to:
 - (a) establish the Commissioner's assessments in each year were wrong, *and*
 - (b) positively establish on the balance of probabilities what the taxable income *should be* on the balance of probabilities. 'Taxable income' is the amount of assessable income less allowable deductions.
8. The applicants must also establish what the penalty assessments should have been.
9. In an onus case like this, a taxpayer is effectively required to produce probative evidence that explains their affairs in a way that permits the Tribunal to find in their favour. The standard of proof is the balance of probabilities. There are several ways in which the taxpayer might go about that task. A personal explanation from the taxpayer or other

witnesses may or may not be sufficient, depending on the circumstances: see, for example, *Ma v Commissioner of Taxation* [1992] FCA 359; (1992) 37 FCR 225 at [9]. Evidence provided by a witness with an interest in the proceedings will ordinarily be scrutinised more closely: see *Federal Commissioner of Taxation v SNF (Australia) Pty Ltd* [2011] FCAFC 74; (2011) 193 FCR 149 at [81]-[82] per Ryan, Jessup and Perram JJ; see also *Re Imperial Bottleshops Pty Ltd and William John King Egerton v Commissioner of Taxation* [1991] FCA 276 at [31] per Hill J. It might be necessary to produce documents to verify or explain transactions: again, much depends on the circumstances. If the applicant does need to provide records, that will be a problem if the records are not readily available, or if they are in disarray. A taxpayer who conducts his affairs in a haphazard way is exposed to the risk that he will not be able to produce documents that should be available and which would be useful in subsequent proceedings: see *Stone v Federal Commissioner of Taxation* [1918] HCA 67; (1918) 25 CLR 289 at 393 per Isaacs J; see also *Buzadzic and Commissioner of Taxation* [2021] AATA 4820 at [104]ff.

10. There can be a tendency in cases like this to focus on individual transactions – particularly the transactions that troubled Commissioner at audit stage. However, an applicant does not succeed merely because he or she manages to explain some of those transactions to the satisfaction of the Tribunal. As Nettle J explained in *Bosanac v Commissioner of Taxation* [2019] HCA 41; (2019) 93 ALJR 1327 (at [30])

*...where, as here, an appeal proceeds on the basis that not all of the material facts are known, either because the taxpayer has been less than forthcoming in making disclosures to the Commissioner or for some other reason, the taxpayer cannot succeed by showing only that the basis of the Commissioner's assessment was in some respect erroneous; **since for all that can be told, unless and until the taxpayer proves to the contrary, there may be other income of which the Commissioner was not aware and which the Commissioner has not taken into account.** In order to succeed in such a case, the taxpayer must discharge the burden of demonstrating on the balance of probabilities the true amount of the taxpayer's taxable income and thus that the amount determined by the objection decision is excessive. [Emphasis added]*

11. The Tribunal and the parties must not lose sight of the real question, which “is whether on the facts as found the applicant has proved that the assessment is excessive”: see *Rawson Finances Pty Ltd v Commission of Taxation* [2013] FCAFC 26; (2013) 93 ATR 775 at [111] per Jagot J.

12. I will begin my reasons by making some general observations about the evidence and the scope of the evidentiary challenge that faced both parties. I will then deal with Mr Waters and Mrs Waters in turn, although inevitably there was some overlap between them.

Some general observations about the proceedings

13. Most of the material that Mr Oliver provided ahead of the hearing related to the affairs of Mr Waters. Indeed, it was unclear as the hearing loomed whether Mrs Waters intended to persist with her case.
14. The statement of facts, issues and contentions filed in respect of Mr Waters was uninformative. It made a series of assertions about the adequacy of the Commissioner's investigation and decision-making process. The document did not summarise the facts or clearly identify or summarise the arguments Mr Waters would offer in discharge of his onus. A witness statement dictated by Mr Waters dated 18 August 2022 did not add much in the way of detail to the factual claims. Mr Oliver also provided a short witness statement of his own dated 10 June 2022.
15. The statement referred to spreadsheets he prepared that were described (at [17]) as "the best attempt to explain the relevant transactions. I have access to the financial records of Triswat Constructions Pty Ltd if they are required (10 archive boxes)." The material filed in relation to Mrs Waters was even more sparse.
16. The absence of material filed in the proceedings pursuant to directions (and the tantalising reference in Mr Oliver's statement to potentially corroborative financial records that had not been provided) prompted me to convene a directions' hearing in advance of the date listed for the final hearing. Mr Oliver confirmed both applicants wished to proceed. He also confirmed he had access to additional material that might be relevant. The Commissioner's counsel, Mr Arnold, flagged the Commissioner might object to the introduction of fresh evidence that should have been disclosed at an earlier point. After discussing the matter, I decided to proceed with the hearing and deal with the evidentiary challenges as they arose. We had spent long enough in pre-hearing processes. The time had come to make a start on the hearing.
17. When the hearing commenced on 24 October 2022, Mr Oliver – who appeared remotely – made clear he *still* had additional material in his possession that was potentially relevant

but which had not been disclosed after the directions hearing. He explained in his opening (transcript at p 2):

I've got a whole lot of other invoices with me so if anything needs to be called on then I've got that available and obviously if that's not achievable today, then I'm obviously more than happy to meet at another venue another time to go through that in further detail.

18. It was frustrating to learn the applicants' representative still had information to hand that might be relevant to their matter but which had not been disclosed. Quite apart from the directions that were made for filing material earlier in the proceedings, Mr Oliver and the applicants should have appreciated it was incumbent to provide evidence that was capable of satisfying the Tribunal of their true taxable income. They were not entitled to effectively turn the tables on the Commissioner at the hearing and ask him to specify what he required. All that had been made clear to Mr Oliver previously.
19. Given Mr Oliver was not experienced before the Tribunal, I agreed (with the Commissioner's consent) that we would make what progress we could after Mr Oliver's opening and take the applicants' evidence before adjourning the hearing so the Commissioner could consider any new material. We then heard the evidence-in-chief of Mr Waters. When Mr Oliver finished leading that evidence, the Commissioner (as foreshadowed) asked for an adjournment to consider the new material which had been mentioned. I agreed that an adjournment was procedurally fair. I took the opportunity to urge Mr Oliver to meet with the Commissioner during the adjournment so he could turn over any of the documents in his possession which had been discussed in his opening submissions which had not already been disclosed: transcript at p 48. We resumed the hearing two days later to hear the examination-in-chief of Mrs Waters before adjourning to allow the Commissioner to prepare his cross-examination in light of the additional documents that had been foreshadowed by Mr Oliver.
20. Both of the applicants were cross-examined at the resumed hearing, and then we adjourned to hear oral submissions. Mr Arnold was able to complete his submissions in relation to Mr Waters but Mr Oliver sought some additional time to prepare oral submissions for Mrs Waters. That process took a lot longer than anticipated. Delay, it seems, was a feature of this case.

21. The absence of a proper statement from any witness means I must make factual findings based on the story told at the hearing. That is a challenging task because the evidence-in-chief was not elicited by an experienced advocate. The experience was a powerful reminder that comprehensive written statements filed in advance of a hearing make the hearing – the most expensive and stressful part of the review process - run more smoothly. Proper statements are required out of fairness to the other side (so we can avoid the delays that happened in this case) and promote early resolution. They also facilitate the fact-finding process because they provide a considered opportunity to set out a narrative.

MR WATERS' CASE

22. Mr Waters provided a brief history of his business career in the short statement dated 18 August 2022 that was filed in advance of the hearing. He explained:

I have been a builder of houses and townhouses for approximately 10 years. In doing so, I established numerous different entities to hold the land and building activities that I was undertaking, I also created numerous bank accounts in which to conduct those activities. I was relatively successful in the majority of those activities, and accumulated several assets (primarily real estate) from the profits of those activities.

23. The balance of the statement talked about the logistical challenges flowing from his incarceration and his significant health problems. It also criticised the Commissioner's decision-making process. Lastly, the statement asserted Mr Oliver would be able to provide information that would explain the disputed transactions.
24. Mr Waters' statement was not a promising start. It did not explain the relevant history or provide details that one would ordinarily expect in a case like this. It also failed to provide a coherent narrative explanation of the applicant's affairs. Worryingly, the statement foreshadowed reliance on the evidence to be provided by the tax agent that focused on the transactions which the Commissioner had called into question rather than embracing the need to substantiate the applicant's taxable income. The statement did not attempt what the cases describing the onus make clear is required.
25. I was forced to try and glean the history and background of the dispute from Mr Waters' evidence-in-chief. That evidence confirmed he was involved in the building trade in Canberra. While he worked for others at various points as an employee or consultant, he

also conducted his own business through a number of companies. I infer the principal entity was called Triswat Constructions Pty Ltd. Mr Waters was the sole director and shareholder in Triswat, and he controlled its bank accounts. Some of the accounts he used were in his own name, or the joint names of him and his wife. He also said he used an American Express card account in his name for business purposes, and other credit cards in the company name. It seems he failed to distinguish clearly between the affairs of the various entities he controlled, so that the affairs of the various entities (including Triswat) were intermingled with each other, and with his own affairs and those of his wife.

26. Mr Waters' business would acquire properties and build homes 'on spec' which were then sold for a profit. He began to take on larger projects during the years under review but he says his business career was interrupted by serious ill-health. He said he needed loans from relatives and associates to stay in business and pay his expenses during this difficult time.
27. The Commissioner conducted a covert audit of the affairs of Mr Waters. I infer Mr Waters may have come to the Commissioner's attention after he was identified as being on the fringes of a fraud carried out by others. The applicant certainly assumes that connection explains why he was targeted. As it happens, it does not matter how Mr Waters came to the Commissioner's attention. I should add there is no evidence before me (apart from the complaints by Mr Waters and Mr Oliver) that the Commissioner inappropriately 'targeted' either of the applicants in these proceedings. But even if that were true – even if the Commissioner had somehow singled out Mr Waters inappropriately – the Tribunal's review provides an opportunity to set the record straight.
28. The audit report concluded there were deposits into Mr Waters' bank accounts (or into accounts that he shared with Mrs Waters) that should have been included in Mr Waters' assessable income. Mr Waters said some of those amounts were loans from friends, family or associates. The report also referred to payments that were apparently made by Triswat on Mr Waters' behalf as well as cash withdrawals from company accounts. The company also paid Mr Waters' American Express bill.
29. The report recorded the opinion that there was fraud or evasion in relation to the earlier years of income. Without that finding, the Commissioner would have been out of time to revisit those assessments. Mr Arnold pointed out Mr Waters had not referred to that

finding in his grounds of objection, so it was formally necessary for him to seek leave to amend those grounds pursuant to s 14ZZK(a) of the Administration Act. Mr Arnold said the Commissioner did not oppose the grant of leave. Despite that invitation, Mr Oliver did not clearly seek leave but I infer from his submissions that Mr Waters wished to do so, and I have given leave accordingly.

30. Mr Oliver did not directly challenge the opinion as to fraud or evasion when he presented Mr Waters' case. That is a problem. To succeed in such a challenge, it is incumbent on the taxpayer to satisfy me that the opinion as to fraud or evasion should not have been formed: see *Binetter v Commissioner of Taxation* [2016] FCAFC 163 where Perram and Davies JJ observed at [91]:

...a taxpayer challenging the authority of the Commissioner to make an amended assessment bears the onus of proving that the statutory requirements for the authority to amend the assessment were not satisfied...

31. As will become apparent from the discussion which follows, I am not satisfied the taxpayer discharged the onus in relation to the opinion about fraud or evasion – or much else.
32. The Tribunal only had access to some of the records of Triswat. That is because a liquidator was appointed to the entity in 2019, although the external administration does not wholly explain the absence of records. In any event, the gaps in the records created a challenge for Mr Waters: proving his case was always going to be more difficult without unfettered access to the books and records of the company in circumstances where many of the transactions in question involved that entity. He was able to provide the Commissioner and the Tribunal with a selection of bank statements, some invoices, and at least some of the general ledgers of the company. The general ledgers confirmed amounts large and small moved into and out of the accounts (including accounts in Mr Waters' name), but there were also some anomalies in the entries. For the most part, the applicant relied on his recollection to characterise the transactions. His recollection was potentially supported by the analysis of Mr Oliver, who supplied spreadsheets which purported to reconstruct and explain Mr Waters' affairs.
33. Mr Oliver's analysis was informed by access to an additional collection of invoices and bank statements that he had gathered in the lead-up the hearing. The documents in question were not made available to the Commissioner during the audit stage; these were documents that Mr Oliver said were available for inspection if the Commissioner would

only specify what he required. Even as the hearing began, Mr Oliver insisted the documents were available but he said they were unsorted and the Commissioner should identify what was required. Mr Oliver said his approach was to look at the invoices and attempt to match them with the bank statements having regard to the general ledgers. He sought to do that in a series of spreadsheets that were tendered in evidence. Beyond that, he suggested the applicant could produce a sample of invoices if the Commissioner would be specific about his concerns. Mr Oliver said he would be happy to access the unsorted mass of documents in his possession and explain how any particular disputed expense might be substantiated rather than producing all the documents: transcript at p 20. That offer was misconceived, for the reasons I have already explained. The taxpayer does not succeed in a case like this merely by explaining a subset of disputed transactions unless the Commissioner concedes (or the circumstances make clear) those are the only transactions in dispute. To allow the taxpayer to do otherwise would effectively reverse the onus of proof. The taxpayer must establish their taxable income, not just respond to the Commissioner's specific criticisms. As Nettle J made clear on *Bosanac*, for all the Commissioner knows, the disputed transactions may just be the tip of the iceberg.

34. In any event, Mr Oliver acknowledged his attempt at reconstructing what had gone on was hampered by the sheer magnitude of the task. As he explained at the outset of the hearing (transcript at p 20):

I suppose in this situation it's been much more difficult when there are literally thousands of invoices and they're filed in Triswat Constructions A to Z expandable files and some of them were paid out of the business bank accounts, some of them were paid out of the America Express account and some of them were paid out of the Commonwealth Bank Mastercard. And in terms of what's been filed, there's no clear distinction between where it was paid from. They've just been filed based on the supplier note which is what I would typically do but certainly if I were paying invoices I would try and mark on those invoices that they were paid from a particular account.

35. When the time came for submissions, Mr Oliver stood by the analysis he had prepared in the spreadsheets. He said the spreadsheets were "the source of truth and I think they're the best explanation for what occurred...": transcript at p 230. He also repeated his lament over what he regarded as poor engagement from the audit team and other officers of the Commissioner.
36. Mr Oliver's brief statement dated 10 June 2022 was admitted into evidence (exhibit 18). The statement did not shed much light on Mr Waters' case beyond remarking on the

difficulties Mr Waters faced in proving his case given he was incarcerated, although Mr Oliver took the opportunity to speculate on the Commissioner's motives in conducting the audit. Mr Arnold, objected to the statement being admitted on the basis that it was not evidence so much as a statement of opinion. I agreed to admit the document although I am mindful the expressions of opinion therein have limited weight in these proceedings. Having said that Mr Oliver made observations in closing submissions that rather underline the challenge facing Mr Waters in discharging the onus.

37. During the closing submissions, Mr Oliver explained how he prepared the spreadsheets that were central to Mr Waters' case as follows (transcript at p 231):

I suppose the way I approached the spreadsheet was to start with everything being an unidentified transaction, my yet to be determined column, and then as I've progressed through all the records I've then moved them from that column to another column that's more – is a better description of the transaction.

38. Mr Oliver then acknowledged many of the transactions he said were explained – like the various loans that Mr Waters claimed were made to him or the company – were not properly documented or documented at all. Mr Oliver nonetheless said I should accept those transactions were explained satisfactorily because he was confident from his knowledge of the applicant and his affairs that the transactions were regular. The problem with that approach is evident in Mr Oliver's submissions regarding the relationship between Mr Waters and Richard Haywood. Mr Waters talked about that relationship in his evidence-in-chief: transcript at p 27. Mr Waters explained he became aware of an opportunity to bid on a property in Canberra but he was not in a position to fund the bid himself. He said he was in hospital at the time. He claims he contacted Mr Haywood, who was connected with Mr Waters' former employer, and proposed a joint venture in relation to the property. Mr Haywood apparently agreed to put up the money to secure the site. All this apparently occurred during the 2013 year of income. But the terms of the joint venture (if that is how the relationship is properly characterised) were never reduced to writing. Similarly, the terms of the supposed loan were not recorded in writing. Even if one allows (a) small businesses can sometimes operate more informally than larger businesses with professional managers, and (b) Mr Waters was unwell at the time, it is odd that the terms of the arrangement were not recorded. Even if I accept there was a business transaction of some sort between Mr Waters or his company and the Mr Haywood, the character of that relationship is unclear. Was it a partnership – and if so, between whom? A joint venture? Or was it a simple loan?

39. I acknowledge the absence of loan documentation (for example) is not inevitably fatal, but in circumstances where the character of the transaction is otherwise unclear, the absence of documentation poses the challenge Logan J described in *Anglo American Investments Pty Ltd (Trustee) v Commissioner of Taxation* [2022] FCA 971. His Honour observed (at [123]):

In itself, and for reasons already given, the absence of a document, in this case a loan agreement, evidencing, in this instance a legal relationship occasioning the indebtedness claimed and an assignment or novation is not fatal. But the case illustrates a difficulty which, years afterwards, can attend discharging the onus of proof in respect of an alleged event where there is an absence of such documentary evidence and where there are inconsistencies evident in such accounting records as are in evidence.

40. Mr Waters' evidence about the payment is incomplete: there is no clear evidence about the terms of any advance. In all the circumstances, the paucity of evidence in relation to the alleged loan and joint venture makes it difficult to confirm the character of the payment. Mr Oliver sought to shore up Mr Waters' case on this point in his evidence, which included the spreadsheets. Mr Oliver explained in submissions (transcript at p 231):

In terms of the loans, I have no loan documentation. I know the nature of this client and I know many of the parties that he's associated with, and I can certainly – without any doubt I can certainly say the transaction with Richard Haywood was a loan because it was a joint venture with him. So I can certainly attest that was an income. He certainly didn't claim it as a tax deduction, because I prepared his accounts. He is fighting with the liquidator of that company to retrieve his share of the transactions that that was in relation to.

41. He made a similar point later in his submissions in relation to other transactions said to be loans. He argued (transcript at p 233):

Tristan, I suppose, has also advised that the loans from his business associates and companies have been repaid. Again I have no documentation in relation to that but my knowledge of Tristan and his affairs I would conclude that that's accurate.

42. Mr Oliver's evidence (particularly when given from the bar table during submissions) does not really amount to corroboration of anything Mr Waters said, not least because Mr Oliver does not have first-hand knowledge of the transactions in question. He undertook a reconstruction of the documents to offer an opinion as to the provenance and regularity of transactions based on his understanding of how Mr and Mrs Waters did business. Opinion evidence of that nature – especially where it is given by someone associated with the taxpayer – is of limited value, to the extent it is evidence at all: see *Chhua and*

Commissioner of Taxation [2022] AATA 2593 at [15] per DP. Molloy and M. Gaudion. Mr Oliver is effectively asking the Tribunal to rely on his assessment of his own client's affairs. That is not how this process works.

43. Having said that, Mr Oliver's evidence and submissions were revealing. After he acknowledged the spreadsheets attempted to explain transactions, he said (transcript at p 232):

I concede that there's still some items in that column (indistinct) because simply rather than being reckless I would rather be conservative, and even though I don't believe some of those items are actually income I have no evidence to provide to the commissioner today of anything else. So in the absence of any evidence, I guess, by default (audio malfunction) yet to be determined.

44. While that passage in the transcript is marred by audio malfunctions, the concession is clear: Mr Oliver purports to explain some but not all the controversial transactions. That concession on its own suggests Mr Waters is unable to discharge the onus, at least to the extent he relies on Mr Oliver's opinion to do so. Even if I were to accept the explanations Mr Oliver has given in respect of *some* of the transactions, the state of that evidence is such that it is impossible to conclude Mr Waters has discharged the onus of establishing his taxable income on the balance of probabilities. Once it is conceded some expenditures are not adequately explained, we find ourselves in exactly the situation Nettle J described in *Bosanac* at [30] (cited above).

45. Mr Waters' evidence-in-chief confirmed he experienced serious illness throughout the years under review but it otherwise lacked specificity. He discussed his employment and business history and his marriage, and he referred to some of his business associates. He said he relied on family and friends to pay bills during the times when he could not work because of illness. He also repeated his complaints about the behaviour of the Commissioner.

46. That imprecision was a challenge in circumstances where Mr Waters had not provided a narrative statement. Given the fresh evidence that was introduced (or at least identified) by Mr Oliver and Mr Waters, I did not require Mr Arnold to commence his cross-examination until he had taken instructions. (To make proper use of the hearing time, I also heard the evidence-in-chief of Mrs Waters which was similarly unenlightening.)

47. Mr Arnold's cross-examination of Mr Waters had the effect (and undoubtedly the objective) of raising questions over the adequacy of the explanation offered in relation to some of the transactions. Mr Arnold did not attempt to wrangle with every one of the items referred to in Mr Oliver's spreadsheet. In his submissions, Mr Arnold argued the question marks over some or all those transactions were such that Mr Waters could not be said to have discharged the onus in relation to each year of income even if he might have been able to offer plausible explanations of some of the matters in dispute.
48. The questions over the Hayward transaction which occurred in the 2013 year of income have already been discussed. Mr Arnold also asked Mr Waters about the way personal expenses were accounted for. Mr Waters was shown the Triswat financial statements for 30 June 2013 (exhibit 2.3) and the general ledger (exhibit 2.4). Mr Waters acknowledged that he would charge business and personal items to company credit cards. He said any personal expenses would be noted in his shareholder loan account which would be reduced when dividends were paid out at the end of the year: transcript at p 115. But Mr Arnold pointed out (transcript at p 116) some payments received from business associates (eg, a firm that apparently hired bobcat equipment) were inexplicably credited to the loan account. The effect of that, Mr Arnold suggested, was that the amount which Mr Waters had notionally loaned to the company was inflated – which meant there were effectively funds available to him when he charged personal expenses to the company credit cards: transcript at p 117. Mr Waters said he could not explain why those third-party payments were treated in that way (transcript at p 116) although he added he was unwell throughout this period and hospitalised for part of it. As Mr Arnold pointed out, that evidence of incapacity is difficult to reconcile with the fact the statements and ledgers appear to demonstrate Mr Waters had personal expenditures during this period of around \$1 million: transcript at p 117. Mr Arnold suggested to Mr Waters the evidence of such extravagant spending in that period is particularly striking in circumstances where the company's income tax returns for that year (exhibit 2.2) disclosed total profit of only \$82,963 on income of \$1,918,174. Mr Arnold said he had a book-keeper who would have made those entries, but he agreed the book-keeper was not called to explain what or why she had done: transcript at p 119. The exchange continued:

Mr Arnold: And I put it to you that Leslie populated the ledger at your – the journal for the loans related entities at your direction?

Mr Waters: I – I don't recall that, but I don't believe so, no. She would have just put anything down as a personal expense for me through my loan account to be repaid at a later date.

Mr Arnold: But you directed her - - -?

Mr Waters: It's not income, it's a loan.

Mr Arnold: Yes, you directed her to increase the loan balance?

Mr Waters: No, I did not. I did not direct her to increase anything.

Mr Arnold: If you can go to page - - -?

Mr Waters: How could I? I was basically incapacitated at that time.

Mr Arnold: If you can go to page 27 of the general ledger, which is exhibit 2.4. And then, if you go down the page to 15 August 2012, you'll see a credit amount of \$25,000?

Mr Waters: Yes.

Mr Arnold: That has no notation in the memo section, does it?

Mr Waters: I've got no – I'm not sure, I - - -

Mr Arnold: So I put it to you that Leslie, or whoever the bookkeeper was, wouldn't have known to assign this to the shareholders loan account unless you directed her to do so?

Mr Waters: Possibly, yes.

Mr Arnold: So the loan account was populated at your direction?

Mr Waters: This is a long time ago. I can't – I can't answer or – I can't remember. It's 2012.

49. Mr Arnold referred to several other payments that appeared to have been credited to the loan account before the following exchange occurred (transcript at p 120):

Mr Arnold: I put it to you that these amounts are income that you're crediting to the loan account to shield your income from the commissioner?

Mr Waters: No, that is not true. I haven't – I haven't – I've never tried to hide my income from the commissioner. All I've tried to do is keep my business afloat.

50. At a minimum, this evidence suggests Mr Waters is not able to adequately explain the transactions that were occurring, and why so many of the payments were accounted for as loans. That flaw in the applicant's evidence became clearer as the cross-examination wore on, as is apparent from the following exchange (transcript at pp 120-121):

Mr Arnold: If we could go to page 41. So you'll see there a net activity of \$80,613?

Mr Waters: Yes.

Mr Arnold: But in reality, the activity through that loan account was in excess of \$1 million?

Mr Waters: Yes, but there's a lot of loans there, Mr Arnold. They're not income.

Mr Arnold: So your proposition is - - -?

Mr Waters: Loans from - - -

Mr Arnold: Each of those credit entries represents loans from other entities totalling a million dollars in one year?

Mr Waters: It wouldn't – wouldn't – I don't think all of them would be but I'd say most of them would be.

Mr Arnold: Well, I put it to you that that's - - -?

Mr Waters: You've got to understand, I – during this time, I was suffering from stage 4 Chron's disease. I don't know if you know anyone who has Chron's disease, but it's the closest thing you can get to bowel cancer, all right. It is a horrible disease. I couldn't work like I normally could. I was relying on friends and family for three – almost three years, to help me get through. And I eventually got through it and repaid everybody. And I'm sorry that my bookkeeping isn't up to your standard, but when you – when you're going through something like that, it's the last thing you're really thinking of. You know, I - - -

Mr Arnold: I put it to you that this is a deliberate omission by you to shield your income from the commissioner?

Mr Waters: No, that is completely incorrect.

Mr Arnold: This is the first we've heard of \$1 million in loans from your friends or clients. I put it to you that you are making that up?

Mr Waters: So – I am not making that up. Would you like my medical records? Would you like to see all the photos? [Emphasis added]

51. Taken at its highest, Mr Waters is unable to explain all the payments during this period and how they were recorded because he was stricken with illness.

52. Treating various payments to the company as if they were loans was a feature of the applicant's evidence in the years that followed. For example, when Mr Arnold asked about a payment from an unidentified third party being charged to the loan account in July 2013 without any notation that identified it as a loan from that third party, Mr Waters responded (transcript at p 123):

That would've been from family or friends. Anything during 2013-14 were people helping me survive while I was in hospital or while suffering from the symptoms of Crohn's disease, and I'm able to work efficiently.

53. That blanket explanation was not available in respect of other payments recorded in the ledgers (exhibit 3.6) that were connected to contractors. When asked why a payment received from a firm of bricklayers in October 2013 would be treated as a loan, Mr Waters became flustered and was unable to offer a clear answer. He said he could not remember and questioned whether the ledger was accurate: transcript at pp 123-124. I should say that Mr Oliver objected to the line of questioning at this point. He observed Mr Waters was not an accountant and may well be at a disadvantage when being cross-examined over

entries in spreadsheets and accounts: transcript at p 125-126. I accept that is so, but that is the risk when the taxpayer is trying to recall and explain inadequately documented transactions.

54. Mr Arnold asked Mr Waters in cross-examination (transcript at p 128) how the company could claim to be paying out over \$777,000 in business expenses in the 2014 year of income (recorded in the ledgers at p 35 of exhibit 3.6) when the company's tax returns (exhibit 3.2) showed a total income of just \$100,748. Mr Waters was unable to explain that beyond asserting that the company was in receipt of loans. When pressed to explain how particular payments were determined to be loans in the absence of other records, Mr Waters acknowledged he would have instructed the book-keeper to record those payments as loans – and he insisted he would not have done so if they were not legitimate loans: transcript at p 130.
55. The quality of Mr Waters' evidence did not improve when questioned about transactions in the general ledger and other accounts relating to the 2015 year of income. The ledger (exhibit 4.5) records total expenditure exceeding \$1 million with credits of just under \$900,000. Mr Waters denied (transcript at p 131, 133) all the amounts expended related to personal expenses of his, but he acknowledged at least some of those amounts were clearly not business expenses. Mr Arnold suggested Mr Waters did not have the resources available to him make loans to the company that would cover those expenses. (Mr Arnold took Mr Waters to his individual tax return that year reproduced at document T6 at p 160 - which showed income of \$132,195.) Again, Mr Waters referred to the existence of undocumented loans contributed by friends and associates, including business contractors, that that made up the difference. When challenged about a payment received from Mr Hayward, the supposed joint venturer, Mr Waters speculated (transcript at p 132): "Richard would have put that money in – I'm assuming that money was for his share of the deposit for that site."
56. That evidence was all very confusing. I accept Mr Waters may have been at a disadvantage when explaining those affairs. When challenged about the quality of his explanations, he protested (not unreasonably): "I'm not a bookkeeper. I don't understand numbers like this. I'm not an expert. I'm just a builder": (transcript at p 130). When asked why he did not call his book-keepers to explain the process they followed in preparing the

books, Mr Waters repeatedly said the Commissioner was welcome to call them if he wished: transcript at pp 130, 132. Again, that is not how this process works.

57. The same observation can be made about Mr Waters' evidence in relation to the 2016 year of income. As with the preceding years, he was shown the general ledgers in relation to that year of income in cross-examination. He was asked about the obvious personal expenses that appear to have been met by the company and charged to the loan account. These included a hotel bill from the Waldorf-Astoria in New York which Mr Waters acknowledged was incurred on a delayed honeymoon with his wife: transcript at p 138. The ledgers relating to the loan account disclosed credits of \$1,404,781.52 and debits in the amount of \$1,723,981.27 (exhibit 5.4 at p 46). Mr Waters' own tax returns for that year (reproduced at document T7 at p 166) showed he was not earning nearly enough money to extend loans out of his own resources. When asked about the source of the monies, Mr Waters again insisted the monies were advanced by friends and associates like a Mr Wasef who was said to have loaned \$100,000 during this period. The following exchange captures the essence of his evidence (transcript at p 137):

Mr Arnold: So is this a loan from Mr Wasef, is it?

Mr Waters: This would definitely be a loan from Mr Wasef.

Mr Arnold: And you haven't given evidence about it in these proceedings before have you?

Mr Waters: I've never been asked this question before in these proceedings.

Mr Arnold: So far today you've given evidence in the hundreds of thousands, if not over a million dollars, in loans made by colleagues and associates?

Mr Waters: Yes, well when you run a construction company, there's no small bills. Everything you do - - (Indistinct) when you do developments is large amounts.

...

Mr Arnold: But you didn't have the means to repay any of these loans, did you?

Mr Waters: Of course I had the means. Most of them have all been repaid.

Mr Arnold: I put it to you that these aren't loans at all?

Mr Waters: Well you're wrong, Mr Arnold. Why don't you call Mr Wasef? Why don't you call Mr Richard Haywood, or Damien Hadzic and ask them?

58. Once again, that is not how this process works. Mr Waters is not able to offer a coherent or complete explanation of the transactions through the accounts. He seeks to fill the gaps in the numbers by suggesting he was in receipt of a range of undocumented loans from friends and associates. When challenged about the inadequacy of that explanation, he seeks to reverse the onus by suggesting the Commissioner should have called his book-

keeper or some of the creditors to verify what went on. Given he was not across the detail of the accounts and was telling an unlikely story about the kindness and informality of third-party creditors, I am not inclined to accept his evidence about the loans without some corroboration.

59. Mr Waters employment circumstances changed in the 2017 year of income. A special assessment was issued in respect of that year. Mr Waters had begun to work for a former business associate in Dubai sometime in 2015, but he said he was working in Dubai full-time from some point in 2016. It is not clear what that work had to do with Triswat. The general ledger at exhibit 6 nonetheless records significant expenditures on hotels, airline tickets and other obviously personal expenses throughout this period. While Mr Waters did not deny those expenditures occurred, there was little other evidence from which I could draw any conclusions about the correct (or more nearly correct) amount of taxable income.

CONCLUSION WITH RESPECT TO MR WATERS' LIABILITY FOR PRIMARY TAX

60. I have made clear the taxpayer in a case such as this must discharge the onus of establishing their correct (or more nearly correct) taxable income in each of the years under review. Mr Waters provided a limited amount of documentary evidence, some of which was still being drip-fed to the Tribunal and the Commissioner by Mr Oliver after the hearing commenced. The evidence of Mr Oliver is of limited value: he purports to provide an analysis in the form of spreadsheets that attempt to make sense of the available evidence and explain individual transactions. That evidence, taken at its highest, is incomplete on its face. Mr Oliver admits he cannot explain all the transactions. The explanations he did offer are necessarily given limited weight given he did not have first-hand knowledge of the transactions in question. I note witnesses who might have given evidence – like individuals said to be creditors who might explain particular deposits, or the various bookkeepers who might explain their understanding of transactions – were not called to give evidence. Their evidence would plainly have been of assistance, and the failure to call those witnesses was not adequately explained.
61. All that meant the evidence of Mr Waters was particularly important. Unfortunately, he was of limited assistance because he could not recall or explain the detail of many of the transactions in question. I would add that an important component of the story he told –

that he was the beneficiary of significant and regular undocumented loans from business associates - seems unlikely on its face. Given that fact and given his interest in the outcome of the proceedings, I am not satisfied his evidence can be given significant weight.

62. Given the state of the evidence, I am unable to conclude Mr Waters has discharged his onus in relation to any of the years under review. I should add there was no evidence presented that would enable me to conclude there was no proper basis for the Commissioner's opinion that there was fraud or evasion. The objection decision with respect to his substantive tax liability must therefore be affirmed.

PENALTIES IN RELATION TO MR WATERS

63. I turn next to the question of administrative penalties. The penalties were imposed on Mr Waters pursuant to s 285-75(1) of Schedule One to the Administration Act for each year under review apart from the 2017 year which was a special assessment.
64. The Commissioner determined the penalty should be imposed at a rate of 75% on the amount of the shortfall in 2013-2016 years income. The penalty was levied at the rate of 75% because the Commissioner concluded the shortfall was the product of a false statement that resulted from intentional disregard of the taxation laws by the taxpayer or his agent within the meaning of item 1 of s 284-90(1).
65. The taxpayer bears the onus of establishing the penalty should be levied at a different rate (or not at all). In this case, Mr Waters says the penalty should be levied at no more than 25%. That rate is imposed where there has been a failure on the part of the taxpayer or his agent to take reasonable care in complying with taxation laws: item 3 of s 284-90(1).
66. I acknowledge the taxpayer faced difficulty in this case in producing documents when he is in prison, but the dispute with the Commissioner predates his incarceration. I also acknowledge Triswat was placed in external administration, which may also have created an obstacle to obtaining documents at the hearing. But Mr Waters has not provided a basis for me to reach a different view about the rate of penalty. While the failure to keep and produce proper records created an insurmountable obstacle to the taxpayer's success in this case, it is not clear that was the only shortcoming in his case. Indeed, as I suggested to Mr Arnold in submissions, it was difficult to discern from the evidence

precisely what was going on in Mr Waters' affairs. It follows it is not appropriate for me to change the rate of penalty.

67. That leaves only the question of remission. The power to remit all or part of a penalty is an unfettered discretion that is available to relieve an individual taxpayer from an outcome that is harsh in all the circumstances.
68. I acknowledge the taxpayer has faced significant health challenges over time. I also acknowledge his situation has been complicated in recent times by his incarceration. But it was not clear how any of that suggests the imposition of the penalty harsh when one has regard to the objectives of the penalty regime.
69. The taxpayer has not satisfied me it would be appropriate to remit any part of the penalty. It follows the objection decision with respect to penalties must also be affirmed.

MRS WATERS' CASE

70. Mrs Waters' statement of facts, issues and contentions was devoid of useful information. It did not engage with the fundamental question she faced in these proceedings: whether she discharged her onus of establishing the correct, or more nearly correct amount of her taxable income in the years under review. The taxpayer allowed herself to be distracted from that task by making complaints about the failure of the Commissioner to engage with her during the audit and objection process. The statement asserted she was not hitherto afforded a proper opportunity to provide evidence supporting her position.
71. Even if that complaint were justified, Mrs Waters has failed to take proper advantage of the opportunity to challenge the objections in these proceedings. She did not provide a statement in advance of the hearing despite being given repeated opportunities to do so. Indeed, it was not clear in the lead up to the hearing whether Mrs Waters intended to persist with her application for review. At the last minute, it seems, it was decided she would give oral evidence. Her case consists of that evidence and some spreadsheets and submissions provided by Mr Oliver. I have already explained why Mr Oliver's spreadsheets and his submissions are of limited weight given Mr Oliver was not a direct witness to the transactions in question.

72. I should add that no other witnesses were called who might support Mrs Waters' case. It follows the evidence in relation to her case is even more sparse than the material provided in relation to Mr Waters. The outcome of the case therefore turns on the quality of her oral evidence at the hearing.
73. Out of fairness to the Commissioner, I agreed (as I decided in relation to Mr Waters) that Mrs Waters could give her evidence-in-chief at the hearing before adjourning so the Commissioner might consider his cross-examination. Mrs Waters was then recalled at the resumed hearing for cross-examination. It was agreed that both parties would then prepare written closing submissions.
74. The examination-in-chief was conducted by Mr Oliver with respect to spreadsheets he had prepared in which he attempted to assign explanations to particular transactions. The first part of his examination of Mrs Waters descended into exactly the sort of line-by-line analysis that the authorities say should be avoided in onus cases. While Mr Oliver dealt with each year consecutively with reference to the spreadsheet, his questions (and Mrs Waters' answers) were difficult to follow. In fairness to Mr Oliver, that was most likely because the underlying records were confusing, and Mrs Waters was inevitably trying to reconstruct her affairs in the witness box from her memory.
75. The difficulty with what the underlying records disclosed was effectively acknowledged in cross-examination in the following exchange (transcript at p 196):

Mr Arnold: So you and your husband would intermingle your accounts and move money from one to the other to pay loans or bills or things of that nature?

Mrs Waters: Absolutely. Quite frequently to pay for deposits for houses, stamp duty. I lent it to him if I had it in my account and he lent it to me by – if he had it. Absolutely.

76. The cross-examination was comparatively brief. It follows the examination-in-chief was particularly important.
77. In the 2014 year of income, Mrs Waters identified and sought to characterise several smaller transactions (including expenditures and cash withdrawals) in the bank statements, although she acknowledged at least some of them were impossible to explain: transcript at p 59. While some items of expenditure were self-explanatory, she was plainly guessing in relation to other transactions during this period: transcript at p 60.

78. Mrs Waters also referred to the purchase and sale of several properties, including one that I infer was the family home in the Canberra suburb of Forde. Those properties (or some of them) were under construction. Mr Oliver's spreadsheet suggests a large amount was apparently derived from the sale of one (and perhaps two) of those properties during the 2014 income year. I infer at least one of the properties was the family home since Mr Oliver's spreadsheet describes the amount associated with that sale as a 'non-capital gain surplus'. Mr Arnold pointed out in written submissions that Mrs Waters was not asked to explain this amount, and noted there was no evidence before the Tribunal to the effect the property in question qualified as the principal place of residence which attracted the relevant exemption.
79. The evidence of Mrs Waters does not discharge the onus of establishing her taxable income in the 2014 year of income. Mr Arnold points out Mrs Waters' evidence never actually settles on a particular figure; even Mr Oliver was unable to do more than suggest a range of possible figures in his submissions. That is unsurprising in circumstances where, at a minimum, Mrs Waters is unable to explain at least some of the transactions recorded in the bank statements.
80. The same criticism can be made of the evidence provided in relation to the 2015 year of income. Mr Oliver, in his submissions, suggests a range of possible figures for the taxable income given that he acknowledges some of the transactions in the bank accounts cannot be explained. There were also question marks about the treatment of proceeds of sale of properties. It appears Mrs Waters was claiming she disposed of two primary residences during the same year of income which gave rise to an exempt capital gain. Mr Arnold pointed out in submissions that one of the properties is referred to in Mrs Waters' tax return as the source of rental income during that year. That anomaly had been discussed in the audit report, so it was not new evidence.
81. Mrs Waters' evidence did not adequately explain those sale transactions nor did she establish why the proceeds of the sale in each case were exempt from capital gains. The gaps in her evidence prevent her from discharging her onus in relation to the 2015 year of income.
82. The evidence in relation to the 2016 year of income suffers from some of the same shortcomings as the preceding years. Once again, Mrs Waters was unable to explain

several transactions in the bank statements. Mr Oliver acknowledged this gap in his submissions and dealt with it by suggesting it was possible to estimate the taxable income within a broad range.

83. That is unsatisfactory, but there was more. Mrs Waters was asked about two large cash deposits made into the bank account by one of her husband's business associates. She insisted these amounts were loans. When Mr Oliver asked to explain the purpose of the second deposit in the amount of \$405,000 on 5 May 2016, the following exchange occurred – complete with interjections from Mr Waters (transcript p 61):

Mr Oliver: Okay and then there's \$405,000 on the 5th of the 5th?

Mrs Waters: Yes, again for Peter. I believe this would have been for a purchase of a property or a property he wanted to come in with in Canberra - what's the suburb?

Mr Waters: Yarralumla.

Mrs Waters: Yeah, that one or the one near the university.

Mr Waters: That was Yarralumla.

Mr Oliver: Yes, I think I've got a settlement stating that you purchased a property in Yarralumla and I think you settled just in July. I'm guessing that - - -?

Mr Waters: Hunter street - - -

Mr Oliver: Yes, that's right.

Mr Waters: Yes.

Mrs Waters: Yes.

84. The weight which I can give that evidence is almost certainly impacted by the leading questions from Mr Oliver, and the interventions of Mr Waters. (I had repeatedly asked Mr Waters not to assist his wife, but he was difficult to restrain.) But even if I leave those concerns to one side, Mrs Waters does not offer anything in her oral evidence that would enable me to be satisfied the amounts advanced by the business associate were, in fact, loans. There is no loan agreement in the evidence and there is nothing to suggest Mrs Waters was familiar with the terms of the loans – indeed, she did not appear to be clear on the properties which were to be purchased using the funds. (In cross-examination, she confirmed she was not privy to the conversation between her husband and the associate where the terms of any loan would have been fleshed out: transcript at p 196.) That is a problem in circumstances where there must be a question over whether the amounts advanced were actually loans, or whether they should be characterised as an investment as part of a joint venture or partnership, or a payment for some other purpose.

85. The uncertain state of the evidence inevitably means Mrs Waters has failed to discharge her onus in respect of the 2016 year of income.
86. The evidence in relation to the 2017 year of income was also difficult to follow. The spreadsheet prepared by Mr Oliver records what I understand to be regular payments into Mrs Waters' account in respect of salary she derived from Triswat. (Mr Oliver at one stage suggested Mrs Waters was employed by a consulting firm – albeit one that may have been controlled by her husband – but Mr Waters confirmed in his evidence-in-chief that Mrs Waters was employed by Triswat: transcript at p 45.) Those payments are not obviously irregular, but there were others which raised more questions. For example, there was a \$22,000 amount described in Mr Oliver's spreadsheet as a loan from Triswat that Mrs Waters breezed over in her evidence-in-chief, but which she struggled to explain in cross-examination. Mr Arnold also asked her about several other transactions mentioned in general ledger that she struggled to explain.
87. Given the paucity of the evidence, it is difficult for Mrs Waters to discharge her onus. Her limited knowledge of individual transactions is probably unsurprising given the chaotic way in which the couple conducted their financial affairs. While Mr Oliver eventually proposed a precise amount of taxable income in this year of income (as opposed to the range of figures he suggested in earlier years), it is impossible to be satisfied on the balance of probabilities that it was the correct (or more nearly correct) amount.
88. Finally, I note Mrs Waters did not initially challenge the finding the Commissioner made as to fraud or evasion in relation to the 2014 year of income. She did not clearly seek leave although I infer from Mr Oliver's submissions that was intended. While I would give leave, there was no evidence presented in her case which would enable me to form a different opinion in any event.
89. It follows the objection decision with respect to Mrs Waters' substantive tax liability must be affirmed.

PENALTIES IN RELATION TO MRS WATERS

90. That leaves only the question of penalties. Mrs Waters was also assessed as being liable to pay administrative penalties in respect of the 2014-2016 years of income. As with Mr

Waters, the penalty was levied at the rate of 75% of the shortfall on account of Mrs Waters or her agent exhibiting reckless disregard for the taxation laws.

91. In his statement of facts, issues and contentions, the Commissioner argued the returns lodged on behalf of Mrs Waters “were so manifestly, significantly and repeatedly incorrect that they could only be result of intentional disregard on the part of the applicant”. That is, with respect, extravagant. There might indeed be other explanations: it is *possible* Mrs Waters or her agent were simply reckless. The problem is that Mrs Waters did not present evidence that would enable me to form that view. In the circumstances, I am not satisfied she has discharged her onus of establishing a different rate of penalty (or no penalty) was appropriate.
92. The same can be said on the question of remission. Mrs Waters has not provided any evidence which provides a basis for finding it would be appropriate to remit all or part of the penalty. To the extent that she has described her circumstances, there is nothing which suggests the penalty is harsh or otherwise inappropriate having regard to the objectives of the penalty regime. It follows the objection decision with respect to penalties in each of the relevant years must be affirmed.

*I certify that the preceding 92
(ninety-two) paragraphs are a
true copy of the reasons for
the decision herein of Deputy
President Bernard J McCabe*

.....[SGD].....

Associate

Dated: 27 May 2024

Date(s) of hearing: 24 October 2022; 26 October 2022; 13 March 2023 and 14 March 2023

Representative for the Applicant: Mr Simon Oliver

Counsel for the Respondent: Mr Thomas Arnold

Solicitors for the Respondent: Australian Taxation Office

EXHIBIT	DESCRIPTION OF EVIDENCE	DATE OF DOCUMENT	DATE RECEIVED
2.2	Electronic Lodgement Declaration of Triswat Constructions Pty Ltd	Various	14 December 2021
2.3	Triswat Financial Statements	2013	14 December 2021
2.4	Triswat Constructions Pty Ltd General Ledger [Detail]	13 December 2021	14 December 2021
3.2	PayG Payment Summary	2014	14 December 2021
3.6	McGrath Property Management 10 Owner Income and Expenditure Spreadsheet for July 2013 to June 2024	14 December 2021	14 December 2021
4.5	Triswat Constructions General Ledger	13 December 2021	14 December 2021
5.4	Triswat Constructions Pty Ltd 1/07/2015 To 30/06/2016	14 December 2021	14 December 2021
6	Triswat Constructions Pty Ltd 1/07/2016 To 30/06/2017	14 December 2021	14 December 2021
18	Affidavit of Simon Oliver	10 June 2022	11 June 2022

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