



## DEFENCE FORCE WELFARE ASSOCIATION

*Patron-in-Chief: His Excellency General the Honourable Sir Peter Cosgrove AK MC (Retd)*

24 June 2019

### **URGENT NOTICE TO VETERANS RECEIVING CLASS A/B INVALIDITY BENEFITS**

Many of you are aware of the Veteran appeals at the AAT against the Australian Taxation Office (ATO) decisions regarding taxation of DFRDB and MSBS Class A and B Invalidation Benefits<sup>1</sup>. Areas being appealed include the following:

1. **Taxation of Lump Sum Back Payments of Invalidation Benefits.** Some veterans granted a retrospective medical discharge, have received a back payment of several years Invalidation Benefit as a lump sum. A veteran is appealing against the taxation of the full lump sum in the year of receipt. In the same case, the veteran had to repay a commuted amount previously received from DFRDB for the earlier normal discharge. The veteran is appealing against the assessment resulting in paying tax twice on the commuted amount.
2. **Taxation of Invalidation Benefits as a Pension.** Veterans are appealing against the ATO Ruling that Invalidation Benefit payments meet the definition of a pension under the Superannuation Industry (Supervision) Regulation (SISR) 1994. Veterans argue that the payments do not meet the definition of a pension and therefore, by default, should be treated as a superannuation lump sum and therefore regarded as disability superannuation benefit attracting more favourable tax treatment..

If the veterans' appeals are successful at the AAT, it may mean that other veterans can appeal against their past assessments and obtain a refund. However, the ATO may try to block this. Look at history.

In the case of *Goodfellow v Commissioner of Taxation* (1976)<sup>2</sup>, the veteran was successful appealing an ATO decision concerning taxation of a Class A Invalidation Benefit under the old Defence Forces Retirement Benefits (DFRB) Act 1948. Other similarly taxed veterans believed they would benefit from the decision, however there was an immediate change to the legislation after the *Goodfellow* decision.

This change meant that all future tax assessments had to be based on the new "remedial" legislation not the old legislation on which *Goodfellow* was successful. Further, the Commissioner of Taxation claimed that under the Income Tax Assessment Act Section 170, other veterans similarly overtaxed in the past, could not be re-assessed and obtain a refund unless they had protected their position by lodgement of a valid objection prior to the *Goodfellow* decision.

#### **Protect Your Interest.**

The ATO is experienced in initiating "remedial" legislation to overcome court decisions.

DFWA is not authorised to give financial advice, however, DFWA strongly recommends that any veteran who is receiving or has previously received Class A or Class B Invalidation Benefit payments consult their accountant or financial/tax advisor about action they could take to protect their position. Such action may involve lodgement of an objection to earlier income tax assessments prior to any decision from the veteran cases currently being heard at the AAT in Brisbane. (A definite date for a decision in these cases is not yet known.)

For further information contact DFWA at (02) 5104 3106.

*(DFWA acknowledges and thanks Dave Burrows for drawing our attention to the Goodfellow case.)*

<sup>1</sup> Wayne Douglas vs Commissioner of Taxation. Brisbane AAT 2016/6964 and 6965; MSBS:

Peter Burns Vs Commissioner of Taxation. Brisbane AAT 2017/1647-1649; 2017/1663.

<sup>2</sup> Page 493-4 of [http://www7.austlii.edu.au/cgi-](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/journals/FedLawRw/1977/32.html?stem=0&synonyms=0&query=Goodfellow%20v.%20Federal%20Commissioner%20of%20Taxation)

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