

GENERAL ADVICE FOR VETERANS RECEIVING CLASS A OR B INVALIDITY BENEFITS

The AAT Decision. Justice Logan ruled that:

- CSC Class A and B Invalidation Benefit payments are a “superannuation benefit”, a “superannuation lump sum” and a “disability superannuation benefit” and are required to be treated in accordance with s 307-145 of the Income Tax Assessment Act 1997 (Cth) (ITAA97).
- CSC calculations of tax on DFRDB Invalidation Benefit lump sum payments resulting from a Retrospective Medical Discharge were incorrect and restitution was required.

ATO Website. The ATO advises:

- that it will continue to administer the taxation of invalidity benefits paid by the DFRDB Scheme and MSBS in line with their current view that the invalidity benefits are superannuation income stream benefits and not as a disability superannuation benefit as decided by the AAT.
- Veterans should declare invalidity benefits as a superannuation income stream benefit in Tax Returns and not in accordance with the AAT decision.
- Veterans should not exercise their lawful rights to object to the ATO Income Tax assessments until the appeals process is finalised.
- Veterans that they will not be disadvantaged and their full rights will be protected if they don't lodge objections now.

BUT –

This is the same ATO which had the law changed and backdated to remove Veterans' accrued rights in the middle of the AAT Hearing in order to overcome a “fatal flaw” in their argument.

This is the same ATO which is currently appealing to remove Veterans' accrued rights which were retained by the AAT decision. Also, claim a right for review will be protected is not the same as saying the review will result in a favourable decision.

This is the same ATO which encouraged Veterans to drop their original objections in 2017 and to claim tax relief by another means and deliberately not tell the veterans that the “loophole” which they advised veterans to use, was closing. This caused many veterans a lot of financial hardship.

Remember the Goodfellow Case where, after a decision in favour of veterans against the ATO, the government immediately introduced a law which prevented the benefits of that decision being claimed by any veteran who had not previously lodged an objection to the ATO decision to protect their rights. The government has shown it is willing to change and backdate laws to undermine accrued rights.

DFWA GENERAL ADVICE

Each Veteran's case is different, and this advice is general only and should not be relied on for specific veteran situations. DFWA recommends all Veterans who are receiving any CSC Class A or Class B Invalidity Benefits, or have received them in the past, to seek professional financial advice, and consider the following:

- Complete the Tax Return for this Financial Year (2019-20) in line with the AAT decision that Invalidity Benefits to be treated in accordance with s 307-145 of the Income Tax Assessment Act 1997.

Example: Include the payment as a lump sum in the Return and in "Additional Information" state: *My Invalidity Benefit payment has been reported by CSC as a superannuation income stream. I submit the payment should be treated as a superannuation lump sum in accordance with s 307-145 of the Income Tax Assessment Act 1997.* This establishes your claimed right and should result in the return being processed as an income stream and not delay your assessment.

- To exercise your full taxpayer rights to object to tax assessments for this Financial Year and past Financial Years in line with the AAT decision as above.
- To exercise your full taxation rights to complain to the Inspector General of Taxation if the ATO delays your assessment unreasonably.

The ATO will still assess your Tax as per their current view. The advised actions are to strengthen your claim to accrued rights in the event of a successful outcome when the appeal process is completed and if the government introduces "remedial" legislation to negate a Court decision in favour of the Veterans.

Note. Further detail is available in Current Issues "Veterans Invalidity Payments and the ATO" on DFWA Home Page.

INDIVIDUAL ADVICE

DFWA is not qualified to give individual financial or taxation advice and recommends that recipients of Class A and B Invalidity pensions from CSC seek professional financial or taxation advice.

DFWA is grateful for advice received from Daniel Paratore from Cleary Hoare Solicitors and from Lorraine Harman from Acumen Accounting.