

Media Release

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ONUS IS ON TAXPAYERS TO PROVE MAIN RESIDENCE STATUS

A recent Administrative Appeals Tribunal decision serves as a reminder to taxpayers that they need to ensure that a house is actually a main residence before claiming the main residence exemption, according to chartered accounting and advisory firm BDO Kendalls.

BDO Kendalls partner, Eddie Chung, says that the case, *Erdelyi and Commissioner of Taxation* [2007], highlights that the onus is on the taxpayer to prove that any tax assessment is excessive or incorrect.

“In this case, while the evidence against the taxpayers’ house being their main residence was circumstantial at best, it was not up to the Tax Office to prove that the house was not the main residence,” Mr Chung says.

“Rather, the taxpayers had to prove that the house was their main residence.”

Mr Chung says the case involved a couple who had purchased a block of land with their daughter, on which they constructed a house.

“They sold the house soon after and claimed that it was their primary residence,” Mr Chung says.

“However, the couple had only moved bare essentials into the dwelling and did not notify any authorities of their change of address.

“There was no refrigerator or washing machine in the house and no telephone service had been installed.

“They only items that had been moved into the house were the main bedroom furniture, a television set, some casual chairs and table, some bar stools, a small amount of crockery and utensils, their clothing and personal items.

“Additionally, the couple could not recall whether they took any steps towards notifying the relevant authorities or institutions of their change of address.”

Mr Chung says that the couple’s level of household consumption was exceptionally lower than that of ordinary households.

“Electricity accounts for two three-month periods showed that the couple’s expenditure for

electricity over these periods was less than \$25.00 for each three-month period,” Mr Chung says.

“In contrast, the national average household spending on electricity is \$17.00 per week.”

Mr Chung says that in this case, the Tribunal found that the evidence did not support the couple’s claim that the house was their main residence.

“Capital gains tax on the sale of the property was applied, as was a penalty tax,” Mr Chung says.

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Note to editors:

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