



Commissioner of Taxation

Senator Sam Dastyari
Chair, Senate Economics References Committee

Dear Senator Dastyari,

Thank you for the opportunity to attend the Committee's hearings on Wednesday 8 April 2015 and Wednesday 22 April 2015 in Sydney in my capacity as Commissioner of Taxation.

On 7 April 2015 you sent to me a letter seeking further information regarding an internal ATO office memo and information on superannuation tax concessions. Please find attached a response to your request regarding related party transactions that went from Australia to countries used as tax havens and superannuation tax concessions. Our officers are available to assist you should you have any questions or require assistance in interpreting this data.

In addition to this, we would also like to take this opportunity to provide the committee with responses to eight Questions on Notice taken during the first hearing.

Finally, I would like to provide qualification to information provided during the hearing. I refer to information on page 40 of the Hansard. Senator Milne asked 'Could you confirm for a start that the Tax Office pays Google for services for a website and/or advertising or any other services or goods that Google may provide the tax office?'

I would like to note for the record that for the 2014-15 financial year, the ATO has paid (i.e. has already paid or committed to paying) \$337,045.03 in gross media for Google advertising.

This includes:

- Google AdWords search advertising (sponsored links when campaign-related keywords are inputted to Google search engine)
- Google Display Network (digital display animated ads and plain text advertising across a range of websites that sell advertising space to Google)
- YouTube advertising (video advertising that normally runs ahead of other videos on YouTube).

All amounts are paid to Mitchells Adcorp Alliance, the Federal Government's master media agency, not to Google directly.

Please do not hesitate to contact me if you wish to discuss any of the above matters.

Yours sincerely

Chris Jordan
Commissioner of Taxation
24 April 2015

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'Related parties' transactions that went from Australia to countries used as tax havens

On 7 April 2015 the committee sent the ATO a letter seeking further information regarding an internal ATO office memo. One of the specific requests for information from that memo was for:

'A year by year breakdown of how many so-called 'related parties' transactions went from Australia to countries used as tax havens for the last 5 financial years. While I note the definition of a 'tax haven' is open to interpretation, a clear list of identified tax haven nations has been previously used by the OECD. For the committee to conduct its work it is important to identify if these transactions represent a growing trend;'

The ATO is able to provide three key pieces of data that may assist the committee:

1. The total value of dealings with specified and other tax preferred jurisdictions reported on the International Dealing Schedule (IDS) in the 2013 income year
2. The growth in the count of instances that specified and other tax preferred jurisdictions are reported in the Schedule 25A, 2007 to 2011 income years, and
3. The growth in the count of controlled entities in specified and other tax preferred jurisdictions reported in the global annual reports of the 110 largest companies.

In interpreting this data, it is important to bear in mind the distinction between related party transactions and profit shifting; definitional issues as to what constitutes a specified and other tax preferred jurisdictions; and some of the limitations of the data that has been provided.

International related party transactions and profit shifting

International related party transactions are a necessary and legitimate part of a multinational entity's global operations. The value or pricing of such transactions are generally subject to the internationally agreed transfer pricing rules, which ensure that arm's length prices are charged for goods and services between related parties. International best practice to determine arm's length pricing is represented by the OECD Transfer Pricing Guidelines, which underpins the design of Australia's domestic transfer pricing rules.

Accordingly, in interpreting the data on related party transactions, it is important to recognise that the dollar value of related party transactions does not represent the amount of profits that are being artificially shifted from one jurisdiction to another. Rather, these figures

represent all business transactions between international related parties and do not differentiate between what is normal tax planning and aggressive tax planning

Tax havens

The OECD has not produced a comprehensive list of countries classified as tax havens since 2000, and since 2009 has not published any countries as being tax havens or otherwise ‘uncooperative’. In 2000, the OECD provided a list of ‘Tax Havens’ in its 2000 Progress Report and identified 35 jurisdictions that met the Tax Haven criteria.¹ The four key criteria that were determined by the OECD in 1998 were:

- No or nominal tax on relevant income
- Lack of effective exchange of information
- Lack of transparency
- No substantial activities.²

Subsequent to the above report released in 2000, the identified jurisdictions have since made formal commitments to implement the OECD’s standards of transparency and exchange of information.³ As such, there are no jurisdictions currently listed as an uncooperative tax haven and the OECD has refrained from referring to these previously identified jurisdictions as “tax havens”.

Nonetheless, the ATO requires taxpayers to disclose their transactions with ‘specified countries’ when filling out the IDS. There are currently 38 tax jurisdictions on the specified countries list (see attached list of specified countries - pages 9-11).

Whilst not appearing on the OECD list, it is clear that the committee has been concerned with the use of low tax jurisdictions (LTJs). We have previously analysed European LTJs (Luxembourg, Switzerland, Ireland and the Netherlands) along with Asian LTJs (Singapore and Hong Kong) and this data has been provided for your information.⁴

Data limitations

The ATO captures information regarding the total value of expenditure and revenue for an entity’s international related party dealings (IRPDs) via the International Dealings Schedule (IDS) - a supplementary schedule filed with the taxpayer’s income tax return. Taxpayers are not required to report the actual number of IRPD transactions.

¹ OECD, accessed 7 April 2015, <http://www.oecd.org/ctp/harmful/2090192.pdf>

² OECD, accessed 7 April 2015, <http://www.oecd.org/ctp/harmful/42469606.pdf>

³ OECD, accessed 7 April 2015, <http://www.oecd.org/countries/monaco/listofunco-operativetaxhavens.htm>

⁴ ATO, *Australia in the global economy*, 13 January 2015

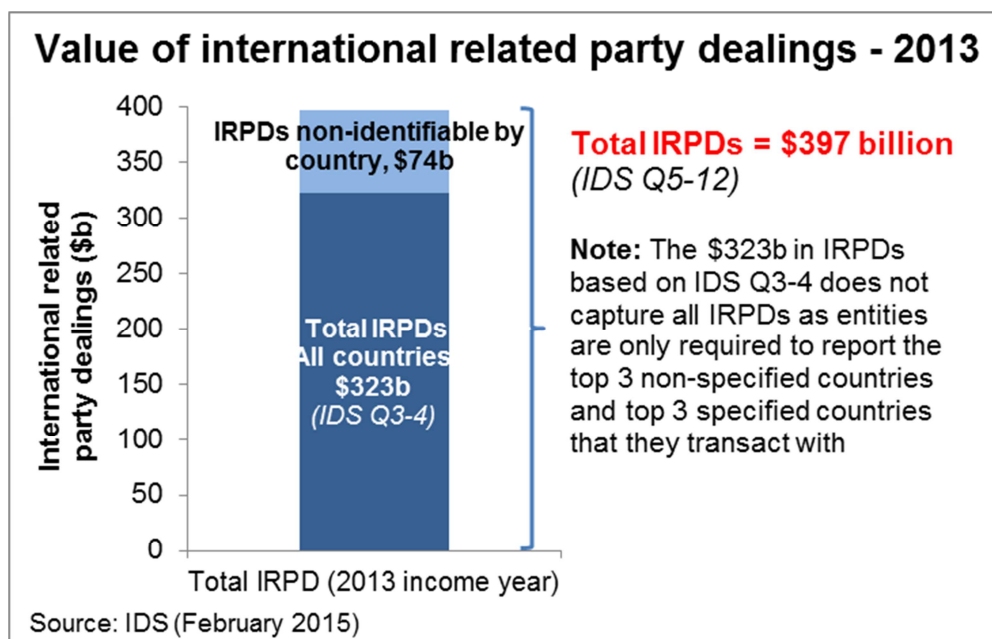
In 2012, the IDS replaced the previous disclosure forms including Schedule 25A (s25A) and International Dealings Schedule for Financial Services (IDSFS), which taxpayers were required to submit to the ATO in the 2012 and previous income years. The IDS captures significantly more detail around related party transactions than the s25A. The 2012 income year represented a transition year, where a large number of taxpayers continued to fill out the s25A rather than the IDS, resulting in an incomplete dataset for the 2012 income year. The 2013 income year therefore represents the first complete set of data the ATO has regarding IRPDs by value by country.

Owing to these data limitations from the transition in ATO schedules for reporting IRPDs, the ATO is not able to provide the value of IRPDs with specified and other tax preferred jurisdictions over the last five years.

Total value of IRPDS in the 2013 income year

Broadly, the IDS requires a taxpayer to report their IRPDs in two ways: by country location of the dealings, and by transaction type of the dealings. As such the taxpayer responses to these questions may not reconcile.

For example, as the IDS requires a taxpayer to only report the three largest specified and unspecified countries (by value of IRPDs) this aggregate value (\$323 billion) is less than the total reported IPRDs by transaction type (\$397 billion).



Most of the taxpayers in the 2013 income year that report their IRPDs on the IDS are companies and the total value of company IRPDs, on a transaction basis, is \$388 billion.

Only a small percentage (3%) of the IRPDs reported in the 2013 income year are with countries that are specified countries. However, 42% of IRPD flows are with LTJs in Asia accounting for 33% and Europe accounting for 9%.

2013, \$billions	IRPD Expenditure	IRPD Revenue	IRPD Total
Total IRPDs – Specified countries (n=38)	5	5	10
Total IRPDs – Asian LTJ (n=2)	61	48	109
Total IRPDs – Euro LTJ (n=4)	17	11	29
Total IRPDs – All other countries	114	61	175
TOTAL – ALL COUNTRIES (IDS Q3-4)	197	126	323
Note: The \$323b in IRPDs based on IDS Q3-4 does not capture all IRPDs as entities are only required to report the top 3 non-specified countries and top 3 specified countries that they transact with. As such, total IRPDs based on IDS Q5-12 (reported as transactions) is a more complete figure.			
TOTAL IRPDs (IDS Q5-12)	232	165	397
Companies	228	160	388 [^]
Trusts	4	3	7
Partnerships	1	1	2

[^]This 'companies' figure is quoted in the ATO's Submission to the 'Senate Inquiry into Corporate Tax Avoidance'
Note: Figures may not add up to the total due to rounding issues. Source: IDS (February 2015)

Growth in the count of instances that specified and other tax preferred jurisdictions are mentioned in the schedule 25a, 2007 to 2011 income years

Over the five years 2007-2011 the percentage growth in the count of instances that specified countries were reported on the Schedule 25A outpaced the all other jurisdictions.

Instances of jurisdictions reported on the S25A	2006	2007	2008	2009	2010	2011	2007-2011 growth
Specified jurisdictions (n=38)	403	415	480	525	452	574	NA
Annual growth (%)	NA	3%	16%	9%	-14%	27%	42%
Asian LTJ (n=2)	1,833	1,914	2,014	2,078	2,122	2,188	NA
Annual growth (%)	NA	4%	5%	3%	2%	3%	14%
Euro LTJ (n=4)	918	982	1,052	1,099	751	1,068	NA
Annual growth (%)	NA	7%	7%	4%	-32%	42%	9%
All other jurisdictions (n=194)	11,756	12,273	12,740	13,113	12,893	13,408	NA
Annual growth (%)	NA	4%	4%	3%	-2%	4%	14%

Growth in the count of controlled entities in specified jurisdictions and LTJs reported in the global statutory annual reports of the 110 largest companies

The annual reports of 92 of the 110 largest companies have been reviewed for connections to specified countries and LTJs. Annual reports provide a more complete picture of the reporting of specified countries and LTJs relative to the IDS in terms of the number of subsidiaries, but lack information relating to the flow of funds. These 92 companies reported 1,269 subsidiaries in specified countries and LTJs in 2013.

The most commonly reported countries in 2013 were Singapore (257), The Netherlands (227), Hong Kong (179) and Luxembourg (172) followed by Cayman Islands (80), a specified country, rounding out the top 5.

Data sources

- International Dealings Schedule (IDS, 2012 income year onwards)
- International Dealings Schedule Financial Services (IDSFS, 2009-2012)
- Schedule 25A (up to 2012 income year)
- ATO, Australia in the global economy, 13 January 2015. Link: <https://www.ato.gov.au/About-ATO/Research-and-statistics/In-detail/General-statistics/Australia-in-the-global-economy/>
- Global statutory company annual reports
- U.S Government Accountability Office (GAO), Large U.S Corporations and federal contractors with subsidiaries in jurisdictions listed as tax havens or financial privacy jurisdictions', December 2008
- OECD

International related party dealings

Table: Total expenditure and revenue for international related party dealings, all entities and all countries								
Schedules:	S25A	S25A	S25A	S25A, IDSFS;	S25A, IDSFS	S25A, IDSFS	S25A, IDSFS,IDS	IDS
Notes:	Derivatives, debt factoring and securitisation amounts are reported separately as part of IDSFS and IDS. These amounts were likely reported under the 'all other' label in the S25A.							
\$m	2006	2007	2008	2009	2010	2011	2012	2013
Stock in trade	154,201	178,193	176,722	207,900	175,440	195,691	202,465	212,263
Royalties, licensing & rent/leasing	4,876	5,227	5,790	6,255	6,993	7,801	8,242	10,855
Services	24,279	28,365	32,722	38,457	39,300	49,978	51,137	47,380
Interest & other financial dealings*	18,492	23,614	27,346	28,194	23,735	22,443	50,456	54,608
Other [IDS: 12(C,D)]	-	-	-	-	-	-	4,015	7,770
Total IRPD #1	201,848	235,399	242,580	280,805	245,468	275,913	316,315	332,876
Total IRPD #1 – Annual growth (%)		16.6%	3.1%	15.8%	-12.6%	12.4%	14.6%	5.2%
Add: Derivatives, debt factoring & securitisation^	-	-	-	-	4,794	31,947	49,672	48,552
Add: Capital transactions	-	-	-	-	3	-	22,706	15,488
Add: Other [S25A: 2a(C,D), 2b(I,J)]	18,426	22,139	28,785	14,941	22,057	20,994	5,279	-
Total IRPD #2	220,274	257,538	271,364	295,747	272,322	328,854	393,971	396,916
Total IRPD #2 – Annual growth (%)		16.9%	5.4%	9.0%	-7.9%	20.8%	19.8%	0.7%
Add: Derivatives, debt factoring & securitisation – outliers					84,983	158,252	-	-
Add: All other [S25A: 2d(E,F)]	231,700	526,525	705,917	82,845	155,353	17,635	5,481	-
Total IRPD #3 (no exclusions)	451,974	784,063	977,281	378,592	512,658	504,741	399,452	396,916
Total IRPD #3 - Annual growth (%)		73.5%	24.6%	-61.3%	35.4%	-1.5%	-20.9%	-0.6%

* Includes insurance, reinsurance & guarantees but does not include derivatives, debt factoring & securitisation (these are reported separately)

^ Large derivative amounts reported by one taxpayer has been removed from 2010 and 2011 ITY Source: Schedule 25A (Sep 2014); IDSFS (Sep 2014); IDS (Sep 2014)

List of specified countries and LTJs

Country	Country classifications	2013, \$		
		IRPD Expenditure	IRPD Revenue	IRPD Total
Andorra	Specified	5	3,699	3,704
Anguilla	Specified	0	0	0
Antigua and Barbuda	Specified	0	0	0
Aruba	Specified	2,700,608	0	2,700,608
Bahamas	Specified	65,596,659	1,582,259,756	1,647,856,415
Bahrain	Specified	39,568,971	6,782,528	46,351,499
Belize	Specified	241,040	0	241,040
Bermuda	Specified	1,488,676,040	895,498,409	2,384,174,449
British Virgin Islands	Specified	362,785,898	1,209,275,866	1,572,061,764
Cayman Islands	Specified	1,349,203,019	613,259,867	1,962,462,886
Cook Islands	Specified	27,739,253	2,579,880	30,319,133
Curacao	Specified	7,419,681	0	7,419,681
Cyprus	Specified	38,737,184	4,903,429	43,640,613
Dominica	Specified	0	0	0
Gibraltar	Specified	491,831,367	0	491,831,367
Grenada	Specified	0	0	0
Guernsey	Specified	369,372,036	50,965,862	420,337,898
Isle of Man	Specified	114,113,004	58,288,425	172,401,429
Jersey	Specified	183,304,642	745,524,389	928,829,031

		2013, \$		
Country	Country classifications	IRPD Expenditure	IRPD Revenue	IRPD Total
Liberia	Specified	5,786,524	10,446,131	16,232,655
Liechtenstein	Specified	82,000,320	383,121	82,383,441
Marshall Islands	Specified	26,243,108	3,668,513	29,911,621
Mauritius	Specified	41,782,432	109,616,851	151,399,283
Monaco	Specified	3,419,075	5,781,216	9,200,291
Montserrat	Specified	0	0	0
Nauru	Specified	0	0	0
Niue	Specified	0	0	0
Panama	Specified	65,729,546	35,842,564	101,572,110
Saint Kitts and Nevis	Specified	0	0	0
Saint Lucia	Specified	0	0	0
Saint Martin (Dutch Part)	Specified	0	0	0
Saint Vincent & the Grenadines	Specified	0	0	0
Samoa	Specified	24,561,860	44,542,422	69,104,282
San Marino	Specified	0	0	0
Seychelles	Specified	14,370,719	1,236,395	15,607,114
Turks and Caicos Islands	Specified	211,208	0	211,208
US Virgin Islands	Specified	0	0	0
Vanuatu	Specified	7,140,607	15,715,285	22,855,892

ATO Information – Inquiry into corporate tax avoidance and minimisation

		2013, \$		
Country	Country classifications	IRPD Expenditure	IRPD Revenue	IRPD Total
Hong Kong	Asian LTJs	5,600,513,403	2,838,605,487	8,439,118,890
Singapore	Asian LTJs	55,114,149,629	45,250,583,307	100,364,732,936
Ireland	Euro LTJs	3,084,774,464	1,873,919,366	4,958,693,830
Luxembourg	Euro LTJs	2,328,703,376	1,516,964,742	3,845,668,118
The Netherlands	Euro LTJs	2,925,188,698	1,239,049,862	4,164,238,560
Switzerland	Euro LTJs	9,044,141,295	6,599,062,242	15,643,203,537
Total IRPD – Specified countries (n=38)		4,812,534,806	5,396,574,608	10,209,109,414
Total IRPD – Asian LTJs (n=2)		60,714,663,032	48,089,188,794	108,803,851,826
Total IRPD – Euro LTJs (n=4)		17,382,807,833	11,228,996,212	28,611,804,045
Total IRPD – All other countries		113,737,905,039	61,221,122,638	174,959,027,677
TOTAL – ALL COUNTRIES (IDS Q3-4)		196,647,910,710	125,935,882,252	322,583,792,962
<i>Note: The \$323b in IRPDs based on IDS Q3-4 does not capture all IRPDs as entities are only required to report the top 3 non-specified countries and top 3 specified countries that they transact with. As such, total IRPDs based on IDS Q5-12 (reported as transactions) is a more complete figure.</i>				
TOTAL IRPDs (IDS Q5-12)		232,399,516,321	164,516,460,896	396,915,977,217

Note: IRPD values are based on IDS Q3-4 unless otherwise noted. Source: IDS (February 2015)

Superannuation tax concessions

The data below provides a view of current superannuation concessions (as per the Tax Expenditure Statement) by income and age of the relevant individuals claiming or receiving the relevant benefits.

In the time available, it has not been possible to attempt to do an analysis on the basis of household income. Such an analysis would take several weeks, and would not necessarily be accurate. There are difficulties in deriving household incomes because the data is not complete, since not every taxpayer has always been required to provide details about other members of his or her household.

Another factor is that because the data is largely extracted from income tax returns, it does not include exempt income or individuals not required to lodge income tax returns.

Revenue from superannuation funds and superannuation surcharge

Table: Net cash collections from all superannuation funds and super surcharge										
	2004-05 \$m	2005-06 \$m	2006-07 \$m	2007-08 \$m	2008-09 \$m	2009-10 \$m	2010-11 \$m	2011-12 \$m	2012-13 \$m	2013-14 \$m
Fund income tax	5,014	5,416	7,513	11,873	9,148	6,045	6,477	7,525	7,626	6,065
Surcharge	1,233	951	699	181	69	54	42	38	35	36
Total	6,247	6,367	8,212	12,054	9,217	6,099	6,519	7,562	7,661	6,101

NOTE: it is not possible to split these figures into contributions and earnings.

Personal superannuation contributions

Data extracted 10 April 2015

Subject to the concessional contribution caps, personal contributions for certain persons who earn less than 10 per cent of their incomes as employees are taxed at a concessional rate of 15 per cent. For individuals with income greater than \$300,000, the effective rate is 30 per cent.

Table 1 and Table 2 show the amount of personal contributions reported at item D12, label H of the individual income tax return.

Table 1: Personal superannuation contributions by taxable income in the respective income year						
Taxable income range	2010-11		2011-12		2012-13	
	Number	Amount (\$)	Number	Amount (\$)	Number	Amount (\$)
a. Less than or equal to \$6,000	3,000	50,413,797	2,698	51,331,609	2,145	25,871,333
b. \$6,001 to \$18,200	11,079	180,976,312	9,859	178,237,129	6,482	65,806,450
c. \$18,201 to \$37,000	43,196	705,432,078	39,884	695,077,973	37,930	436,804,085
d. \$37,001 to \$80,000	68,832	1,343,903,537	67,392	1,373,097,411	66,419	930,011,575
e. \$80,001 to \$180,000	39,397	1,144,654,602	41,057	1,216,981,068	44,166	849,572,889
f. \$180,001 or more	23,210	810,191,349	24,956	885,234,307	27,026	603,958,449
Total	188,714	4,235,571,675	185,846	4,399,959,497	184,168	2,912,024,781

Table 2: Personal superannuation contributions by age in the respective income year						
Age range [^]	2010-11		2011-12		2012-13	
	Number	Amount (\$)	Number	Amount (\$)	Number	Amount (\$)
Under 18	42	735,039	34	626,582	40	694,145
18 to 24	587	4,887,390	552	4,996,086	565	5,431,629
25 to 29	1,914	12,769,085	1,823	13,152,451	1,738	13,003,745
30 to 34	4,592	37,954,537	4,406	39,261,600	4,415	42,136,182
35 to 39	10,232	102,981,786	9,449	101,150,466	9,091	100,489,621
40 to 44	17,098	187,649,174	16,434	193,310,211	16,278	198,059,534
45 to 49	23,706	270,508,387	22,149	266,553,107	21,599	273,453,196
50 to 54	30,990	664,957,871	30,252	677,543,168	29,567	413,618,721
55 to 59	35,979	917,039,870	35,316	944,980,154	35,136	575,628,518
60 to 64	37,279	1,100,271,839	36,595	1,111,121,178	36,392	671,801,491
65 to 69	17,908	616,281,444	19,506	685,152,159	19,951	408,951,863
70 & over	8,387	319,535,253	9,330	362,112,335	9,396	208,756,136
Total	188,714	4,235,571,675	185,846	4,399,959,497	184,168	2,912,024,781

* NOTE: the data has been restricted to income tax returns processed to 31 October - 16 months after the end of the respective income year. ^ The individual's age in the respective income year.

Employer contributions

Data extracted 10 April 2015

Most employer contributions, up to the concessional contributions caps, are included in the assessable income of superannuation entities and taxed at a concessional rate of 15 per cent. For individuals with income greater than \$300,000, the effective rate is 30 per cent.

Table 3 and Table 4 show the amount of employer contributions reported on the member contribution statements which continually change as a result of fund re-reporting.

Table 3: Employer superannuation contributions by taxable income in the respective income year						
Taxable income range	2010-11		2011-12		2012-13	
	Number	Amount (\$)	Number	Amount (\$)	Number	Amount (\$)
a. Less than or equal to \$6,000	278,723	374,182,060	252,377	366,095,595	225,221	273,156,892
b. \$6,001 to \$18,200	1,094,526	1,409,946,007	1,027,471	1,328,834,720	898,183	1,053,234,988
c. \$18,201 to \$37,000	2,285,449	6,824,296,400	2,241,730	6,643,402,510	2,231,942	6,007,368,191
d. \$37,001 to \$80,000	3,984,751	24,654,111,639	4,102,937	25,512,966,922	4,067,923	23,157,312,433
e. \$80,001 to \$180,000	1,414,931	17,234,790,028	1,618,023	19,642,821,230	1,717,967	18,705,806,681
f. \$180,001 or more	195,111	4,656,108,779	230,729	5,410,504,154	264,177	5,121,766,449
Total	9,253,491	55,153,434,913	9,473,267	58,904,625,131	9,405,413	54,318,645,633

Table 4: Employer superannuation contributions by age in the respective income year						
Age range [^]	2010-11		2011-12		2012-13	
	Number	Amount (\$)	Number	Amount (\$)	Number	Amount (\$)
Under 18	208,660	165,922,417	193,671	164,226,124	153,261	142,572,772
18 to 24	1,307,830	3,142,744,374	1,313,709	3,306,456,435	1,275,586	3,291,227,007
25 to 29	1,222,784	4,978,776,365	1,256,834	5,369,199,806	1,271,459	5,545,235,889
30 to 34	1,067,321	5,377,093,142	1,116,285	5,901,473,910	1,155,890	6,262,051,936
35 to 39	1,042,289	5,918,220,009	1,038,902	6,193,126,493	1,024,498	6,241,993,766
40 to 44	1,024,944	6,229,063,224	1,065,122	6,793,009,447	1,061,711	6,864,633,254
45 to 49	1,000,178	6,494,689,847	999,795	6,741,110,941	963,665	6,464,418,333
50 to 54	929,500	7,634,408,842	959,084	8,056,838,152	944,025	6,775,454,828
55 to 59	735,380	7,349,880,204	762,105	7,762,823,092	757,668	6,045,620,178
60 to 64	496,139	5,361,684,158	512,312	5,653,286,713	518,908	4,366,861,886
65 to 69	176,238	1,971,541,506	206,457	2,341,571,322	224,209	1,856,043,579
70 & over	42,228	529,410,824	48,991	621,502,698	54,533	462,532,206
Total	9,253,491	55,153,434,913	9,473,267	58,904,625,131	9,405,413	54,318,645,633

* NOTE: the data has been restricted to income tax returns processed to 31 October - 16 months after the end of the respective income year. ^ The individual's age in the respective income year.

Superannuation income stream - untaxed element

Data extracted 10 April 2015

The component of superannuation income stream payments from untaxed sources (the taxable component) is included in a recipient's assessable income. A 10 per cent tax offset applies to the taxable component of pension payments for persons aged 60 and over.

The tax treatment of a death benefit paid to a dependant as an income stream depends on the age of the fund member and the dependant. If either was aged 60 or over at the time of death, then the taxable component of payments to the dependant will be taxed at marginal rates with a 10 per cent tax offset. If both were under age 60 at the time of death, the taxable component of the pension will be taxed at the dependant's marginal rate and will become eligible for the 10 per cent offset once the dependant reaches age 60.

Tables 5 and 6 show the amount of untaxed Australian annuities and superannuation income streams reported at item 7, label N of the individual income tax return (untaxed element) and the corresponding amount of Australian superannuation income stream tax offset reported at item T3, label S of the individual income tax return.

Table 5: Superannuation income stream - untaxed element by taxable income in the respective income year

Taxable income range	2010-11			2011-12			2012-13		
	Number	Untaxed amt (\$)	Offset (\$) **	Number	Untaxed amt (\$)	Offset (\$) **	Number	Untaxed amt (\$)	Offset (\$) **
a. Less than or equal to \$6,000	1,968	19,354,975	1,153,775	1,975	20,582,628	1,315,034	1,982	18,448,033	1,208,085
b. \$6,001 to \$18,200	14,587	105,900,755	6,116,114	13,278	105,442,393	6,300,655	11,457	89,783,759	5,841,025
c. \$18,201 to \$37,000	77,336	1,332,835,474	106,106,629	74,702	1,285,084,241	102,411,478	70,776	1,207,382,967	96,802,328
d. \$37,001 to \$80,000	83,296	2,787,903,937	228,808,420	85,388	2,859,893,445	237,902,816	87,373	2,993,021,622	252,513,896
e. \$80,001 to \$180,000	26,951	927,617,271	55,797,092	28,678	988,090,835	61,021,196	30,826	1,074,207,055	69,049,641
f. \$180,001 or more	4,694	263,674,163	19,112,840	5,416	302,085,029	22,311,302	6,454	361,625,410	26,701,568
Total	208,832	5,437,286,575	417,094,870	209,437	5,561,178,571	431,262,481	208,868	5,744,468,846	452,116,543

Table 6: Superannuation income stream - untaxed element by age in the respective income year

Age range ^	2010-11			2011-12			2012-13		
	Number	Untaxed amt (\$)	Offset (\$) **	Number	Untaxed amt (\$)	Offset (\$) **	Number	Untaxed amt (\$)	Offset (\$) **
Under 18	211	1,616,923	13,139	172	1,450,280	16,125	146	1,232,209	15,609
18 to 24	427	4,495,035	18,769	463	5,830,646	21,137	456	6,865,521	16,452
25 to 29	549	12,126,402	6,914	633	14,005,395	23,218	649	17,592,314	13,758
30 to 34	776	17,731,748	22,158	873	21,042,854	28,985	926	24,406,312	15,314
35 to 39	1,411	29,906,442	78,189	1,425	31,660,233	47,619	1,398	34,568,113	82,646
40 to 44	3,422	67,926,492	261,945	3,539	71,810,714	183,244	3,459	75,559,217	239,835
45 to 49	6,608	140,343,716	692,667	6,270	133,532,400	650,450	5,811	126,637,785	663,608
50 to 54	9,369	207,236,418	1,206,734	9,872	217,856,026	1,193,323	9,831	226,292,205	1,228,195
55 to 59	24,915	677,309,387	12,697,991	24,711	660,181,794	13,376,810	24,582	640,705,591	14,728,263
60 to 64	34,538	1,049,971,858	96,434,150	33,966	1,048,744,156	96,131,603	33,549	1,084,375,890	99,615,666
65 to 69	27,153	840,460,375	82,498,859	29,686	941,045,426	92,691,814	31,854	1,045,182,859	103,259,779
70 & over	99,453	2,388,161,779	223,163,355	97,827	2,414,018,647	226,898,153	96,207	2,461,050,830	232,237,418
Total	208,832	5,437,286,575	417,094,870	209,437	5,561,178,571	431,262,481	208,868	5,744,468,846	452,116,543

* NOTE: the data has been restricted to income tax returns processed to 31 October - 16 months after the end of the respective income year.

** NOTE: the offset amount is the amount of the offset available to the individual. As it is a non-refundable offset, the available amount does not equate to the used amount. Furthermore, the data has been restricted to just those individuals with an Australian annuities and superannuation income streams untaxed element.

^ The individual's age in the respective income year.

Superannuation lump sum payment

Data extracted 10 April 2015

The taxable component of lump sums paid from untaxed funds to persons aged 60 or over is taxed at a maximum rate of 15 per cent up to an (indexed) amount and at the top marginal rate thereafter. For persons aged 55 to 59, the tax rate ranges from 15 per cent up to the top marginal rate, while for persons under age 55 the tax rate is typically 30 per cent.

Table 7 and Table 8 show the amount of Australian superannuation lump sum payments reported at item 8, labels Q and P of the individual income tax return. The tables also show the amount of the offset calculated by the ATO which allows the tax on the lump sum payment to be capped at the respective tax rate.

Table 7: Superannuation lump sum payment by taxable income in the respective income year

Taxable income range	2010-11				2011-12				2012-13			
	Number	Taxed amt (\$)	Untaxed amt (\$)	Offset (\$) **	Number	Taxed amt (\$)	Untaxed amt (\$)	Offset (\$) **	Number	Taxed amt (\$)	Untaxed amt (\$)	Offset (\$) **
a. Less than or equal to \$6,000	6,118	22,888,016	1,982,101	43,048	5,521	25,087,395	2,279,414	42,928	5,398	21,804,234	1,720,579	177,299
b. \$6,001 to \$18,200	16,025	79,056,950	5,548,288	2,881,117	14,381	78,435,476	5,295,622	2,675,092	14,117	78,454,408	5,061,656	518,818
c. \$18,201 to \$37,000	28,257	226,208,247	16,774,423	14,342,130	27,425	236,779,304	17,954,082	14,454,175	29,396	251,197,120	17,190,553	10,947,533
d. \$37,001 to \$80,000	30,718	444,845,117	46,639,460	82,057,135	28,225	477,527,860	47,491,548	87,497,882	28,885	484,223,745	46,631,278	95,063,029
e. \$80,001 to \$180,000	18,104	705,917,947	115,463,082	213,568,407	18,423	783,162,311	119,766,380	237,250,250	18,929	799,964,525	120,106,696	250,671,802
f. \$180,001 or more	5,558	599,490,492	154,924,270	248,557,641	6,611	728,085,242	197,925,265	308,681,698	7,014	873,052,990	201,714,389	355,978,742
Total	104,780	2,078,406,769	341,331,624	561,449,477	100,586	2,329,077,588	90,712,311	650,602,025	103,739	2,508,697,022	392,425,151	713,357,225

Table 8: Superannuation lump sum payment - untaxed element by age in the respective income year

Age range ^	2010-11				2011-12				2012-13			
	Number	Taxed amt (\$)	Untaxed amt (\$)	Offset (\$) **	Number	Taxed amt (\$)	Untaxed amt (\$)	Offset (\$) **	Number	Taxed amt (\$)	Untaxed amt (\$)	Offset (\$) **
Under 18	100	213,994	197,697	25,942	79	139,090	248,563	8,013	63	507,038	210,897	109,352
18 to 24	2,568	12,261,729	6,221,016	1,600,832	2,250	14,749,491	4,550,558	1,977,501	2,707	18,110,853	7,175,627	2,858,049
25 to 29	5,327	29,618,970	6,855,130	2,918,290	4,631	40,937,422	7,306,583	5,268,783	5,403	50,414,483	8,432,373	7,395,664
30 to 34	7,141	49,547,603	6,023,113	4,671,652	5,790	57,924,214	5,330,185	6,276,266	6,802	67,413,348	6,396,783	7,489,850
35 to 39	9,118	77,867,188	9,950,683	8,391,836	7,591	80,370,323	7,736,671	8,514,385	7,970	86,991,975	5,413,832	8,927,342
40 to 44	10,131	116,561,081	16,847,223	16,323,420	9,564	128,761,534	18,473,795	18,956,735	10,187	136,977,615	15,417,325	17,421,763
45 to 49	10,453	136,996,268	22,155,554	18,908,026	9,885	148,266,186	23,993,097	20,553,850	10,124	167,394,171	20,530,773	22,247,329
50 to 54	10,945	158,947,074	21,340,338	19,663,214	10,711	173,363,921	27,380,566	22,376,913	11,165	187,000,172	20,058,324	24,254,623
55 to 59	43,399	1,496,392,862	136,409,496	467,472,869	44,234	1,684,565,407	161,521,462	541,587,493	43,607	1,793,887,367	167,097,946	593,289,765
60 to 64	1,587	-	61,135,114	11,868,736	1,414	-	65,072,114	12,492,916	1,346	-	64,632,462	13,278,593
65 to 69	3,039	-	44,441,710	8,172,027	3,306	-	55,531,292	10,527,911	3,158	-	62,108,648	13,268,212

ATO Information – Inquiry into corporate tax avoidance and minimisation

70 & over	972	-	9,754,550	1,432,634	1,131	-	13,567,425	2,061,260	1,207	-	14,950,161	2,816,683
Total	104,780	2,078,406,769	341,331,624	561,449,477	100,586	2,329,077,588	390,712,311	650,602,025	103,739	2,508,697,022	392,425,151	713,357,225

* NOTE: the data has been restricted to income tax returns processed to 31 October - 16 months after the end of the respective income year.

The taxed element of an individual's superannuation lump sum is not included in this data where the individual is aged 60 or over.

** NOTE: the offset amount is the amount of the offset available to the individual. As it is a non-refundable offset, the available amount does not equate to the used amount.

^ The individual's age in the respective income year.

Capital gains tax small business retirement exemption

Data extracted 10 April 2015

Eligible small businesses can exclude capital gains arising from the sale of active small business assets, where the proceeds of the sale are used for retirement. There is a lifetime limit of \$500,000 in respect of any one individual.

Table 9 and Table 10 show the amount of the small business retirement exemption reported on member contribution statements which continually change as a result of fund re-reporting.

Taxable income range	2010-11		2011-12		2012-13	
	Number	Amount (\$)	Number	Amount (\$)	Number	Amount (\$)
a. Less than or equal to \$6,000	294	46,898,410	255	41,382,729	220	32,635,790
b. \$6,001 to \$18,200	408	57,042,101	335	47,414,036	214	24,977,652
c. \$18,201 to \$37,000	757	98,673,370	805	103,664,059	670	81,122,730
d. \$37,001 to \$80,000	1,437	178,486,234	1,350	163,743,955	1,330	154,114,587
e. \$80,001 to \$180,000	1,295	189,972,588	1,501	205,293,620	1,365	183,674,220
f. \$180,001 or more	691	139,648,733	743	141,568,550	719	138,782,140
Total	4,882	710,721,435	4,989	703,066,949	4,518	615,307,118

Age range ^	2010-11		2011-12		2012-13	
	Number	Amount (\$)	Number	Amount (\$)	Number	Amount (\$)
Under 18	-	-	-	-	-	-
18 to 24	44	135,615	73	513,397	55	36,571
25 to 29	74	2,848,564	75	927,431	75	876,054
30 to 34	112	7,559,145	118	6,051,236	128	6,190,071
35 to 39	218	22,191,746	224	17,745,098	229	21,214,135
40 to 44	423	42,849,762	513	52,841,730	499	53,679,008
45 to 49	850	97,078,975	734	83,871,920	684	74,497,958
50 to 54	1,060	130,488,626	1,163	134,391,276	1,059	119,874,864
55 to 59	796	133,922,286	726	121,481,045	655	107,439,721
60 to 64	703	134,358,484	702	141,853,427	572	115,113,422
65 to 69	444	97,051,170	456	95,971,810	404	79,117,566
70 & over	158	42,237,063	205	47,418,579	158	37,267,748
Total	4,882	710,721,435	4,989	703,066,949	4,518	615,307,118

* NOTE: the data has been restricted to income tax returns processed to 31 October - 16 months after the end of the respective income year.

^ The individual's age in the respective income year.

Superannuation co-contributions

Data extracted 13 April 2015

The government makes a superannuation contribution up to a maximum amount when a low or middle-income earner makes personal (after-tax) super contributions to their super fund.

The co-contribution is not taxed.

	2010-11	2011-12	2012-13
Maximum co-contribution amount (\$)	1,000	1,000	500

Table 11 and Table 12 show the amount of the government co-contribution.

Table 11: Superannuation co-contributions by taxable income in the respective income year						
Taxable income range**	2010-11		2011-12		2012-13	
	Number	Amount (\$)	Number	Amount (\$)	Number	Amount (\$)
a. Less than or equal to \$6,000	40,941	31,569,464	36,349	28,026,612	29,015	10,780,733
b. \$6,001 to \$18,200	132,020	100,206,311	113,775	85,899,424	86,637	31,161,271
c. \$18,201 to \$37,000	375,469	270,634,668	334,377	239,312,919	262,867	90,172,662
d. \$37,001 to \$80,000	424,353	153,310,949	386,493	138,695,117	114,950	15,732,688
e. \$80,001 to \$180,000	-	-	-	-	-	-
f. \$180,001 or more	-	-	-	-	-	-
Total	972,783	555,721,391	870,994	491,934,072	493,469	147,847,353

Table 12: Superannuation co-contributions by age in the respective income year						
Age range^	2010-11		2011-12		2012-13	
	Number	Amount (\$)	Number	Amount (\$)	Number	Amount (\$)
Under 18	4,422	3,055,655	3,596	2,448,286	2,281	723,891
18 to 24	78,328	40,890,376	67,718	34,649,271	40,585	10,076,411
25 to 29	58,102	25,003,760	50,666	21,599,380	24,553	5,620,862
30 to 34	58,076	27,787,432	51,300	24,084,099	27,261	6,681,158
35 to 39	77,008	40,007,313	65,432	33,438,797	34,838	9,309,652
40 to 44	100,057	54,215,983	88,411	47,245,997	48,611	13,728,246
45 to 49	123,121	68,219,273	106,009	58,021,617	55,632	16,283,684
50 to 54	142,296	81,654,158	127,998	72,447,843	69,650	21,154,477
55 to 59	143,640	87,140,541	129,814	77,445,020	72,849	23,316,071
60 to 64	132,791	88,559,609	121,164	79,400,441	75,431	26,078,634
65 to 70	54,942	39,187,291	58,886	41,153,321	41,778	14,874,266
Total	972,783	555,721,391	870,994	491,934,072	493,469	147,847,353

* NOTE: the data has been restricted to income tax returns and co-contribution entitlement determinations processed to 31 October - 16 months after the end of the respective income year.**Note: This income is not used to determine the eligibility for super co-contribution.^ The individual's age in the respective income year.

Low income superannuation contribution (LISC)

Data extracted 13 April 2015

The government makes a superannuation contribution up to a maximum amount of \$500 when a low-income earner receives concessional (before-tax) super contributions to their super fund. The government contribution is not taxed.

Table 13 and Table 14 show the amount of the government co-contribution.

Table 13: Low income superannuation contribution by taxable income		
Taxable income range**	2012-13	
	Number	Amount (\$)
a. Less than or equal to \$6,000	161,058	15,987,362
b. \$6,001 to \$18,200	746,969	114,158,136
c. \$18,201 to \$37,000	1,874,289	604,484,532
d. \$37,001 to \$80,000	7,119	3,113,237
e. \$80,001 to \$180,000	-	-
f. \$180,001 or more	-	-
Total	2,789,435	737,743,267

Table 14: Low income superannuation contribution by age		
Age range^	2012-13	
	Number	Amount (\$)
Under 18	48,365	4,625,630
18 to 24	844,217	200,628,916
25 to 29	319,201	87,649,245
30 to 34	261,176	69,946,520
35 to 39	240,535	65,451,189
40 to 44	247,623	70,273,632
45 to 49	218,127	64,444,713
50 to 54	208,026	62,628,190
55 to 59	166,645	49,523,700
60 to 64	143,343	40,561,490
65 to 69	73,008	17,894,045
70 & over	19,169	4,115,997
Total	2,789,435	737,743,267

* NOTE: the data has been restricted to income tax returns and co-contribution entitlement determinations processed to 31 October - 16 months after the end of the respective income year.

**Note: This income is not used to determine the eligibility for Low Income Super Contribution

^ The individual's age in the respective income year.

Non-lodger population

Additional LISC recipients under data matching arrangements for individuals who had not lodged or were not required to lodge their 2012-13 income year return. *We have not split this group by income range or age*

	2012-13	
	Number	Amount (\$)
Total	443,630	60,364,499

Excess non-concessional contributions tax (ECT)

Data extracted 10 April 2015

Contributions above non-concessional caps may be subject to the excess contributions tax levied at 46.5 per cent (in 2010-11 to 2012-13). From 1 July 2013, non-concessional contributions above the non-concessional cap can be withdrawn, in which case, they are not subject to the excess contributions tax.

Table 15 and Table 16 show the amount of excess non-concessional contributions tax based on assessment data which continually change as a result of fund re-reporting and revision of ECT assessments.

Table 15: Excess non-concessional contributions tax by taxable income in the respective income year

Taxable income range	2010-11		2011-12		2012-13	
	Number	Amount (\$)	Number	Amount (\$)	Number	Amount (\$)
a. Less than or equal to \$6,000	180	2,960,461	192	3,426,648	136	2,799,068
b. \$6,001 to \$18,200	133	2,242,487	132	2,562,025	90	1,553,827
c. \$18,201 to \$37,000	233	3,452,880	248	4,705,509	199	4,316,414
d. \$37,001 to \$80,000	389	5,103,093	389	5,877,746	332	5,795,757
e. \$80,001 to \$180,000	382	3,490,698	343	7,705,853	353	4,137,329
f. \$180,001 or more	405	4,303,500	409	5,622,824	383	4,650,190
Total	1,722	21,553,119	1,713	29,900,605	1,493	23,252,584

Table 16: Excess non-concessional contributions tax by age in the respective income year

Age range [^]	2010-11		2011-12		2012-13	
	Number	Amount (\$)	Number	Amount (\$)	Number	Amount (\$)
Under 18	1	11,625	-	-	2	104,625
18 to 24	2	12,254	1	11,625	-	-
25 to 29	-	-	1	25,575	2	3,507
30 to 34	7	26,121	3	88,671	3	21,789
35 to 39	4	120,917	7	27,008	5	50,328
40 to 44	29	370,231	13	256,690	12	49,907
45 to 49	62	551,830	52	682,742	35	421,007
50 to 54	159	2,140,845	128	2,074,582	88	1,046,094
55 to 59	270	2,875,071	320	5,974,936	197	3,433,616
60 to 64	504	7,811,797	479	11,786,259	363	8,000,702
65 to 69	535	6,170,139	542	7,137,704	579	8,279,483
70 & over	149	1,462,288	167	1,834,813	207	1,841,527
Total	1,722	21,553,119	1,713	29,900,605	1,493	23,252,584

* NOTE: the data has NOT been restricted due to the amount of variations that occur as a result of fund reporting errors and revision of ECT assessments. # Data also limited to those individuals who have lodged an income tax return for the respective year. ^ The individual's age in the respective income year.

Small business capital gains tax exemption for assets held more than 15 years

Data extracted 10 April 2015

Capital gains arising from the disposal of active small business assets that have been held continuously for 15 years are exempt from capital gains tax where the taxpayer is permanently incapacitated or reaches the age of 55 and retires.

Table 17 and Table 18 show the amount of the small business 15-year exemption reported on member contribution statements which continually change as a result of fund re-reporting. These are the amounts deposited into superannuation. There are other amounts which individuals choose not to deposit into superannuation.

Table 17: Small business capital gains tax exemption for assets held more than 15 years by taxable income in the respective income year

Taxable income range	2010-11		2011-12		2012-13	
	Number	Amount (\$)	Number	Amount (\$)	Number	Amount (\$)
a. Less than or equal to \$6,000	83	35,670,844	100	47,474,206	66	36,802,932
b. \$6,001 to \$18,200	95	35,615,454	93	32,023,005	85	32,568,759
c. \$18,201 to \$37,000	194	79,754,882	195	77,486,245	187	81,490,772
d. \$37,001 to \$80,000	228	95,523,128	256	114,354,580	229	94,110,592
e. \$80,001 to \$180,000	172	81,486,345	213	92,963,859	199	96,881,174
f. \$180,001 or more	94	48,307,660	122	68,389,519	92	47,099,812
Total	866	376,358,313	979	432,691,414	858	388,954,039

Table 18: Small business capital gains tax exemption for assets held more than 15 years by age in the respective income year

Age range [^]	2010-11		2011-12		2012-13	
	Number	Amount (\$)	Number	Amount (\$)	Number	Amount (\$)
Under 18	1	79,051	-	-	-	-
18 to 24	5	83,129	5	10,281	6	17,030
25 to 29			1	325	3	10,435
30 to 34	5	54,810	5	183,902	3	45,832
35 to 39	6	112,629	10	463,757	5	499,631
40 to 44	14	1,755,740	25	2,587,921	19	1,160,313
45 to 49	34	4,587,616	25	3,074,766	12	1,504,975
50 to 54	52	7,992,004	57	7,126,201	54	8,896,663
55 to 59	148	70,249,136	135	61,607,866	161	72,433,508
60 to 64	250	109,963,236	282	130,460,566	252	121,573,478
65 to 69	241	121,515,557	266	130,079,224	200	102,687,314
70 & over	110	59,965,405	168	97,096,604	143	80,124,861
Total	866	376,358,313	979	432,691,414	858	388,954,039

[^] NOTE: the data has been restricted to income tax returns processed to 31 October - 16 months after the end of the respective income year. ^ The individual's age in the respective income year.

Questions on Notice

Question 1-2: ISAPs data

Reference: Hansard page 31-32, 33

Senator: Ketter

Question:

Senator KETTER: I want to talk about offshore marketing hubs. Can you tell us whether the ATO has made any adverse assessments against firms for the abuse of offshore marketing hubs?

Mr Jordan: I will pass to Mark Konza who can talk more specifically on the status. As I have said, we are in dispute, clearly—we have mentioned that—with a number of taxpayers. He can talk about the stage we are at.

Mr Konza: The short answer is yes, we have made some adverse assessments with some taxpayers. We currently have 15 cases underway. That number fluctuates a little bit, depending on when cases are finished and started. There have been 20 in the past; there are 15 now. We have other cases to start and we are continuing to look at that issue.

Senator KETTER: Can you tell us which firms and for how much?

Mr Konza: We are not proposing to answer that question today because it would contravene their secrecy provisions.

Senator EDWARDS: Do you want to go through that again?

Mr Jordan: We can provide aggregated data. Under the ISAP, we have already raised assessments for in excess of \$250 million. I presume part of that is from those.

Mr Konza: Yes, part of that is from that.

Mr Jordan: If you want to know the figures specifically for the marketing hubs, we could probably take that on notice and provide them.

Continues at page 33

Senator KETTER: I would like to go back to the adverse assessments that we talked about a bit earlier. You talked about providing the aggregated figures. Are you able to provide information about the individual sizes of the disputed amounts?

Mr Konza: We would normally desist from doing that because they might be—not only do we try not to disclose taxpayers' identities and their personal information but also we try not to disclose information that can be readily tracked to a taxpayer. If we break that sort of detail down people will go to public disclosures or provisions. This sort of analysis, I read in the press, is already undertaken. We resist doing that, if we can.

Mr Jordan: Why don't I undertake that we will have a look at those figures and see if, if we break it down, it would be very obvious as to who it was or not and we will make a judgement? If we can, we will provide it broken down into individuals.

Answer:

Can you tell us which firms [taxpayers] and for how much?

The ATO has issued a number of amended assessments to taxpayers in relation to their marketing hub arrangements over the past three years. The total amount for those amended assessments is approximately \$1.3 billion in taxable income and \$600 million in primary (or shortfall) tax, penalties and interest.

Consistent with the ATO's claim of public interest immunity in relation to taxpayers' details, I decline to disclose the names of the taxpayers whose assessments have been amended.

Are you able to provide information about the individual sizes of the disputed amounts?

The confidentiality provisions of the tax law limit our ability to disclose the names of the taxpayers whose assessments have been amended. The disputed amounts of tax in individual cases range from around \$20 million to \$350 million.

Question 3: Advice to government of tax gaps and estimated additional revenue

Reference: Hansard Page 36

Senator: Xenophon

Question:

Senator XENOPHON: Mr Jordan, I have got four distinct areas I want to ask you questions on. I will race through them, because time is limited. Could I go to where we were 84 minutes ago, and that was in respect of the line of questioning that the chair asked you in respect of the public interest immunity issues and about these individual companies. I understand that you say you cannot name them because of the strict privacy provisions in the tax act, but can you tell us whether the tax office has estimated how much potential tax is involved for the 69 target companies if we had, for instance, a broad multilateral agreement in relation to tax, how much extra tax could potentially be paid. I know you can only give a ballpark figure but if we can get an idea of that it would be very useful.

Mr Jordan: I will need to pass on to my colleagues but I think in terms of the marketing hubs we have estimated there is about \$1 billion there that—

Senator XENOPHON: In annual revenue?

Mr Jordan: Yes. Revenue to date might cover a couple of years. I should pass to my colleagues who know more—

CHAIR: Could I ask for a point of clarification on the figure, if you are talking about whether that would be not taxable revenue but actual—

Mr Jordan: Tax. We will talk tax.

Senator XENOPHON: I just want to put this in context. You told Fairfax Media a week ago today that the tax office will beat a budget target of hitting \$1.1 billion in revenue from multinationals by 2017 and possibly in the next 12 months.

Mr Jordan: That is under the ISAPS program itself. When we heard, I think it was, the figure of \$240 million we were given over a four-year period, we committed to government to raise \$1.1 billion in return for the investment of \$240 million. We believe we will easily exceed that \$1.1 billion. We have already raised \$250 million of that, either through settlements or assessments.

Senator XENOPHON: But the specific question is: in terms of the argument over the public interest immunity and confidentiality, there are 69 target companies; surely the tax office has looked at potentially how much tax the Commonwealth government is missing out on in respect of that. Can you tell us what that range of figures is?

Mr Jordan: I will pass to Mr Konza, but I should say that some of the companies that get mentioned in this area are not part of the 69, because they do not disclose revenue in Australia of \$5 billion. They tend to be more the Australian listed companies with that amount. They sit in the next 300 companies that constitute about 24 per cent of the tax base. We believe there is a substantial upside in revenue there. I think it is difficult to put a figure on it but I will pass over to my colleague.

Senator XENOPHON: Okay. Sorry, I just want to get a specific answer. I appreciate you are being very helpful. These are 69 companies that were subject to this public interest immunity argument. There are another 300 companies that have significant revenue. What I am trying to establish for the purpose of this inquiry is: if we had a tighter set of arrangements in terms of tax arrangements, how much more would that mean potentially—even in a range of figures—for the Commonwealth of Australia, in terms of what we could be getting back in additional taxes. Surely you must have a ballpark figure in mind. Or do you? Is there a ballpark figure?

Mr Cranston: We are trying to work on the tax cap. Only four countries around the world have published a tax cap. One of our priorities for the tax cap, for us this year, is the large market. We are currently sort of estimating it, but it has got to be a credible estimate and we have got a number of experts who are giving us feedback and saying we are missing certain areas. Until we get that right it is very dangerous to put an estimate on it.

Senator XENOPHON: Okay. So not even an estimate at this stage.

Mr Cranston: Not even an estimate. We are planning to have an estimate—

Senator XENOPHON: So no credible estimates; not even an incredible estimate?

Mr Mills: Senator, inherent in your question is whether or not the law needs to change in order to capture some of that, as opposed to that part of it that we assess we can challenge, within existing law—

Senator XENOPHON: Thank you for clarifying that, Mr Mills. So I guess my question is: surely the tax office would give advice to the government in consultation with Treasury from time to time as to whether there are particular gaps that should be closed. Has the tax office given advice to the government of gaps that ought to be closed, as you have just indicated? If so, what is the ballpark figure of additional revenue for the Commonwealth?

Mr Mills: A lot of this actually comes under the BEPS work that is being done—part of the multilateral work that is being done. So it is tied up in that broader package of things. I do not recall, although I can take it on notice and find out, that there are exact figures because they actually relate to a whole range of different initiatives.

Senator XENOPHON: So not even around the coffee machine or the water cooler does the tax office have an idea of how much money could potentially be gathered by the Commonwealth if the laws are tightened up?

Mr Mills: It depends. You have to assume what the outcome of that change in law will be. So it depends on the exact initiative before you can actually make the estimate. It is impossible to say—

Senator XENOPHON: Have there been any estimates made under any scenarios as to additional revenue for the Commonwealth?

Mr Konza: You have to ask Treasury those questions. We look at cases—

Senator XENOPHON: But you can advise Treasury.

Mr Konza: We advise Treasury about what we see in particular cases and then Treasury decide whether they are going to change the law or how they want to change the law. They will ask us for data to support their decision-making process.

Senator XENOPHON: So no-one here can give me a ballpark figure of additional revenue that the Commonwealth could get if we tightened up these multinational tax arrangements? Can anyone tell me? Nothing.

Mr Konza: Are you talking about the entire BEPS agenda?

Senator XENOPHON: If the BEPS agenda was implemented, for instance, use that as an assumption, what would that mean in terms of additional taxes for the Commonwealth?

Mr Konza: You are asking a question where we do not know what the result of the tightening of the agenda would be, so we cannot postulate a figure.

Senator XENOPHON: But there have not been any scenarios considered by tax in respect of this?

Mr Konza: You would have to ask Treasury about the advice.

Answer:

The ATO has provided advice to Treasury on most, if not all, of the base erosion and profit shifting issues raised in the past few years. Treasury and the ATO work closely together on such matters.

However, the advice provided by the ATO is not always confined to revenue, especially when an issue is first being considered. In some cases, the revenue lost or foregone is unquantifiable; other times, it may only be possible to estimate a broad range within which the revenue figure would lie. In any event, until decisions have been made about the appropriate policy direction, it is usually not clear exactly how much revenue is or will be impacted.

Question 4: Profit shifting

Reference: Hansard page 37

Senator: Xenophon

Question:

Senator XENOPHON: Let me go to an article that you were quite extensively quoted in. I think I asked you about this in Senate estimates last June. In the *Financial Review* article on 21 May 2014 by Nassim Khadem, headed 'Profit shifting not just a tech problem', I think you made the fair enough point that it is not just about high-tech companies. The figures in that table, which I think were endorsed by the tax office or from the tax office, were that in 2011-12 \$130.62 billion was sent from Australian companies in terms of their international expenditure, including \$39.99 billion in Singapore alone. There was an interchange with Mr Jordan about Starbucks and their intellectual property and I think I got you on the record referring to Starbucks's arrangements with some element of sarcasm. What has happened with respect to that? We are not just talking about high-tech companies, Google and Apple. It was \$130 billion three financial years ago. What is it this year or what was the figure last financial year?

Mr Konza: We have a schedule called the international dealing schedule, which large companies have to fill out. As part of that, they have to advise us of the top 3 countries where they send and receive international related party payments. It is a two-way thing. Last year's schedule said that there was, I think, \$322 billion—

Senator XENOPHON: So it has gone from \$130 billion to \$322 billion?

Mr Konza: Yes.

Mr Hirschhorn: That is both sides—both purchases and sales. I think the \$130 billion might be just one side.

Senator XENOPHON: Expenditure. So what would expenditure be? How much has that gone up?

Mr Konza: I would need to take that on notice.

Senator XENOPHON: But it has gone up—hasn't it?

Mr Konza: Yes.

Senator XENOPHON: So we might up towards \$200 billion?

Mr Konza: I would not want to speculate.

Answer:

As at mid-April 2015, several thousand companies are yet to lodge international dealings schedules, however preliminary data lodged before 15 April shows expenditure for the 2014 income year to be approximately \$199 billion.

Question 5: Impact of subdivision 768-A on overseas transactions

Reference: Hansard page 37-38

Senator: Xenophon

Question:

Senator XENOPHON: Professor Richard Vann made reference to section 23AJ of the Income Tax Assessment Act being repealed. After it was introduced into parliament on 17 July 2014, it has been rewritten as subdivision 768-A of the act. I have just read a KPMG circular this morning which states:

768-A will, however, provide opportunities for taxpayers as it will extend the exemption to a broader range of equity interests (e.g. non-share dividends) ... this change is welcomed ...

This is something that breezed through parliament. I will put my hand up—it was an issue without any controversy. It was actually a measure of the former Gillard government and implemented by the Abbott government. I am not criticising anyone; I am just saying it breezed through the parliament. Can you, on notice, provide me with information as to whether that measure in relation to international dividends and other equities has meant we are now collecting less tax rather than more from these sorts of transactions? That was the imputation of what Professor Vann was saying. We have done something that has made us go backwards. It is not a criticism.

Mr Mills: Can I put it in context. The reason successive governments have gone down this path is that we made a decision about 10 or 15 years ago to set up a set of in-substance debt and equity rules. Those changes that were most recently done were consistent with those in-substance debt and equity rules. What we have done is gone down a path that maintains a consistency. The alternative was to do what Professor Vann referred to as the European solution, if you like, which would have been completely inconsistent and would have created the potential for gaps. The rules have only just been implemented in respect of I think the current year, which means that we have no data as yet.

Senator XENOPHON: But, from Professor Vann's evidence, it is likely that, under the old section 23AJ, we would have collected more tax from these international transactions, but now we will be collecting less, which seems to go against the grain of what we are concerned about.

Mr Mills: Section 23AJ was an exempting provision and what it did is actually one of the problems. As it previously existed, it was granting exemptions for things that were effectively debt instruments, not equity instruments. We have swapped it so that it is consistent with our broad range of things.

Senator XENOPHON: But the exemptions are now broader. Is that right?

Mr Mills: Well, it has taken a completely different turn.

Senator XENOPHON: Are the exemptions now broader?

Mr Mills: You cannot say it is broader. It is a different way of looking at it. Parliament—you—have decided that it needs to be done consistent with the rest of the law that we have underlying it. Whether or not that is the ultimate solution—

Senator XENOPHON: But the question is: are we going to get less or more tax from overseas transactions?

Mr Mills: We will take that on notice, as you requested.

Answer:

The net revenue impact of the rewrite of Section 23AJ of the *Income Tax Assessment Act 1936* in Subdivision 768-A of the *Income Tax Assessment Act 1997* is unquantifiable, due to the current lack of data and uncertainty as to potential taxpayer behavioural responses.

The rewrite has the consequence that the exemption provision has been narrowed in some respects and broadened in others. For example, Subdivision 768-A closed down certain observed tax structuring that relied on a domestic law arbitrage opportunity arising from the debt/equity rules operating for thin capitalisation purposes but not for dividend exemption (section 23AJ) purposes. This loophole allowed offshore acquisitions to be financed via the Australian operations of multinational enterprises without being constrained by the thin capitalisation limits.

The potential cross-border tax arbitrage tax planning opportunity raised by Professor Vann as a result of the changes to section 23AJ, if implemented, is likely to result in interest deductions offshore rather than impacting the Australian tax base. Furthermore, this planning is subject to the outcome of BEPS Action Item 2 which would aim to neutralise the tax effects of such tax planning.

The ATO will be monitoring the impact of these changes as it receives relevant data in the future.

Question 6: ATO advice on introduction of subdivision 768-A

Reference: Hansard page 38

Senator: Milne

Question:

Senator MILNE: Did you provide advice, as the tax office, to Treasury or the parliament about the likely implications of this law being changed? In light of the fact that obviously a tax academic has told us that it creates a greater opportunity for tax avoidance, did you point that out and was that part of the consideration? It certainly was not something that came to the parliament, which comes back to my point about advising Treasury as opposed to advising the parliament. Take it on notice if you do not know, but did you provide written evidence to Treasury in relation to this and, if so, will you provide it?

Mr Mills: We will take it on notice.

Mr Jordan: I am happy to have a look at this whole thing, because, from my recollection what the amendments were trying to do was to stop people that were creating some restructures that allowed deductions in overseas countries but an exempt dividend here. There was an anomaly in the definition of section 23AJ that was designed to say if, in substance, it is debt, it will be treated as debt and therefore will be taxable here, because you have got a deduction over there. And if, in substance, it was equity, it would stop a lot of these artificial arrangements between countries that were getting deductions overseas and here. I am a little surprised, I suppose, to hear this come out this morning and I am happy to have us look at this—

Senator XENOPHON: It arose out of Professor Vann's evidence.

Mr Jordan: Yes, that is what I mean. I am happy to undertake to look at that within the ATO and to perhaps provide advice to Treasury. My understanding was that it was designed to stop people structuring things to get an exempt dividend when it was really interest that should be taxable.

Senator XENOPHON: KPMG was quite excited about it though.

Mr Jordan: I will take that on board, and thank you for pointing it out.

Answer:

The advice provided by the ATO to Treasury at the time the amendment was being considered in 2013 concluded that there are factors weighing for and against the revenue and that it was not possible to quantify the revenue impact. The issues raised were:

- The revenue impact was unquantifiable due to the lack of data
- A gain to the revenue could theoretically arise however a behavioural response (in terms of a restructure of investments by taxpayers) could result in the status quo being maintained – that is, continued entitlement to the exemption, and
- The changes, on the other hand, could result in a cost to revenue to the extent that the range of interests that qualify for the exemption is broadened.

Question 7: ATO use of section 38 for taxpayer confidentiality

Reference: Hansard page 38-39

Senator: Canavan

Question:

Senator CANAVAN: At the outset, I would like to put on record that I have only been a member of this committee for eight or nine months. I have been a regular observer of economics committees and I have regularly seen witnesses from the ATO not reveal individual taxpayers' details. From my experience, at least, that has always been accepted by this committee. Indeed, it is not just the ATO witnesses; it is often the ACCC as well. Mr Jordan has already outlined how revealing that might undermine our tax system. But I would also like to put on record that, if we go down the path you have outlined, it has the potential to undermine the work of this committee, because we seem to be focusing on something which is rather fruitless—

CHAIR: Hang on.

Senator CANAVAN: Chair, I did not interrupt you—

CHAIR: Well, that is not a question.

Senator CANAVAN: Well, I can make a point of order—

CHAIR: You got your talking points from the Treasurer's office, obviously.

Senator CANAVAN: I can make a point of order if you like. Chair, I want to put on record that we have received very useful evidence this morning. There are clearly issues with the system that should be discussed and debated. But to go down the path where we would overturn probably years of this committee's experience in demanding that individual taxpayers, who are under investigation but have not been charged, be identified would be a regrettable step and undermine the effectiveness and credibility of this committee. It is not a course I would support.

To flesh out this issue, I want to ask the ATO about its FOI disclosure log, which goes back to 2011. I have looked at it and I can see four cases, other than the case we have been discussing today, where you have invoked section 38 for taxpayer confidentiality reasons. There may be some others there. Can you on notice go back whether there have been other cases where you have invoked taxpayer confidentiality? Some of those past cases go to the quote from Mr Swan that Senator Edwards used and that referred to the Minerals Resource Rent Tax. Clearly there was a reason the government did not want to reveal. That instance was not about identifying taxpayers directly; it was rather a question about whether a taxpayer could be indirectly identified. If you could give me all those cases, it would be greatly appreciated.

Mr Jordan: We will take that on notice, Senator. I should have also mentioned earlier that we will obviously be monitoring these proceedings and I have suggested to you that you ask corporates specifically about their own information. If it comes to our attention that there is information, which we do not believe is correct or is misleading, we are willing to inform the committee that in our view something was incorrect. My advice, as previously given, is that, whilst we cannot give information about taxpayers, if they themselves make statements publicly that we know to be incorrect, we are within our rights—not breaching the secrecy provisions—to correct the public record. So we will certainly make that undertaking to you: if information is stated to this committee that we understand is incorrect in their tax affairs, we will correct the record.

Answer:

The ATO does not record this information in a readily accessible form.

There are currently 68 matters on the disclosure log.

We have identified 12 matters on the disclosure log which we believe contain at least some redactions under section 38 of the *Freedom of Information Act 1982 (FOI Act)*.

The ATO redacts exempt parts of documents where appropriate, and publishes them on the disclosure log, in accordance with the *FOI Act* and Office of the Australian Information Commissioner guidelines. No further reporting on redactions made to disclosure log documents is undertaken.

The ATO would need to examine each document on the disclosure log, and compare them to the relevant copies on our FOI files (some of which may no longer be available as they may have been destroyed) to answer this question more accurately. This is because the reasons for redactions are not always evident from the copies of documents on the disclosure log.

Question 8: Arrangements with overseas based companies

Reference: Hansard page 40

Senator: Milne

Question:

Senator MILNE: This afternoon, one of our witnesses is Google, so I would very much like to know how the tax office treats its own arrangements with Google? Could you confirm for a start that the tax office pays Google for services for a website and/or advertising or any other services or goods that Google may provide the tax office?

Mr Jordan: I am not sure we have any advertising—because people sort of know us—but I presume we have commercial arrangements. I know Google is on my computer at work, so I presume we pay for that and use their search functions. We would have iPhones with Apple and we use Apple products and we use Google.

CHAIR: Mr Jordan, I hope you are not paying for searching and browsing?

Mr Jordan: I do not know. We do not advertise. I am pretty sure we do not advertise.

Senator MILNE: To whom does the tax office pay, then? Do you pay an entity in Australia or do you believe you are paying an entity in the United States or somewhere else for the services that Google provides the tax office, whatever they might be?

Mr Jordan: I do not know the answer regarding Google. I am pretty sure that we pay to Apple Australia, which is a subsidiary of theirs. Does anyone else know what we do?

Mr Cranston: I would not think we pay Google anything. We do not advertise and the web service is free. But for Apple, yes.

Senator MILNE: Let me switch to Apple, then. It is the same question. It is not particular about a company; it is more the issue: to which entity do you actually pay it—an Australian entity or do you believe that the service is being paid for to an entity in the United States or somewhere else? How does this relate to withholding tax? Tell me, first of all, how many experts do you have in the tax office on withholding tax now?

Mr Jordan: With Apple—if I could just deal with that one and I will pass to Mark Konza on the withholding tax—I understand that for our product we pay Apple Australia Pty Ltd, which is a subsidiary of international Apple. They disclose the sales of that here in Australia. In terms of withholding tax—

Mr Konza: I could not put a number on that. We have a number of people who are experts on withholding tax. What you might be driving at is that there was a former officer saying that he only did withholding tax and was a withholding tax expert, and he expressed concern about our coverage of the topic of withholding tax. I would just like to say that there is something of a fundamental difference in that thought and my approach to the administration of international tax. A number of years ago when I moved into the Public Groups area, I discovered that a range of people concentrated on one particular aspect of international taxation. My concern is that if you do that you get outmanoeuvred by people who are using a multifaceted approach to profit shifting. Transfer pricing is only one part of profit shifting. We have, for probably the last five years, been emphasising that we expect our officers to be able to handle all the major components of profit shifting. When you are looking at transfer pricing, what goes into the products that are being priced also goes to the question of withholding taxes. We expect our international tax experts to be able to cover withholding tax.

Senator MILNE: I understand this is the end, so please put it on notice. You also have an arrangement, I understand, with Oracle Siebel to provide a service. Would you take on notice, please,

any arrangements the tax office has with a particular company that is based overseas and may have a subsidiary here, to whom you actually pay, and the tax arrangements, accordingly? Thank you.

Mr Cranston: In case I have misled the committee, in relation to Google, our understanding is the search engine is embedded in our web pages. I do not know what that means in payments, so we will also take that on notice.

Mr Jordan: You are very well informed about Siebel. It is an interesting product that some people love and some people do not, in our organisation, our client-relationship management product.

Answer:

Given the extensive operations of the ATO, the ATO has a range of contracts, principally with Australian based entities. Our systems do not record their connections with offshore parent companies. Our procurement and contractual arrangements include a requirement that vendors comply with Australian law, including tax law.

Arrangements between an entity and the ATO with respect to its tax obligations are managed with the relevant Compliance area within the ATO (which is separate from our procurement and contract management areas).

Major suppliers with overseas interests that the ATO has commercial arrangements of over \$10 million with include:

Supplier Name	Supplier ABN	Category
SAS Institute Australia Pty Ltd	13002287247	Software maintenance and support
CA (Pacific) Pty Ltd	20001146345	Software maintenance and support
Lockheed Martin Australia Pty Ltd	30008425509	Computer services and relocation services
Accenture Australia Holdings Pty Ltd	61096995649	Computer services and software
Wilson Parking Australia 1992 Pty Ltd	67052475911	Security guard services
HP Australia Pty Ltd	74004394763	Computer servers
UGL Services Pty Ltd - DTZ. A UGL company - UGL Services	77074196991	Building construction and support and maintenance and repair services. Property management services
IBM Australia Limited	79000024733	Application implementation services. Computer services. Software. Software maintenance.
Stellar Asia Pacific Pty Ltd	86082618148	Management advisory services
SERCO Global Services Pty Ltd	89062943640	Management advisory services
OPTUS Networks Pty Ltd	92008570330	Software and Telephony equipment
Chubb Security Australia Pty Ltd	99003605098	Security or access control systems

Source: Austender