

FINANCE AND PUBLIC ADMINISTRATION REFERENCES COMMITTEE
MANAGEMENT AND ASSURANCE OF INTEGRITY BY CONSULTING
SERVICES (CONSULTING SERVICES)
ANSWERS TO QUESTIONS ON NOTICE

Agency: Australian Taxation Office
Topic: Letters relating to multi-national tax schemes
Senator: Deborah O'Neill

Question:

DEBORAH O'NEILL: Thank you, Chair. The Tax Practitioner Board was in contact with the ATO and sought information from the ATO. You indicated in estimates the other day that you had a subset of the 144 emails that you were able to use. Given the information-gathering powers that you have and your statutory responsibilities and the carve out that you have to account independently of everybody else that Senator Pocock ably got in the last session, could you explain to me why the Tax Practitioner Board was able to get more information than the ATO, which would seemingly have greater powers of investigation?

JEREMY HIRSCHHORN: Yes, so, Senator, this is I think a very important point and it goes to the very different roles of the tax office and the TPB. So the tax office's interest is in tax. Now, we have an interest then, of course, in how people influence the payment of tax, but our core business is tax. The TPB have a core business of regulating the behavior of registered tax agents. So that's not all tax advisers, but registered tax agents. We sent notices to each of the firms, compulsory notices to produce information.

DEBORAH O'NEILL: To whom were they directed? To the CEO?

JEREMY HIRSCHHORN: I suspect, Senator, usually to the head of tax. I can take that on notice, but I would expect the head of tax, requiring information in relation to the clients and targets that they had marketed 11 particular tax schemes that we were unhappy with. Not all firms got notices in relation to all seven – to all 11 schemes, but we sent notices requiring information of client lists, target lists, who they'd actually spoken with.

DEBORAH O'NEILL: Can you provide on notice as much detail about those 11 tax schemes and which companies were related to each one of them?

JEREMY HIRSCHHORN: So, Senator – can I come back to that. In doing those notices which are focused on clients and targets, and I think I testified on this basis last week, we were frustrated through large claims for legal professional privilege on behalf of clients

DEBORAH O'NEILL: That was not in every case.

JEREMY HIRSCHHORN: That was not.

DEBORAH O'NEILL: That was specifically with PwC.

JEREMY HIRSCHHORN: Indeed, Senator. That was particularly with PwC. And so we sent extra notices to ask for internal information.

DEBORAH O'NEILL: And to whom did you send those notices?

JEREMY HIRSCHHORN: Again, I will take it on notice but I suspect the – I would think most likely the head of tax.

Answer:

In 2016 the ATO publicly issued twelve Taxpayer Alerts, one of which has since been withdrawn. These alerts provided a summary of our concerns about new or emerging tax risk and put the market on notice about the ATO concerns. Most of the Alerts issued in 2016 targeted arrangements in the large business sector and international tax related issues.

Where we have evidence to suggest that a firm may have been involved in propagating a particular scheme or arrangement, we may issue formal compulsory information gathering notices to the firm to obtain further information, including potentially their client and target lists.

In 2016, compulsory notices were issued to each of the Big 4 firms in relation to 9 of the Taxpayer Alerts. The notices were addressed to the appointed representative for each firm. In some cases, this was the Head of Tax.

The following table shows a summary of how many firms received a formal compulsory notice for each of the 9 Alerts. Due to strict secrecy provisions, we cannot disclose which firm(s) received which notices, or taxpayer related information obtained through the notices.

Taxpayer Alert	No. of firms that received notices
TA 2016/1 – Inappropriate recognition of internally generated intangible assets and revaluation of intangible assets for thin capitalisation purposes	1
TA 2016/2 – Interim arrangements in response to the Multinational Anti Avoidance Law (MAAL)	2
TA 2016/3 – Arrangements involving related party foreign currency denominated finance with related party cross currency interest rate swaps	2
TA 2016/4 – Cross-border leasing arrangements involving mobile assets	4
TA 2016/7 – Arrangements involving offshore permanent establishments	3
TA 2016/8 – GST implications of arrangements entered into in response to the Multinational Anti-Avoidance Law (MAAL)	1
TA 2016/9 – Thin capitalisation - Incorrect calculation of the value of 'debt capital' treated wholly or partly as equity for accounting purposes	2
TA 2016/10 – Cross-Border Round Robin Financing Arrangements	3
TA 2016/11 – Restructures in response to the Multinational Anti Avoidance Law (MAAL) involving foreign partnerships	1

The 2016 Taxpayer Alerts can be accessed via: <https://www.ato.gov.au/General/ATO-advice-and-guidance/ATO-guidance-products/Taxpayer-alerts/>