

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Inquiry into the Management and Assurance of Integrity by Consulting Services

Department: Department of the Treasury
Topic: Civil penalty proceedings related to the promotion of tax exploitation schemes
Reference: Spoken
Senator: Barbara Pocock

Question:

Senator BARBARA POCOCK: I will direct those questions where they belong. I want to ask a question about the consultation that you have underway in relation to the government's response to new legislation. I understand that there was consultation on the exposure draft, which closed on 4 October. How many submissions did you receive; are you able to tell us?

Ms Brown: Ms Berger-Thomson may have those numbers.

Ms Berger-Thomson: Across the four measures, we received 16 submissions.

Senator BARBARA POCOCK: Will you publish them?

Ms Berger-Thomson: Typically, we do publish submissions received.

Senator BARBARA POCOCK: Prior to the legislation being introduced, is that typical also?

Ms Berger-Thomson: That tends to be a matter for government. We try to, yes.

Senator BARBARA POCOCK: You try to. The exposure draft indicates that the government will extend the time that the ATO can commence civil penalty proceedings related to the promotion of tax exploitation schemes, from four to six years. Have I got that right?

Ms Berger-Thomson: That's correct.

Senator BARBARA POCOCK: Would this capture the PwC tax scandal, given that the ATO became aware of companies avoiding the MAAL in 2016? It seems that it would not. Do you know? You might want to take it on notice if you are not sure.

Ms Berger-Thomson: I might take that one on notice.

Ms Brown: The time the clock starts, for want of a better expression, will depend on a range of issues. It is not necessarily when the act occurred; it can be when the regulator became aware. I think it is better if we take that one on notice.

Senator BARBARA POCOCK: Could you have a look at that. I am curious about that.

CHAIR: Particularly if that's a provision of what you are doing, so that we understand whether it is currently a provision or to be a provision.

Ms Brown: Whether it is retrospective or not. It could be forward looking. It is unusual to have laws that

apply retrospectively when it imposes that kind of obligation on you. Regarding the four to six years, there would be other rationales for the six years, which we can find out and let you know about. Off the top of my head, some of them are: how long can you keep people from knowing whether they have done something wrong? How long can you keep records before it imposes a huge compliance burden? How long are people's recollections? After six years, it becomes a bit more vague, and then it is not going to be a fair case. There are factors like that which also go to whether you could extend much further than six. We can give some thought to that and come back with an answer on notice.

Answer:

The draft amendments to the *Tax Administration Act 1953* regarding the promoter penalty regime are proposed to apply from the later of 1 July 2024 and the first day of the quarter in a year after Royal Assent is received.

Only the amendment to the time limitation period would apply retrospectively. That means that from commencement of the amendments, the Commissioner would be able to take action in relation to past conduct that occurred within the previous 6 years rather than within the previous 4 years.

Other changes to the promoter penalty regime, notably the changes to maximum penalties that the Federal Court may impose, would only apply for conduct engaged in on or after 1 July 2024 (or Royal Assent if that occurs after that date).

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Inquiry into the Management and Assurance of Integrity by Consulting Services

Department: Department of the Treasury
Topic: Time limitations in relation to the promotion of tax exploitation schemes
Reference: Spoken
Senator: Barbara Pocock

Question:

Senator BARBARA POCOCK: The law currently provides that no time limitation applies for the promotion of schemes involving tax evasion. What's the purpose of applying a time limitation in relation to the promotion of tax exploitation schemes?

Ms Berger-Thomson: In part, I think it is because the evidence and the opportunity for people to act on advice, from a fairness perspective, impacts that. Partly, it's people keeping records and the like. We can take that on notice.

Senator BARBARA POCOCK: I would be curious about the thinking there. Thank you. I appreciate that. Treasury referred the PwC matter to the AFP. Have you sought a briefing from the AFP on their progress in the investigation to date?

Ms Brown: We have had conversations with the AFP. What we can confirm is that the investigation is ongoing. Beyond that, it would be more appropriate to direct those questions to the AFP.

Senator BARBARA POCOCK: That's not a very surprising answer, is it, Ms Brown? It is not a very exciting answer either. It is ongoing. Are you meeting with them regularly?

Ms Brown: I don't think we'd say it is a regular meeting. We have provided information. If they have more questions, we are ready to assist. It is for them to conduct the investigation. Again, the questions would be better directed towards the AFP.

Senator O'NEILL: My recollection of some evidence we received in recent weeks was that the initial AFP inquiry that was first requested of them by the ATO didn't advance because there wasn't sufficient knowledge in the AFP. They didn't know what evidence to ask for. There was an evidence-knowledge deficit in the equation that meant it didn't really hit its straps at that first point of alert. Are you aware of that, Ms Brown?

Ms Brown: No. Again, it is for the AFP to determine.

Senator O'NEILL: If we get that to you on notice—

Answer:

There is currently a four-year time limitation, generally from time of the last alleged promoter activity, for the Commissioner of Taxation to apply to the Federal Court for a breach of the promoter penalty provisions. The limitation is proposed to be extended from four to six years by the reform proposal released for consultation on 20 September 2023.

The current time limitation was put in place to align the period for which actions can be taken against tax promoters with the period that penalties can be brought against taxpayers for a tax scheme.

Time limitations are in place for commencing civil proceedings in taxation law, such as promoter penalty applications, to ensure that disputes are settled quickly and that the threat of civil action does not hang over a defendant indefinitely. However, in cases of fraud or evasion, there is no time limit on when the Commissioner may amend a taxpayer's assessment.