

House of Representatives Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Inquiry into the Tax Laws Amendment (2012 Measures No. 4) Bill 2012

26 July 2012

Topic: Otherwise deductible rule

Hansard Page: 31

Question: 1 (ATO)

Mr CIOBO: Why would Treasury be completely oblivious to, in this particular case, employers having to pay hundreds of thousands of dollars and, in aggregate terms, millions of dollars of additional tax because employees have left? Why would you be unaware of that when clearly it is a major problem for employers?

Mr Leggett: We can only be made aware of these issues if they are brought to our attention. If they are not brought to our attention—

Mr CIOBO: So it is the employers' fault?

Mr Leggett: We cannot be out there presuming what is happening in practice. If there are concerns with the FBT system, there are mechanisms available for employers to bring them to our attention and for us to act on them. Those mechanisms have not been used in this case.

Mr Jacobs: We could invite the ATO or they could take on notice whether or not those issues have been raised.

Ms Cleaver: They have been becoming more widespread with this issue of maintaining their own homes. We can bear half a million dollars worth of costs, but for potentially 1,500 residents who are not maintaining their own homes that is a huge cost.

Mr CIOBO: What is the ATO's view?

Mr Bailey: It is an issue in the current system, but I will take on notice how many complaints we have had about it. Anecdotally, we do not seem to get a huge amount of complaints about the otherwise deductible rule.

Mr CIOBO: That is by volume, I am assuming?

Mr Bailey: By volume?

Mr CIOBO: Yes, not by value.

Mr Bailey: No.

Answer:

The ATO has received 3 calls about this issue since 30 March 2012. None of these calls were complaints. One of those callers had this issue for a single employee and did not mention a dollar amount. The other two cases related to a total of nine employees, with approximately \$175,000 of fringe benefits tax (FBT) payable due to the absence of declarations.

A project, including reviews of 50 employers providing living away from home allowance (LAFHA), to assess the correct application of the LAFHA rules, was conducted in 2011. One of those employers paid FBT on the full amount of LAFHA paid to an employee due to the absence of the required declaration.

The issue has not been raised at meetings of the National Tax Liaison Group FBT sub-committee.