QUESTION: AET 67

Topic: **Tax Laws Amendment (2006 Measures No. 1) Act 2006**

Hansard Page: **110**

Senator ABETZ asked:

Senator ABETZ: Thank you to officials from the Australian Taxation Office. I am sure that chapter 3 of the Tax Laws Amendment (2006 Measures No. 1) Act 2006 will immediately spring to mind, but I understand that that deals with the issue of promoters of certain schemes. In section 290-60 we are told:

(a) the entity markets the scheme or otherwise encourages the growth of the scheme or interest in it; …

Does that apply to charitable institutions as well, if somebody goes out promoting or requesting money, albeit that it will not be for an investment or a profit but for a charitable institution?

Mr Quigley: My gut feeling is that it would not, but I would need to take it on notice.

Senator ABETZ: Right, if you could take that on notice. Then, taking it the next step: what if it is done for the purpose of allegedly charitable purposes, or fraudulent purposes disguised as charitable? Would that regime in the tax act apply? If you want to take that on notice, yes.

Mr Olesen: Yes.

Answer:

The scheme referred to in section 290-60 of the Tax Laws Amendment (2006 Measures No. 1) Act 2006 is a tax exploitation scheme carried out for the purpose of obtaining a tax related benefit that is not in fact allowable. Promoter penalties do not usually apply to charitable institutions requesting donations because there is no scheme of this type. However, if a charitable institution were to solicit donations on the basis that donors could claim a tax deduction that wasn't actually allowable, promoter penalties could apply.

If a scheme involves an offence, such as fraud, it would be more appropriate to prosecute the promoter than to apply promoter penalties. If there is no offence but there is a tax exploitation scheme, promoter penalties could apply.