

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates

26 February 2014

Question: AET 3024

Topic: Not-for-profits

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Senator BUSHBY asked:

CHAIR: How much revenue has been raised from the not-for-profit sector since the establishment of the ACNC?

Mr Olesen: I do not have that data with me. We would need to take that on notice.

CHAIR: In doing so, can you also see if you can answer how much of that has arisen from ATO initiated activity and the degree to which any of that was raised through referrals from the ACNC.

Mr Olesen: Sure.

CHAIR: Are you aware of the ACNC reversing any legal positions or strategies which had previously been endorsed by the ATO on precedential questions of law?

Mr Olesen: That is properly a question better directed to the ACNC. I am aware that we do not completely agree on every single way in which we use to consider whether a charity was a charity and all the issues associated with whether a charity is a charity, but by large we do. I think there were some things at the margins.

CHAIR: Would you mind taking on notice anything that you are aware of at the margins where you have a slightly differing view. I will ask the ACNC as well. Do you think there is any likelihood that a change of decision-maker could lead to a reversal of position on questions of law?

Mr Olesen: Consistent with my last answer, I do not think in any significant way because our views are substantially the same. As I say, at the margins there might be some slight differences in approach but they are not significant, in my understanding.

Answer:

The Australian Charities and Not-for-profits Commission (ACNC) was established on 3 December 2012. A charity must be registered with the ACNC prior to applying to the ATO for endorsement to access tax concessions. Endorsed charities are exempt from paying income tax and enjoy certain other tax concessions.

The ATO undertakes compliance activities to ensure endorsed charities and other not-for-profit entities continue to meet the requirements to access tax concessions, otherwise they may have a tax liability. Since 3 December 2012, the ATO has raised \$10.5 million in revenue adjustments from entities that we found not to meet the requirements to access tax concessions. All the revenue adjustments to date have arisen directly from ATO initiated activities. We have however, received three compliance referrals from the ACNC that are currently under review and may lead to revenue adjustments.

The ATO is not aware of the ACNC reversing any legal positions or strategies that had previously been endorsed by the ATO on precedential questions of law. There is one case where the ACNC has followed a Federal Court decision whereas the ATO is appealing and awaiting the conclusion of that appeal process before applying the Federal Court decision on the matter. The ATO and ACNC hold meetings to discuss potential differences of views.