

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates

26 February 2014

Question: AET 32-39

Topic: Reviews (Tsy)

Written: 5 March 2014

Senator LUDWIG asked:

32. Since the Supplementary Budget Estimates in November 2013, how many new reviews (defined as review, inter-departmental group, inquiry, internal review or similar activity) have been commenced? Please list them including:

- a. the date they were ordered
- b. the date they commenced
- c. the minister responsible
- d. the department responsible
- e. the nature of the review
- f. their terms of reference
- g. the scope of the review
- h. Whom is conducting the review
- i. the number of officers, and their classification level, involved in conducting the review
- j. the expected report date
- k. the budgeted, projected or expected costs
- l. If the report will be tabled in parliament or made public

33. For any review commenced or ordered since the Supplementary Budget Estimates in November 2013, have any external people, companies or contractors being engaged to assist or conduct the review?

- a. If so, please list them, including their name and/or trading name/s and any known alias or other trading names
- b. If so, please list their managing director and the board of directors or equivalent
- c. If yes, for each is the cost associated with their involvement, including a break down for each cost item
- d. If yes, for each, what is the nature of their involvement
- e. If yes, for each, are they on the lobbyist register, provide details.
- f. If yes, for each, what contact has the Minister or their office had with them
- g. If yes, for each, who selected them
- h. If yes, for each, did the minister or their office have any involvement in selecting them,
 - i. If yes, please detail what involvement it was
 - ii. If yes, did they see or provided input to a short list
 - iii. If yes, on what dates did this involvement occur
 - iv. If yes, did this involve any verbal discussions with the department

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- v. If yes, on what dates did this involvement occur
34. Since the Supplementary Budget Estimates in November 2013, what reviews are on-going?
- Please list them.
 - What is the current cost to date expended on the reviews?
35. Since the Supplementary Budget Estimates in November 2013, have any reviews been stopped, paused or ceased? Please list them.
36. Since the Supplementary Budget Estimates in November 2013, what reviews have concluded? Please list them.
37. Since the Supplementary Budget Estimates in November 2013, how many reviews have been provided to Government? Please list them and the date they were provided.
38. When will the Government be responding to the respective reviews that have been completed?
39. What reviews are planned?
- When will each planned review be commenced?
 - When will each of these reviews be concluded?
 - When will government respond to each review?
 - Will the government release each review?
 - If so, when?
 - If not, why not?

Answer:

32.

- 1. Extension to terms of reference and reporting date of existing review: Post-Implementation Review of Division 7A of Part III of the Income Tax Assessment Act 1936**
- 8 November 2013 (date of announced extension)
 - 18 May 2012 (original commencement of review)
 - Assistant Treasurer
 - Treasury
 - Review of taxation laws governing individuals' removing funds from private businesses at company tax rates instead of their personal marginal tax rates
 - Extended Terms of Reference*

The Board of Taxation is currently undertaking a post-implementation review of Division 7A of Part III of the Income Tax Assessment Act 1936 (Division 7A).

Division 7A contains integrity provisions designed to prevent shareholders (or their associates) of private companies from inappropriately accessing the profits of those companies in the form of payments, loans or debt forgiveness transactions.

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Division 7A is part of a broader tax framework in which private business structures operate. Within this context the Board should:

- * examine the broader taxation framework in which Division 7A operates including its interaction with other areas of the tax law;
- * examine whether there are any problems with the current operation of Division 7A, that are producing unintended outcomes or disproportionate compliance and administration costs; and
- * to the extent that there are problems, recommend options for resolving them so that, having regard to the policy intent of Division 7A and potential compliance and administration costs, the tax law operates effectively.

The Board's report should take account of the revenue implications of various options and, where appropriate, suggest approaches that minimise any revenue cost.

In undertaking this review the Board should seek public submissions and consult widely.

The Board should report to the Government by 31 October 2014.

- g. Post-implementation review.
- h. Board of Taxation.
- i. 2 x EL2 officers; 1 x APS 5 officer (all part-time).
- j. 31 October 2014.
- k. Cost for consultant, no more than \$25,000.
- l. For the Government to determine.

2. Review of Tax Impediments Facing Small Business

- a. 28 March 2014.
- b. 28 March 2014.
- c. Acting Assistant Treasurer, Minister for Small Business, & Parliamentary Secretary to the Treasurer.
- d. Treasury.
- e. Review of systemic tax issues that hinder small business from achieving their commercial goals.
- f. I, Mathias Cormann, Acting Assistant Treasurer, together with Bruce Billson, Minister for Small Business, request the Board of Taxation (the Board) to conduct a fast-track review to identify features of the tax system that are unreasonably or unnecessarily hindering or preventing small businesses from pursuing and achieving their commercial goals.

The Board's report should provide business and broader community perspectives on issues in the tax system that are of most concern to small businesses, and identify the short- and medium-term priorities for small business tax reform in Australia, while noting that frequent change is often cited as a contributing factor to the compliance burden facing small

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business. In doing so, there should be a particular focus on high priority options for simplification and deregulation.

Recognising that the small business sector is highly diverse, as much as possible the report should focus on aspects of the tax system that unreasonably impede the goals of a broad cross section of businesses, with a particular emphasis on impediments to growing into medium and large business. The Board should not feel constrained to use any specific definition of small business.

To facilitate the production of this fast-track review, we ask that the Board utilise its extensive links with tax professionals and conduct targeted consultation with key business groups. The Board also should work closely with the Treasury and Australian Taxation Office in preparing its report. Further, the report should utilise and build upon the conclusions of the Board's scoping study of small business tax compliance costs, which was completed in December 2007.

We ask that the Board report to Government by 31 August 2014.

- g. Fast-track review to identify features of the tax system hindering the operation of small business.
- h. Board of Taxation.
- i. 3 x EL2 officers, 1 x APS5 officer (all part-time).
- j. 31 August 2014.
- k. Not available as of 9 April 2014
- l. For the Government to determine.

3. Debt and Equity Tax Rules

- a. 14 May 2013.
- b. 14 May 2013.
- c. Assistant Treasurer.
- d. Treasury.
- e. Review into the definitional rules in the tax laws that classify financial instruments as debt or equity.
- f. The Board of Taxation (the Board) is asked to undertake a post-implementation review of the debt and equity rules in the income tax law (Division 974 of the Income Tax Assessment Act 1997).

The debt and equity rules were introduced to classify certain financing arrangements as debt or equity for specified tax purposes (for example, the thin capitalisation rules and the interest and dividend withholding rules) on the basis of the 'economic substance' of the arrangement rather than merely on the basis of the legal form. The rules have now been in operation for over a decade.

The standing terms of reference for a post-implementation review requires the Board to consider whether the legislation:

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gives effect to the Government's policy intent, with compliance and administration costs commensurate with those foreshadowed in the Regulation Impact Statement for the measure;

is expressed in a clear, simple, comprehensible and workable manner;

avoids unintended consequences of a substantive nature;

takes account of actual taxpayer circumstances and commercial practices;

is consistent with other tax legislation; and

provides certainty.

In undertaking the post-implementation review, the Board is also asked to:

examine whether there are any unintended misalignments between the debt and equity distinction and related concepts in the income tax law which could potentially result in inconsistent policy outcomes; and

consider whether there can be improved arrangements within the Australian tax system to address any inconsistencies between Australia's and other jurisdictions' debt and equity rules that could give rise to tax arbitrage opportunities.

To the extent that there are unintended misalignments between the debt and equity distinction and related concepts in the income tax law, the Board should also examine the potential for broader application of the current debt and equity rules to ensure consistent policy outcomes.

On 14 December 2013, the Assistant Treasurer separately announced in a press release that the Government intended to proceed with amendments to the integrity rule in section 974-80, however, the design of this measure would be considered as part of the Board's review of the debt and equity tax rules being conducted.

The Board is asked to report to the Assistant Treasurer by March 2015.

- g. Post-implementation review and review of interactions.
- h. Board of Taxation.
- i. 1 x EL2, 1 x EL1, 1 x APS 5 (all part-time).
- j. March 2015.
- k. Cost for consultant, no more than \$87,000.
- l. For the Government to determine.

4. Thin Capitalisation Arm's Length Debt Test

- a. 14 May 2013.
- b. 14 May 2013.
- c. Assistant Treasurer.
- d. Treasury.

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- e. Review into the operation of an alternative 'arm's length' test available in the thin capitalisation provisions to clarify eligibility, make it easier to comply with and administer.
- f. The Board of Taxation (the Board) is asked to undertake a review of the thin capitalisation arm's length test contained in Division 820 of the Income Tax Assessment Act 1997.

The arm's length test is intended to provide a carve-out from the thin capitalisation rules for a level of debt which is considered to be 'commercial or independent'. The arm's length test focuses on what the businesses acting at arm's length would borrow and what independent commercial lenders would lend to the business (the policy).

Having regard to that policy, the Board is to consult on ways to make the arm's length test more effective by reducing compliance costs for business and making it easier for the Australian Taxation Office to administer.

In addition, the Board should consider who should be eligible to access the arm's length test and in what circumstances.

The Board should consider views put forward and provide its recommendations in a report to the Government by December 2014.

- g. Review of administrability and ease of compliance, and scope of test.
- h. Board of Taxation.
- i. 1 x EL2, 1 x EL1, 1 x APS 5 (all part-time).
- j. December 2014.
- k. Cost for consultant, no more than \$20,000.
- l. For the Government to determine.

5. Competition Review

- a. Election commitment. The Prime Minister and Minister for Small Business announced a review of competition policy on 4 December 2013. The Minister for Small Business announced the Terms of Reference and Review Panel on 27 March 2014.
- b. The Minister for Small Business announced the Terms of Reference and Review Panel on 27 March 2014.
- c-e. Independent review.
- f. A copy of the terms of reference are available at: <http://competitionpolicyreview.gov.au/terms-of-reference/>.
- g. The review has a broad Terms of Reference to allow it to consider all relevant aspects of competition policy.
- h. The Review is being conducted by an independent Panel. Professor Ian Harper is the Chair of the Review Panel. Mr Peter Anderson, Ms Su McCluskey and Mr Michael O'Bryan are the other Panel members. Further information is available at: <http://competitionpolicyreview.gov.au/review-panel/>.

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- i. A secretariat to support the Government's competition policy review has been established within the Treasury and comprises 16 officers. There are nine Treasury officers (one SES Band 2, two SES Band 1, two Executive Level 2, two Executive Level 1, one APS 6 and one APS 5). In addition, there is one Associate Secretary from the NSW Department of Treasury and Finance; one officer from the Department of the Prime Minister and Cabinet (APS 6); two officers from the ACCC (Executive Level 2); one officer from the Department of Industry (Executive Level 2); one officer from the Productivity Commission (Executive Level 2), and one non-ongoing employee from outside government (Executive Level 2).
- j. The Terms of Reference ask the Review Panel to provide a final report to the Government within 12 months.
- k. Funding of \$2.5 million for the review was included in the 2013-2014 Mid-year Economic and Fiscal Outlook – \$1 million in 2013-14 and \$1.4 million in 2014-15.
- l. The Final Report will be provided to the Government.

6. Financial System Inquiry

- a. Election commitment
- b. Final terms-of-reference and committee members were announced on 20 December 2013.
- c-e. Independent review
- f. Final terms-of-reference were announced on 20 December 2013.
<http://fsi.gov.au/terms-of-reference/>
- g. The Inquiry is charged with examining how the financial system could be positioned to best meet Australia's evolving needs and support Australia's economic growth.
- h. An independent committee, chaired by Mr David Murray AO.
- i. Treasury has 11 on-going staff and one non-ongoing employee seconded to the Secretariat (APS6 to SESB3).
The Secretariat also includes 8 staff from other government agencies (APS6 to approx.SESB1), and 6 staff from the private sector (EL1 to approxSES1-2)
- j. Final report expected to be delivered to the Government by November 2014.
- k. \$6.0 million over 2013-14 and 2014-15.
- l. Final report to be delivered to the Government.

33.

1. Extension to terms of reference and reporting date of existing review: Post-Implementation Review of Division 7A of Part III of the Income Tax Assessment Act 1936

- a. Mark West, Partner, McCullough Robertson Lawyers.
- b. n/a

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- c. Cap of \$15,000 consultant fees @ \$606 daily sitting fee, plus \$10,000 domestic travel costs, for the provision of independent tax expertise in the Board of Taxation Secretariat's dealing with issues generally arising in this review.
- d. The application of independent tax expertise in attending meetings and consultations, considering submissions, considering and providing advice on materials provided by others in the drafting of a discussion paper and final report, responding to ad hoc enquiries from the working group of this review, and assisting generally in the preparation of a discussion paper and final report.
- e. Neither the consultant nor his firm are on the lobbyist register.
- f. n/a
- g. n/a
- h. n/a

2. Review of Tax Impediments Facing Small Business

Nil

3. Debt and Equity Tax Rules

- a. John Smith / Frank O'Loughlin
- b. n/a
- c. John Smith: cap of \$27,000 consultant fees @ \$135 per hour, plus \$10,000 domestic travel costs.

Frank O'Loughlin: cap of \$40,000 consultant fees @ \$300 per hour (cap of \$1,800 per day), plus \$10,000 domestic travel costs.
- d. The application of independent tax expertise in attending meetings and consultations, considering submissions, considering and providing advice on materials provided by others in the drafting of a discussion paper and final report, responding to ad hoc enquiries from the working group of this review, and assisting generally in the preparation of a discussion paper and final report.
- e. Neither consultant is on the lobbyist register.
- f. n/a
- g. n/a
- h. n/a

4. Thin Capitalisation Arm's Length Debt Test

- a. Mark Goldsmith
- b. Deloitte
- c. Cap of \$15,000 consultant fees; \$606 daily sitting fee, plus \$5,000 domestic travel costs.
- d. The application of independent tax expertise in attending meetings and consultations, considering submissions, considering and providing advice on materials provided by others

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in the drafting of a discussion paper and final report, responding to ad hoc enquiries from the working group of this review, and assisting generally in the preparation of a discussion paper and final report.

- e. Neither the consultant nor his firm are on the lobbyist register.
- f. n/a
- g. n/a
- h. n/a

5. Competition Review

- a. Apart from the Secretariat, the Chair and Panel members have been engaged. Professor Ian Harper (Chair), Ms Su McCluskey, Mr Michael O'Bryan SC, and Mr Peter Anderson.
- b. Not applicable as contracted as individuals.
- c. The Chair is paid a sitting fee of \$1,500 per day, Panel members are paid \$1,000 per day; plus travel costs.
- d. To conduct the independent review.
- e. The Chair and Panel members are not listed on the lobbyists register.
- f-h. The Minister for Small Business appointed the Panel members. The Minister or his office contacted the panel members about their appointments. The Minister for Small Business had discussions with Treasury in the period from the Government's election to the formal appointment of each member.

6. Financial System Inquiry

- a. Committee members include Mr David Murray AO, Professor Kevin Davis, Mr Craig Dunn, Ms Carolyn Hewson, and Dr Brian McNamee.
International Advisory Panel members include Sir Michael Hintze AM, Dr David Morgan AO, Ms Jennifer Nason, and Mr Andrew Sheng.
- b. n/a
- c. The Committee chair will be paid \$1500 per day, and all other committee members will be paid \$1000 per day.
Each member of the International Advisory Panel will be paid \$1500 per day.
- d. The Inquiry committee will produce an interim report, and a final report for the Government in accordance with the terms of reference.
The International Advisory Panel will provide an expert perspective to the Inquiry on aspects of the terms of reference, including technological change, Australia's global competitiveness and offshore regulatory frameworks.
- e. No.
- f. The Treasurer contacted each member to discuss their appointment.
- g. The Treasurer appointed each member.

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- h. The Treasurer appointed each member.
- i-v. The Treasurer had discussions with Treasury in the period from the Government's election to the formal appointment of each member.
34. Debt and Equity Tax Rules - \$33,358.07
Thin Capitalisation Arm's Length Debt Test - \$909.00
The Financial Industry Supervisory Levy methodology Review is an ongoing review. It commenced prior to 7 September and is continuing. There is no net cost to Treasury.
35. nil.
36. nil.
37. nil.
38. This is for the Government to determine.
39. An actuarial study into home building and contents insurance prices in North Queensland. The Australian Government Actuary (AGA) will be requested to compare home building and home contents insurance premium increases in North Queensland over the period 2005-06 to 2012-13, and make comparisons with pricing across Northern Australia more broadly as well as other east coast centres, including Adelaide, Sydney and Melbourne.
- a. It is planned to commence in the first half of 2014.
- b. The review will be concluded by 31 December 2014.
- c. The Government will consider the findings of the review before considering what, if any, action is necessary.