

**Senate Economics Legislation Committee**  
**ANSWERS TO QUESTIONS ON NOTICE**

**Treasury Portfolio**

Additional Estimates

2014 - 2015

**Department/Agency: Treasury**

**Question: AET 108-116**

**Topic: External Compliance Assurance Process**

**Reference: written - 06 March 2015**

**Senator: Ketter, Chris**

**Question:**

108. How much money has it saved the ATO?
109. Have there been any disputes between the ATO and internal audits so far? What were they?
110. Is there a risk that we lose the expertise inside the ATO to make sure the internal audits of these big companies are paying their fair share?
111. What strategies exist to detect multinational tax avoidance tactics within the ECAP program?
112. What are the conditions under which the ECAP program will be considered a success and what conditions make a failure?
113. When will the program be evaluated?
114. There have been reports in the business press that the ATO has significantly increased the number of tax disputes it resolves out of court – could you detail how many settlements were reached between the ATO and companies in each of the past five financial years? Could you describe the trend in the number of settlements over the past five years in general terms – is it up or down? Why is this?
115. One example of this is the settlement that was reached between the tax office and GE Capital in January over \$144 million in tax deductions – what were the reasons for ATO deciding not to pursue this case to its conclusion in court? Is it fair to say that the ATO now has an informal preference for settling cases out of court? If so, why?
116. Does the ATO have any figures on the average revenue return for corporate tax disputes which are concluded through the legal process compared with those which are settled out of court?

**Answer:**

108. There are no calculated ATO cost savings from what we were testing in the pilot. Moreover, External Compliance Assurance Program (ECAP) is not primarily designed as a cost saving measure for the ATO and we have not at this stage tracked estimated ATO cost savings. Its intent is to provide options for taxpayers that provide them with cost savings.
109. There have been no disputes.
110. No. ECAP focuses on lower level risks and factual verification. It is not an audit but an assurance activity. The ATO will make the compliance decision on each ECAP and therefore a case officer with compliance capability skill set will be required in all cases.

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111. The ECAP pilot focussed on a set of specific factual risks that do not include multinational tax planning.
112. Qualitative assessment of the pilot is being undertaken against four elements:
- Enhanced client experience – is the experience in dealing with the ATO better?
  - Reduced compliance cost and red tape – have we streamlined the approach for both taxpayers and ATO?
  - Cost-effective assurance over a larger proportion of population – does ECAP offer a competitive and effective approach overall?
  - More efficient use of ATO resources – does the use of ECAP support improved case management?
113. We are currently evaluating the ECAP pilot. The evaluation outcomes will be publically available, together with the existing ECAP materials, on ato.gov.au.
114. Pre-litigation settlements have risen from 40 percent of settlements in 2009-2010 to 73 percent year to date. Further, whilst the trend in the numbers of all settlements has increased over the last four years, settlement numbers are lower than those reported during 2000-2008, when settlements of mass-marketed tax disputes lead to higher numbers.

From 2012-13, there has been a clear increase in settlements at the pre-litigation stage. This aligns with the ATO's approach to dispute resolution and has allowed us to clear a number of difficult, long standing disputes.

Most settlements continue to involve tax disputes within the micro-business segment, with 41 percent of year to date settlements occurring in this market. Over the previous 5 years, large market settlements have been fairly steady accounting for less than 10 percent of all settlements. The unusually high settlement results in the large market for year to date can be attributed to one group of 27 entities.

Stage settlement occurred (All markets)	2009-10	2010-11	2011-12	2012-13	2013-14
Pre-Litigation	248	161	165	244	301
Litigation	373	143	91	95	92
Total	621	304	256	339	393

115. Due to confidentiality provisions, the ATO is unable to disclose information relating to a specific taxpayer's affairs.

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More generally, in October 2014 the ATO released a new streamlined Code of Settlement and related guidance materials. The code sets out the ATO's policy on the settlement of taxation and superannuation disputes, including disputes involving debt.

The ATO is committed to working with taxpayers to resolve disputes as early and cooperatively as possible. The code makes it clear that any ATO decision to settle (or not) must be a fair, effective and efficient means of resolving the matters in dispute, and must be based on an informed understanding of the relevant facts and issues in dispute and any advice of a settlement advisory panel, or legal or other expert opinions relevant to the matter being considered.

When deciding whether or not to settle a matter with a taxpayer, the ATO is required to consider all of the following factors:

- the relative strength of the parties' position
- the cost versus the benefits of continuing the dispute
- the impact on future compliance for the taxpayer and broader community.

In keeping with the principles of being a model litigant, litigation is appropriate where:

- there is a contentious or uncertain point of law that requires clarification, and it is in the public interest to seek law clarification through litigation
- the behaviour is such that we need to send a strong message to an individual – or broadly to the community that we will not sit idly by
- there is a longstanding unresolvable debt
- the dispute is intractable, alternative means of resolving the dispute has been attempted but have not produced an acceptable outcome.

116. The ATO's data does not allow us to answer this question directly as framed with reference to "corporate tax disputes".

We have, however, provided figures as they relate to revenue outcomes of litigation involving large market taxpayers (with turnover greater than \$250 million) as compared with total revenue outcomes of litigation.

The information provided below is based on outcomes for all finalised matters in litigation. Reference to "finalised prehearing" includes matters "settled out of court", but also includes cases withdrawn by the taxpayer or conceded by the ATO after litigation has been initiated. "Matters concluded through the legal process" refers to matters decided by the courts or tribunals.

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“Revenue return” is based on finalised tax, penalty and interest for all completed cases. “Revenue variance” indicates the variation between amount of tax, penalty and interest subject to the dispute (“tax in dispute”) and the amount of tax, penalty and interest on finalising the dispute (“revenue return”).

#### All markets

In 2013-14, there were 835 finalised litigation matters across all market segments, involving \$2,124 million tax in dispute, and resulting in \$999 million revenue return. Revenue variance for matters finalised prehearing in 2013-14 was 52% (from \$1,292 million to \$626 million). For the same period, revenue variance for matters concluded through the legal process was 55% (from \$832 million to \$373 million).

For all finalised litigation matters in 2013-14 the average tax in dispute was \$2.5 million and average revenue return was \$1.2 million.

For matters concluded through the legal process in 2013-14 the average tax in dispute was \$5 million and the average revenue return was \$2.2 million.

For matters finalised prehearing in 2013-14 the average tax in dispute was \$1.9 million and the average revenue return was \$0.9 million.

#### Large market

For large market (>\$250 million) there were 48 finalised litigation matters, involving \$1,561 million in dispute, resulting in \$642 million revenue return. This is an average tax in dispute of \$33 million and an average revenue return of \$13 million for large market disputes.

Revenue variances for matters finalised pre-hearing in 2013-14 was 57% (from \$845 million to \$367 million). For the same period revenue variances for matters concluded through the legal process was 62% (from \$715 million to \$274 million).