

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates

2014 - 2015

Department/Agency: ATO

Question: 37-38

Topic: Pharmaceutical companies with APAs

Reference: Spoken – 02 June 2015

Senator: Dastyari, Sam

Question:

Senator DASTYARI: You might need to take this on notice: how many different pharmaceutical companies have had an advanced pricing agreement with the ATO?

Mr Konza: Over what period? We have been doing APAs with the pharmaceutical industry, to my knowledge, for 25 years.

Senator DASTYARI: Over the past five years.

Mr Konza: Yes.

Senator DASTYARI: Is it: yes, you have the information; or yes, you will take it on notice?

Mr Konza: No, I am sorry: I would have to take that on notice.

Senator DASTYARI: That is completely reasonable. Does the ATO have any current advanced pricing agreements in place with multinational pharmaceutical companies?

Mr Konza: Yes, I think that there might be two in place, but that is off the top of my head. I can take that on notice as well.

Senator DASTYARI: Is that a similar situation as to what has happened in the tech sector where—tell me if this is incorrect—because of the audit process and the strenuous testing of assertions that have been made, effectively you would put future APAs on hold to see the conclusion of that process. Is that what is happening in the pharmaceutical sector as well?

Mr Konza: What has happened in the tech sector is that we have said any tech company that is involved in what the commissioner has publically termed 'at-the-edge tax planning' will not be accessing the APA program, because to unpick that tax planning would require the use of our investigatory powers. So audits and reviews are the better way of looking at their arrangements. There are tech companies who are not involved in at-the-edge tax planning arrangements. If they wanted an APA, and that was the case, then we would treat them gratefully—

Senator DASTYARI: We do not want to talk about the companies—we have covered that.

Mr Konza: Pharmaceutical companies identified as engaging in at-edge-tax planning would be subject to the same restriction for the same logic.

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Senator DASTYARI: You said there is a small number—you believe in the vicinity of two, but you will confirm that on notice—of APAs with what would traditionally be deemed a pharmaceutical company, noting the term pharmaceutical company is a broad term, because lots of companies do different things. Have the two APAs been entered into in the past several years or are they existing APAs that have just continued on and not run out yet?

Mr Konza: I would need to take that on notice. I have been given access to data that indicates that there are more than two. However, exactly as you phrased your question, I do not want to tell you what I have got in front of me here, because I think some of these are not pharmaceutical companies but actually medical instrument companies or other types of companies. But, from their names and my knowledge of the industry, I can see at least three that are definitely pharmaceutical companies.

Answer:

37. Over the past five years, seven pharmaceutical companies have had an advanced pricing agreement with the ATO.
38. The ATO has four current advanced pricing agreements in place with multinational pharmaceutical companies. One advanced pricing agreement was entered into in the past several years (2013) and three are existing advanced pricing agreements that have been renewed and not run out yet.