

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Supplementary Budget Estimates

2014 - 2015

Department/Agency: ATO

Question: SBT 4301 - 4308

Topic: Facilitation payments

Reference: Hansard Page 127-128

Senator: Milne

Question:

Senator MILNE: I want to go to facilitation payments. How much have Australian companies, as a big picture figure, claimed as tax deductions under sections 26.52(4) and 26.52(5) of the Income Tax Assessment Act during the last five years? Do you have that information? First of all, how do you define a facilitation payment?

Mr Mills: Facilitation payments are very broadly defined in those sections. In fact, the second one you referred to is disallowing it. It is not an entitlement to a claim; it actually prevents a claim. It is very broadly defined. It would catch almost any range of payments that are made to effectively get preferential treatment—what you would otherwise describe as a bribe, in colloquial terms, if I can put it like that. It is an extremely broad definition.

Senator MILNE: Are you capturing that in the records?

Mr Reardon: I would say we would have to take that on notice to see what the actual amounts are and whether we have captured that information.

Senator MILNE: Yes, because in other countries they have legislation to publish what you pay. They require that in their public reporting as opposed to their tax records et cetera. In the last five years, has the tax office audited any Australian company to verify facilitation payments claimed as a tax deduction?

Mr Olesen: We would have to take that on notice.

Senator MILNE: Does the tax office provide specific resources for scrutinising facilitation payments? If so, how many full-time equivalents do you have on that?

Mr Olesen: We would not allocate resources on such a specific basis. We allocate according to risk. If facilitation payments presented as a particular risk on an issue with a particular corporation or group, then we would look at that issue. Our officers are trained to look at a whole range of issues, and we would certainly be able to deal with the particular issue that we are talking about.

Senator MILNE: Is it common? Do many of them claim their facilitation fees?

Mr Olesen: Sorry, I do not have any information on the incidence of it here. I will have to take that on notice.

Senator MILNE: Has anyone had a look at the rate at which Australian companies—actually, the number of them? Is it systemic that they are paying facilitation fees? What is the kind of quantum?

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Mr Olesen: I would love to be helpful. I just have not got anything that gives me an indication of what data we collect and what analysis we can do from that data. I am happy to take that on notice.

Mr Mills: Part of the problem will be that some companies do self-assess. If they are following the law in terms of making a self-assessment, when they lodge their tax return they are disallowing it themselves, in many cases. As long as they have treated it properly, they are already not claiming the deduction that they are not entitled to. As to whether any specific audit action or similar would pick up any further amounts, I would have to take that on notice, as my colleagues have said.

Answer:

Bribes to public officials are not deductible under the tax law. However, subsection 26-52(4) of the *Income Tax Assessment Act 1997* provides that facilitation payments to foreign public officials are not bribes. Therefore facilitation payments to foreign officials may be tax deductible.

The ATO does not record the incidence of facilitation payments claimed by Australian taxpayers, and has not undertaken any systematic review of such payments. We have however identified one instance of a taxpayer claiming a deduction for bribes or facilitation payments contrary to the law, and a very small number of instances of taxpayers who have made payments of this type but have not claimed a deduction.

The ATO rates this issue as a relatively low risk and has not applied specific resources to the issue. While the ATO does not have staff dedicated to investigating and reviewing facilitation payments, auditors are expected to comprehensively review the tax affairs of taxpayers, including whether or not facilitation payments have been wrongly claimed as allowable tax deductions.