

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Supplementary Budget Estimates

2014 - 2015

Department/Agency: ATO

Question: SBT 4310-4312

Topic: Environmental organisations that receive DGR status

Reference: Hansard Page 130

Senator: Canavan

Question:

Senator CANAVAN: I am just following up on some questions that Senator Bushby raised at the last estimates to do with section 30.270 of the Income Tax Assessment Act. That provision stipulates that environmental organisations that receive DGR status should not act as a conduit for their services. I want to specifically ask about the situation that has been reported in the media, but I am not asking about the specific case. The details of that are that a substantial donation was made to an environmental organisation that received DGR status in what appears to be an arrangement that was intended to benefit a third-party that did not have DGR status. I do not want to ask about the eligibility of being on the register of environmental organisations; I just want to ask: could the gaining of, or an attempt or conspiracy to claim, a tax deduction for a donation in excess of, say, \$100,000, using such an arrangement as I have outlined, be an offence under the Criminal Code or any other taxation law?

Mr Olesen: I think it might be more sensible for us to take that on notice, given the complexity of the laws involved.

Senator CANAVAN: Can I further ask: under the Criminal Code, are offences committed by persons who aid, abet, counsel or procure the commission of offences?

Mr Olesen: Senator, we are not necessarily experts on the Criminal Code. We can do our best to take that on notice.

Senator CANAVAN: Can you also take on notice, if you are aware of any such offences—to the extent that they are offences based on the previous questions—which might have been committed in the circumstances there outlined, and the penalties which would be applicable in those circumstances.

Mr Olesen: Again, I will take that on notice.

Answer:

Due to the confidentiality provisions in Division 355 of Schedule 1 to the *Taxation Administration Act 1953*, the Commissioner is unable to disclose information concerning the taxation affairs of individual taxpayers.

We are able to provide general advice on how we manage compliance risks. The ATO monitors information in the public domain concerning deductible gift recipients and their activities. This includes issues raised in the media and information provided by members of the public. If we identify a potential risk to compliance, we undertake further investigation including undertaking reviews, audits and where appropriate, instigating criminal investigations.

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In general, ATO compliance action initially focusses on civil remedies – that is, applying the tax law and the penalties contained therein. For example, we would consider whether a material benefit is attached to any gift such that the deduction should be denied and an administrative penalty applied. Alternatively, where the conduct is in the nature of tax avoidance, an anti-avoidance provision could apply to deny the tax benefit (deduction) and a scheme penalty would be imposed of around 50 per cent of the tax shortfall amount.

In more limited circumstances, the ATO may consider it appropriate to undertake a criminal investigation, possibly with the assistance of the Australian Federal Police. Such investigations may consider offences such as obtaining a financial advantage or causing a loss to the Commonwealth under Section 135.1 of the Criminal Code Act or conspiracy to defraud the Commonwealth under Section 135 of the Criminal Code Act. Some conduct may also amount to an offence of money laundering that is covered by Division 400 of the Criminal Code Act.

If we have intelligence on an organisation listed on one of the Deductible Gift Recipient Registers we will pass that on to the agency managing that Register, for their action to review the entity's continued eligibility for deductible gift recipient endorsement. For instance, under section 30-270 of the *Income Tax Assessment Act 1997*, to be eligible for the register of environmental organisations an organisation must have a policy of not acting as a mere conduit for the donation of money to other organisations. If we had information suggesting that an organisation on the register of environmental organisations was acting as a conduit, we would pass that on to the Department of the Environment for their consideration.