

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Supplementary Budget Estimates

2015 - 2016

Department/Agency: Treasury

Question: SBT 10-17

Topic: Tobacco

Reference: Hansard page no. 48 - 21 October 2015

Senator: Leyonhjelm, David

Question:

Senator LEYONHJELM: I have some questions for Treasury Revenue Group, but that is all I have for the ATO. I want to ask about estimates that were provided to the health department on tobacco clearances. In response to a question on notice from me regarding advice to Treasury from the health department in October last year, Treasury stated: Treasury advised that clearances of tobacco fell by 3.4 per cent in the 2013 calendar year relative to the 2012 calendar year.

Treasury also advised that publication of more detailed data related to tobacco excise was limited by concerns regarding taxpayer confidentiality. On 10 August this year, Treasury published more detailed data related to tobacco excise in its freedom of information disclosure log. My first question is: how was this publication possible in the context of the taxpayer confidentiality point raised earlier?

Mr French: As I understand it, we have had further discussions with the tax office and with Customs and I think the view we had reached earlier was that there were issues around taxpayer confidentiality because there are a very limited number of participants in the market. Subsequent to that, I would need to take on notice the details of the arrangements, but, as I understand it, we agreed with those agencies that those taxpayer confidentiality issues no longer applied.

Senator LEYONHJELM: So this more detailed information that was made available or provided, did you release that to the health department?

Mr French: We released some information in relation to an FOI request we had received and we consulted with other agencies.

Senator LEYONHJELM: Are you aware if the health department was alerted to it, received it or sent it?

Mr French: We consulted with other agencies, including the health department, prior to the FOI being released.

Senator LEYONHJELM: The assumption would be that they would have to have got it. The data that Treasury originally provided to the health department were for the 2012 and 2013 calendar years. Why was this the case when the most relevant period for assessing the impact of plain packaging is the year starting 1 December 2012 and the year starting prior to 1 December 2012?

Mr French: I would have to take that on notice.

Senator LEYONHJELM: Did you—I do not think you did—warn the health department of potential problems from using calendar year data to inform a change that was only operational from 1 December rather than 1 January? Do you know why that was?

Mr French: I would have to take that on notice as well.

Senator LEYONHJELM: Thank you—if you would, please. My understanding is that the health department was not warned of potential problems from using data for the 2013

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calendar year, which included a 12½ per cent tax increase from 1 December 2013. Is my understanding correct, and, if that is the case, can you throw any light on why not?

Mr French: Again, I would need to check our records on that—

Senator LEYONHJELM: On notice, please.

Mr French: on notice.

Senator LEYONHJELM: Okay.

Mr Heferen: Senator, can I just check what we are taking on notice there. Are we taking on notice that, in giving the information—

Senator LEYONHJELM: Did you warn the health department—

Mr Heferen: That there was a tax increase?

Senator LEYONHJELM: Did you alert the health department that using data for the 2013 calendar year included a 12½ per cent tax increase from 1 December 2013—so using calendar data, but there was a tax increase on 1 December 2013?

Mr Heferen: But what we are checking is whether we warned the health department that there was an increase in tax in that year?

Senator LEYONHJELM: The health department are relying on your data; that is right. We are wondering why they are drawing the conclusions that they are.

The Treasury's release of monthly data on its freedom of information disclosure log—I am going back to Mr French, I think—indicates that you could provide data for the year starting 1 December 2012 just as easily as you could for the 2013 calendar year. It also indicates that you could provide data for the year prior to 1 December 2012 just as easily as you could for the 2012 calendar year. Am I right about that?

Mr French: I do not have the data in front of me, so I cannot be certain, but my recollection of the release of information was certainly from monthly data.

Senator LEYONHJELM: I might ask you to take on notice why the calendar year data was released rather than data for the applicable period for the policy implementation. Professor Sinclair Davidson published an article entitled 'Department of Health telling porkies on plain packaging' on the Catallaxy Files website on 19 August this year and in the IPA's FreedomWatch on 20 August this year. In that article, Professor Davidson takes the monthly data on your freedom of information disclosure log to replicate your figures for the 2012 and 2013 calendar years and your calculation of a 3.4 per cent decline between these periods. He also calculates figures for the period starting 1 December 2012 and the year prior to 1 December 2012, and the change from one period to the other is negative 0.8 per cent. Have you done this calculation yourselves? Could you confirm that the 0.8 per cent decline between the periods is correct?

Mr French: I have not seen the reports you are referring to. We are happy to have a look at them.

Senator LEYONHJELM: It is not so much the report; it is doing the calculations yourself.

Mr Heferen: We will take it on notice.

Senator LEYONHJELM: Thank you.

CHAIR: Senator Leyonhjelm—

Senator LEYONHJELM: Yes, all right. You really want me to stop; do you?

CHAIR: I want to be fair. If you could tell me how much longer you are going to be, I just want to try—I do not want to get an anonymous letter like Senator Heffernan did from somebody out the back saying that I am a shithouse chair.

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Senator LEYONHJELM: You don't?

CHAIR: No. Excuse the expression, but I am sure Senator Heffernan would not mind me quoting it. I do actually want to be efficient if I can.

Senator LEYONHJELM: All right. I would hate you to get a letter like that. Carry on.

CHAIR: No, finish up your line of questioning.

Senator LEYONHJELM: In the data you released on your freedom of information disclosure log, the monthly figures for the ATO are net of tobacco products destroyed with the introduction of plain packaging, but the monthly figures for Customs are not. However, the figures covering the six-month period from December 2012 to May 2013 are provided for refunds under the tobacco refund scheme operated by Customs. The document on your freedom of information disclosure log implies that this tobacco refund scheme relates to tobacco products destroyed with the introduction of plain packaging. Is that correct?

Mr French: That is my understanding.

Senator LEYONHJELM: Your document states that the figure for refunds under the tobacco refund scheme 'cannot be related to monthly net clearances on a comparable basis to other Customs data presented in this document', so we cannot allocate these refunds to specific months prior to the introduction of plain packaging, when tax was originally paid. Would that be correct?

Mr French: That is what Customs has advised us.

Senator LEYONHJELM: But it isn't it true that we know that these refunds relate to tax paid at some time in the period prior to 1 December 2012?

Mr French: I would have to check the details of that. I will take it on notice.

Senator LEYONHJELM: If that is so, can't these refunds be subtracted from the total clearances in the year prior to 1 December 2012 so as to get clearances through Customs in the year prior to 2012, net of products for which refunds were provided under the tobacco refund scheme?

Mr French: Again, Senator, we could take this on notice.

CHAIR: Do you want to put them all on notice?

Senator LEYONHJELM: I am almost at the point where I am about to do that. I think, given that I have given Mr French enough grief already, I might put the remainder on notice. Thank you, Mr French.

Answer:

1. 'how was this publication possible in the context of the taxpayer confidentiality point raised earlier?'

Taxpayer confidentiality is a matter for the collection agencies. In September 2014 the ATO decided to release monthly tobacco clearance and duty data under FOI request 1-5QWI4PM. All agencies subsequently agreed to Treasury releasing net clearance data under FOI request 1703 in August 2015.

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2. 'The data that Treasury originally provided to the health department were for the 2012 and 2013 calendar years. Why was this the case when the most relevant period for assessing the impact of plain packaging is the year starting 1 December 2012 and the year starting prior to 1 December 2012?'

The Department of Health asked Treasury whether Treasury had any data which could be relevant for comparison with data referred to in an article published in *The Australian* on 6 June 2014 ("*Labor's plain packaging fails as cigarette sales rise*"). The article referred to Australian Bureau of Statistics data on tobacco consumption and presented data attributed to "Infoview Technologies" that was prepared on a calendar year basis. Treasury provided data on a comparable basis to the data provided by Infoview Technologies.

3. 'Did you—I do not think you did—warn the health department of potential problems from using calendar year data to inform a change that was only operational from 1 December rather than 1 January? Do you know why that was?'

At the time Treasury provided clearance growth rates to the Department of Health they were aware that all tobacco products manufactured or packaged in Australia for domestic consumption effective 1 October 2012 were required to be in plain packaging, and from 1 December 2012, all tobacco products sold, offered for sale, or otherwise supplied in Australia must be in plain packaging. See the response to (2) above.

4. 'My understanding is that the health department was not warned of potential problems from using data for the 2013 calendar year, which included a 12½ per cent tax increase from 1 December 2013. Is my understanding correct, and, if that is the case, can you throw any light on why not?'

At the time Treasury provided clearance growth rates to the Department of Health they were aware of the timing of the four planned 12.5 per cent increases in tobacco excise. See the response to (2) above.

5. 'Did you alert the health department that using data for the 2013 calendar year included a 12½ per cent tax increase from 1 December 2013—so using calendar data, but there was a tax increase on 1 December 2013?'

See response to (4) above.

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6. 'The Treasury's release of monthly data on its freedom of information disclosure log—I am going back to Mr French, I think—indicates that you could provide data for the year starting 1 December 2012 just as easily as you could for the 2013 calendar year. It also indicates that you could provide data for the year prior to 1 December 2012 just as easily as you could for the 2012 calendar year. Am I right about that?'

Monthly data was available to Treasury at the time of the request from the Department of Health. See response to (2) above.

7. 'I might ask you to take on notice why the calendar year data was released rather than data for the applicable period for the policy implementation. Professor Sinclair Davidson published an article entitled 'Department of Health telling porkies on plain packaging' on the Catallaxy Files website on 19 August this year and in the IPA's FreedomWatch on 20 August this year. In that article, Professor Davidson takes the monthly data on your freedom of information disclosure log to replicate your figures for the 2012 and 2013 calendar years and your calculation of a 3.4 per cent decline between these periods.'

See answer to (2) above.

8. 'He also calculates figures for the period starting 1 December 2012 and the year prior to 1 December 2012, and the change from one period to the other is negative 0.8 per cent. Have you done this calculation yourselves? Could you confirm that the 0.8 per cent decline between the periods is correct?'

There was a 0.8 per cent decline in tobacco clearances between the 12 months ended 30 November 2013 and the 12 months ended 30 November 2012 excluding Tobacco Refund Scheme refunds which cannot be allocated to the month when the related clearance was originally processed.

9. 'In the data you released on your freedom of information disclosure log, the monthly figures for the ATO are net of tobacco products destroyed with the introduction of plain packaging, but the monthly figures for Customs are not. However, the figures covering the six-month period from December 2012 to May 2013 are provided for refunds under the tobacco refund scheme operated by Customs. The document on your freedom of information disclosure log implies that this tobacco refund scheme relates to tobacco products destroyed with the introduction of plain packaging. Is that correct?'

Yes, according to advice received from the Department of Immigration and Border Protection, formerly the Australian Customs and Border Protection Service (Customs).

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10. 'Your document states that the figure for refunds under the tobacco refund scheme 'cannot be related to monthly net clearances on a comparable basis to other Customs data presented in this document', so we cannot allocate these refunds to specific months prior to the introduction of plain packaging, when tax was originally paid. Would that be correct?'

Customs indicate that this is correct.

11. 'But it isn't it true that we know that these refunds relate to tax paid at some time in the period prior to 1 December 2012?'

Yes. These refunds relate to products that were cleared prior to 1 December 2012.

12. 'If that is so, can't these refunds be subtracted from the total clearances in the year prior to 1 December 2012 so as to get clearances through Customs in the year prior to 2012, net of products for which refunds were provided under the tobacco refund scheme?'

No, it is also possible that some of the refunds relate to clearances that were processed prior to the 12 months ended 30 November 2012. Customs have advised Treasury that it is not possible to determine when the original clearances to which the Tobacco Refund Scheme refunds related occurred.