

**Senate Standing Committee on Economics**

**ANSWERS TO QUESTIONS ON NOTICE**

**TREASURY**

**Australian Taxation Office**

Additional Budget Estimates 20 February 2008

**Question**                    **AET 61**  
**Topic:**                      **Compliance activities-CGT**  
**Hansard Page:**            **E26(ii)**

**Senator Murray asked**

I just want to follow up, please, minister to Ms Granger on capital gains. As you know, your compliance activities included a lift in capital gains compliance. You were to examine around 6,000 at-risk cases this year. I do not know if the efficiency dividend discussion will cut that. And as you know I have previously indicated my belief that firstly it is an area where compliance is light because much of the transaction records are in the state jurisdiction, not the federal and it would be difficult for you to access. Secondly, my view is that as a result of the superannuation changes there would have been a spike in activity which would attract capital gains and you should see a surge in revenue beyond that which you have cautiously estimated. In that framework, could you give me and the committee a good briefing on where you are with capital gains, what you are seeing, what you are expecting and what the prospects are. You have flicked it to Mr Konza.

*Mr Konza—As you say, we plan to look at some 6,000 cases. So far we have completed about 3,900-odd cases looking particularly at real estate transactions. Those cases have raised \$34.8 million so far this year. It is worth noting that last year we processed 6,100 cases over the full year and raised \$33.3 million, so with two thirds of the cases this year we have exceeded the revenue that was raised in last year's program.*

**Senator MURRAY**—Mr Konza, are you able to give me an indication out of—you said 3,000 you had examined?

*Mr Konza—3,900, yes.*

**Senator MURRAY**—How many of those had not been compliant and produced this revenue gain?

*Mr Konza—I do not know that I can do that for you today.*

**Senator MURRAY**—Could you give me a feeling for it because, for instance, if it was just 10 out of 3,000 then there is no real compliance issue. But if it was 2,800 out of 3,000 then it is a sign that it really would need to be expanded as a program.

*Ms Granger—If I can add to that answer, I do not have the strike rate here today but we can certainly supply that to you. We are finding substantial non-compliance, but I think the tenor of the questions you were asking us last was there deliberate anti-avoidance; did we need to start using Part 4A in this area, for example. What we are finding is a range of issues but we are still finding that people, for example, do not understand well the main residence exemption. There are still people who do not understand that this is capital gain that needs to be included. These are property cases. In that regard, even though I think this risk has been well targeted, it is not 10 cases. I think the strike rate is quite healthy and we need to do more work both educating and more cases. Indeed, as I indicated earlier this morning, we will be expanding this area as part of expanding the program. The other question you were asking me last time was also how we were going in terms of the number of states that were involved in the data matching program. We now have all states involved. The other issue that we had had was quality of data. That has improved enormously, although there is always going to be a challenge there because, as you know, TFNs are not attached to that data but we are doing quite well with the matching process. **I will get you the strike rates, the number of cases where there were adjustments.***

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**Senator MURRAY**—A couple of responses from me to what you have just said immediately jump to mind. It seems in your answer that you are dividing non-compliance into two broad categories: the ignorant and the cunning.

**Ms Granger**—Yes.

**Senator MURRAY**—You did not use those words; I am using them.

*Ms Granger*—*Could I say there are more shades of grey than that.*

**Senator MURRAY**—I can understand training up the ignorant but the cunning, frankly, have to be punished because it is deliberate.

*Ms Granger*—*Absolutely.*

**Senator MURRAY**—What is the precautionary—

**CHAIR**—Sorry, Senator Murray, to interrupt, but could I ask committee members and people at the table also to speak up a little.

**Senator MURRAY**—Sorry, Madam Chair, I have noticed if Hansard could note the volume is a bit low. But I will try. Dividing it between the ignorant and the cunning, to use my phraseology, ignorant do need nurturing and guidance and training and so on but the cunning need punishment. What is the rough division between those? I am not looking for accurate feeling but—

*Ms Granger*—*I do not want to guess at it. I can provide you with answers on that. I can talk more generally about this market as opposed to this particular project. In general in the individuals area particularly—you and me and others—it is overwhelming ignorance or carelessness. It is a very small number that are deliberate gain payers or actively trying to avoid their responsibilities.*

**Senator MURRAY**—That is good.

*Ms Granger*—*Yes. But I could probably get something a bit more accurate at around the rate of penalty and the degree of penalty which reflects our judgement on that.*

#### Answer:

There were 3,939 capital gains tax cases completed from 1 July 2007 to 31 December 2007. Of these cases, 2,305 were reviews and 1,634 were audits.

Total adjustments (including penalty and interest):

As at 31 December 2007, there have been \$34.8 million in total adjustments comprising tax, interest and penalties. Total liabilities raised for the period 1 July 2007 to 31 December 2007, breakdown by audits and reviews:

	Tax	Penalty	Interest	Total
Audits	\$20.53 million	\$7.04 million	\$2.39 million	\$29.95 million
Reviews	\$4.50 million	\$0.10 million	\$0.31 million	\$4.91 million
TOTAL	\$25.03 million	\$7.13 million	\$2.70 million	\$34.86 million

Reviews are used for both audit selection and the resolution of simple cases. Reviews are often initiated via a telephone conversation to clarify perceived issues and to allow the taxpayer to make a voluntary disclosure in a cooperative manner. For example, in some cases it may need to be verified if the property is in fact the principal place of residence or vacant land.

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Of the 2,305 reviews completed during the period 1 July 2007 to 31 December 2007, 712 reviews resulted in voluntary disclosures by taxpayers, resulting in total liabilities raised (tax, penalty and interest) of \$4.91 million in respect to prompted voluntary disclosures.

Cases are initiated as audits based on an initial assessment of a higher risk or due to the escalation of a review case.

1,634 audit cases were finalised to 31 December 2007, and 1,117 resulted in an adjustment. This represents a strike rate of 69% to date in the current year, and an increased strike rate from previous full year results, which were:

- 33% in 2005-06, and
- 46% in 2006-07.

Penalties are imposed on these adjustment cases in accordance with the relevant Tax Office Practice Statement Law Administration. A base penalty rate is formulated as a percentage of the tax shortfall amount and is determined by the level of care taken by the taxpayer (or agent). The base penalty amount may be increased or reduced depending on the individual circumstances of the case.

Of the 1,117 audit adjustment cases finalised between 1 July 2007 and 31 December 2007:

- 149 cases were subject to a 75% penalty on the outstanding amount of tax for failure to provide information. These cases represent instances where taxpayers were contacted to lodge late returns, their estimated capital gains on the disposal of property exceeded \$75,000 and they failed to respond after telephone calls and reminder letters. As a consequence, default assessments were issued and the higher level of penalty was imposed.
- 92 cases were subject to a 25% penalty for their failure to take reasonable care;
- 13 taxpayers received a reduced rate of penalty to 20% after the Commissioner's discretion was applied for disclosure within a reasonable time of notification of the audit;
- 85 taxpayers received a further reduction down to a rate of 5% after applying the Commissioner's discretion for prompted voluntary disclosures; and
- 778 received no penalty as they lodged their return declaring the capital gain promptly after being contacted or were found to have taken reasonable care.