

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates

23 – 24 February 2011

Question No: AET 98

Topic: SAXBY v R (7FEB2011)

Hansard Page: Written

Senator Bushby asked:

I note that in an appeal court decision in the Supreme Court of Tasmania, Saxby v R (7 Feb 2011) a conviction was confirmed against a taxpayer who had made a false representation in an objection to a tax assessment. Without going into the merits or otherwise of the case which has been decided via due process, my questions are:

1. How often has the ATO prosecuted taxpayers for making false statements in an objection to a tax assessment?
2. If the ATO practice is a rare one, or indeed one which has never been used, why the change in policy?
3. If there is a change in policy has the government been advised and with what response?
4. Does it concern the ATO that if it adopts the new policy it is possible that a suspect taxpayer might be both convicted of defrauding the Commonwealth for understating income or overstating expenses, and then convicted again if he makes an objection which contains false statements?
5. Could this double punishment approach undermine confidence in the tax system by creating fear in the minds of taxpayers against making legitimate objections, because they fear the prospect of another penalty in addition to the first?

Answer:

1. ATO systems cannot readily provide precise data about such a specific type of behaviour giving rise to prosecution. However, prosecution of taxpayers for making false statements in an objection to a tax assessment would be rare.
2. There has been no change in policy. The ATO is working closely with the Commonwealth Director of Public Prosecutions (CDPP) to identify further appropriate cases for tax offence prosecutions under existing tax laws. This

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates

23 – 24 February 2011

compliance work will focus on taxpayers whose behaviour whilst criminal, is such that it is appropriate to undertake prosecution action under the Commissioner's own provisions, such as section 8N of the *Tax Administration Act 1953*.

3. Not applicable.

4. The CDPP prosecutes offences against Commonwealth law. The decision whether or not to prosecute an alleged offence is the responsibility of the CDPP.

5. It is important that appropriate civil and criminal sanctions are applied for serious abuse of the tax system. Broader community voluntary compliance is maintained from seeing serious abuse addressed.