

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates

16 February 2012

Question No: AET 31 - 39

Topic: Tax crime investigations

Hansard Page: Written

Senator Bushby asked:

31. What is the ATO's estimate of GST and income/company tax lost through the black economy for illegal drugs?
32. What are the current levels of collections [in relation to illicit drugs]?
33. Which area of ATO monitors media and court proceedings to uncover entities which do not pay tax on the sale of illegal drugs?
34. Which area of ATO monitors motor vehicle and house sales to uncover black market entities purchasing assets to launder ill gotten gains?
35. What is the overall effectiveness of this ATO unit?
36. What has ATO done with regards to a recent case where police found \$2 million hidden in a roof in Sydney, might this cash have been accumulated in the black economy and now need to be taxed?
37. On the ATO website, in the section titled 'Tax crime investigations and results,' it contains results for the years 2006-07 to 2011-12. Could the ATO provide a breakdown of these results which provide details of the number of prosecutions by particular offence under its parent Statutes?
38. Also, could ATO provide details of the type of offence in relation to the 'withdrawn' category?
39. I refer to the below ATO Taxation Ruling on its Prosecution Policy. Is it correct to say that there has been an ATO Prosecution Policy current since 15 Dec 2001, and that in 2006 this was publicly withdrawn, but as yet has not been replaced by a new policy statement, or at least not one that is available to the public?

[Taxation Ruling - IT 2246W - Notice of Withdrawal](#)

Australian Taxation Office Prosecution Policy

Notice of Withdrawal

Taxation Ruling IT 2246 is withdrawn with effect from today.

1. Taxation Ruling IT 2246 provides details of the ATO Prosecution Policy and lists a range of factors that need to be considered when deciding whether or not to take prosecution action.
2. IT 2246 was replaced by the ATO Prosecution Policy with effect from 1 July 2000. This Prosecution Policy was itself replaced by the current ATO Prosecution Policy with effect from 15 December 2001.
3. The policy issues contained in IT 2246 that continue to have application are now contained in the ATO Prosecution Policy which applies from 15 December 2001.

Commissioner of Taxation

22 November 2006

References

ATO references:
NO 2005/18404

ISSN 0813 - 3662

Related Rulings/Determinations: [IT 2246](#)

Answer:

31. The ATO does not estimate the amount of revenue lost from the untaxed profit from the sales of illicit drugs.

However, the Australian Crime Commission (ACC) has previously estimated that overall the cost of organised crime to the Australian community was between \$10 and \$15 billion dollars a year. As well as costs such as the social costs of drug addiction, the ACC estimate includes an attribution to lost revenue.

32. The ATO does not specifically record a breakdown of cash collections from the taxation of profits from the sale of illicit drugs.

33. The ATO doesn't have a dedicated area to monitor media and court proceedings to uncover entities which do not pay tax on the sale of illegal drugs.

The ATO works collaboratively, including through task force approaches with state and federal law enforcement agencies, to remove the profit from organised crime by undertaking activities such as audits, applying penalties, recommending prosecution, taxation debt recovery and enforcing lodgment of taxation returns.

The ATO currently has approximately 95 officers focused on the taxation implications of serious and organised criminal activity in its Serious Non-Compliance business line.

34. The ATO does not have a specific area that 'monitors motor vehicle and house sales to uncover black market entities purchasing assets to launder ill gotten gains'.

However, we do analyse motor vehicle and house sales information more broadly as part of our data matching program. We match data we receive with our own information to identify discrepancies between information reported by taxpayers in their tax returns against details reported by third parties to detect those who may not be correctly disclosing all of their income.

35. As noted in the responses to AET 33 and 34 the ATO does not have dedicated units such as those described in questions AET 33 and 34. However, the ATO is included in the Commonwealth Organised Crime Strategic Framework as an agency responsible for responding to organised crime.

Indicators that the ATO is being effective in supporting the framework include our audit results, success in collecting debts and obtaining Mareva injunctions over assets, positive feedback from our law enforcement agency partners, our inclusion in new taskforces such as the Criminal Asset Confiscation Taskforce and our recent invitation to attend the Serious and Organised Crime Co-ordination Committee. The ATO raised over \$217 million in liabilities related to the tax implication of organised crime from 1 July 2010 to 31 January 2012.

36. The ATO's general practice is not to comment on specific cases, but to seek to answer such questions with information that is general in nature.

The ATO works with state and federal law enforcement agencies, including through task force approaches, to remove the profit from organised crime. The ATO undertakes activities such as audits, applying penalties, recommending prosecution, taxation debt recovery and enforcing lodgment of taxation returns to ensure the integrity of the tax system and community confidence is maintained.

Where organised criminals are suspected of having committed criminal offences against taxation and superannuation laws the ATO provides expertise to support law enforcement investigations of these matters.

The ATO has approximately 95 officers focused on the taxation implications of serious and organised criminal activity. From 1 July 2011 to 31 January 2012 we have completed 201 audits and raised over \$81 million in tax liabilities.

37. The Commonwealth Director of Public Prosecutions (CDPP) is responsible for prosecuting offences against all laws of the Commonwealth, including taxation law.

The ATO has been authorised by the CDPP to prosecute some summary offences against tax laws including offences relating to the non-lodgment of forms, failure to comply with a formal notice for information, making false or misleading statements and receiving a fee for preparing an income tax return on behalf of a taxpayer while not being a registered tax agent.

Serious Offences

Matters of a more serious or complex nature are referred to the CDPP for prosecution.

The majority of serious offences from 2006-07 to 2011-12 were prosecuted under the *Crimes Act 1914* (offences occurring before 24 May 2001) or the *Criminal Code Act 1995* (offences after this date). There have also been a number of serious offences prosecuted under the *Excise Act 1901*. The majority of these were in 2006-07 and 2007-08, however prosecutions under this Act have tapered off since the closure of the legal tobacco growing industry in October 2006.

The main offences prosecuted relate to the following sections of these three Statutes:
Crimes Act 1914

- 29D Crimes Act (Defraud the Commonwealth)

Criminal Code Act 1995

- Section 11.1 - Attempt to commit an offence
- Section 134 - Obtaining property or a financial advantage by deception

- Section 135 - Other offences involving fraudulent conduct (including general dishonesty, obtaining financial advantage, conspiracy to defraud)
- Section 137 - False or misleading information or documents

Excise Act 1901

- Section 117-117H - Offences regarding possession, movement, sale or buying of tobacco leaf, other tobacco products or other excisable goods
- Section 25 - Only licensed manufacturers to manufacture excisable goods

In terms of serious offences prosecuted under Project Wickenby, there have been 22 convictions from inception in 2006 to 31 January 2012. Table 1 shows the charges on which these convictions were made. This information was provided by the CDPP.

Table 1: Project Wickenby - Convictions by charge from 2006 to 31 January 2012

Statute	Charge by section	Total Counts
Crimes Act 1914	Section 29D - Defrauding the Commonwealth	3
	Sections 29D and 86 - Defrauding the Commonwealth	5
	Sections 5 and 29D - Being knowingly concerned in defrauding the Commonwealth	3
Criminal Code 1995	Sections 11.2(1) and 134.2 - Aiding a Company to dishonestly cause a loss to the Commonwealth	1
	Sections 11.2(1) and 135.1(3) - Aiding a Company to dishonestly cause a loss to the Commonwealth	2
	Section 134.2(1) - Obtaining a financial advantage by deception	7
	Section 135.1(1) - Dishonestly obtaining a gain from the Commonwealth	6
	Section 135.4(3) - Conspiracy to dishonestly cause a risk of loss to a Commonwealth entity	10
	Section 135.4(5) - Conspiracy to cause risk of loss to the Commonwealth	1
	Section 400.3(1) - Money laundering	1
	Section 400.4(1) - Money laundering	1
Bankruptcy Act 1966	Section 268(2)(g) - Failing to aid to the utmost of his or her power in the administration of his or her property and affairs under the agreement	1
Australian Crime Commission Act 2002	Sections 33(1) and 33(2) - Giving evidence at an examination that was, false or misleading in a material particular	3

Summary Offences

A breakdown of summary offence convictions, by statute and section, for matters prosecuted directly by the ATO is provided in Table 2. The ATO is able to capture and report this information as the ATO has been authorised by the CDPP to prosecute certain summary offences against tax laws. Therefore the ATO is the agency responsible for laying charges for those summary offences.

The majority of summary offences are prosecuted under the *Taxation Administration Act 1953* and most relate to failing to lodge a tax return (Section 8C).

Table 2: Summary offences - Convictions by Statute and Section, 2007-08 to 31 January 2012

Statute	Charge by section	Total counts
s8C TAA	Section 8C(1)(a) Failure to comply - Furnish an approved form or any information	9235
	Section 8C(1)(e) Failure to comply- Produce documents	23
	Section 8C(1)(f) Fail to comply – Attend before the Commissioner	9
s8D TAA	Section 8D Failure to answer questions	2
s8H TAA	Section 8H Failure to comply - Court Order	910
s8K TAA	Section 8K False-misleading statement	3
s8N TAA	Section 8N Reckless false-misleading statement	9
s260-20 TAA	Section 260-20(1) Failure to comply with garnishee notice	1
s251O ITAA 1936	Section 251O Advertising by persons	8
s8Q TAA	Section 8Q Recklessly Keeping Records	2
s251L ITAA 1936	Section 251L Demand or receive a fee	54
s20A Crimes Act	Section 20A Crimes Act 1914, Breach of Bond	6
TOTAL		10,262

Please note:

*Due to a change in recording systems in 2007, figures for the 2006-07 year are unavailable.

*Numbers of entities prosecuted correlates with number of convictions as reported on www.ato.gov.au

38. Matters of a more serious or complex nature are referred to the CDPP for prosecution. Matters are referred through a brief of evidence presented on the individual and the decision to prosecute ultimately rests with the CDPP.

Table 1 provides the prosecutions withdrawn in relation to Project Wickenby, as advised by the CDPP.

Table 1: Project Wickenby prosecutions withdrawn, by charge – 2006-07 to 31 January 2012

Act	Section	Total Counts
Crimes Act 1914	Sections 29D and 86 - Defrauding the Commonwealth	4
Criminal Code 1995	Sections.11.5(1) and 400.4(1) - Conspire to launder money	4
	Section 11.5(1) and 134.2 - Conspire to obtain a financial advantage by deception	3
	Section 134.2(1) - Obtaining a financial advantage by deception	15
	Section .11.5(1) and 400.6(1) - Conspire to launder money	2
	Section 135.4(3) - Conspiracy to dishonestly cause a risk of loss to a Commonwealth entity	1
	Section 400.4(1) - Money laundering	1
TOTAL		30

Table 2 provides the details of summary prosecutions which were withdrawn:

Table 2: Summary offences prosecutions withdrawn, by charge 2007-08 to 31 January 2012

Statute	Section	Total counts
s8C TAA	Section 8C(1)(a) Failure to comply - Furnish an approved form or any information	1143
	Section 8C(1)(e) Failure to comply- Produce documents	9
	Section 8C(1)(f) Fail to comply – Attend before the Commissioner	2
s8H TAA	Section 8H Failure to comply - Court Order	134
s8N TAA	Section 8N Reckless false-misleading statement	2
s251L ITAA 1936	Section 251L Demand or receive a fee	9
s20A Crimes Act	Section 20A Crimes Act 1914, Breach of Bond	4
TOTAL		1,303

39. The ATO abides by the prosecution policy of the Commonwealth as published by the Commonwealth Director of Public Prosecution. Guidance on how the ATO applies this policy is set out in Corporate Management Practice Statement PSCM 2007/02 *Fraud Control and the Prosecution Process*.

This practice statement is publicly available at www.ato.gov.au. It replaces the Australian Taxation Office Prosecution Policy issued in 2001 under Taxation Ruling IT 2246.

Practice Statement PSCM 2007/02 provides ATO employees with guidance in relation to fraud control and the prosecution process. In particular, it highlights relevant Commonwealth legislation, guidelines and policy and describes its application to the ATO context.