

## **Standing Committee on Tax and Revenue**

### **ANSWERS TO QUESTIONS ON NOTICE**

#### **Australian Taxation Office**

16 September 2015

**Department/Agency:** ATO

**Question:** 1

**Topic:** Wind-up threshold

**Reference:** Hansard - page 17

#### **Question:**

**CHAIR:** I would like to touch on the issue of recovery practices and winding up businesses. There has been a bit of publicity in the media over the last few months about the increase in the number of businesses being wound up in order to obtain recovery of outstanding tax liabilities et cetera. Would you please update the committee on where the ATO is with that and the rationale for that increase. There was also a comment in one of the submissions that, in the past, there was an outstanding tax debt of approximately of \$300,000 before the ATO started to really pursue recovery actions or wind-up notices, and now that appears to have dropped to approximately \$30,000. That is the comment from the person who provided the submission.

**Mr Jordan:** I am not sure about the \$30,000, but I do understand that we had quite high thresholds before took that very last resort and very last step. It is not as though we ever just jump in to wind up; we try to work with people and businesses and have a payment plan. But, if people refuse to engage and refuse to meet any of their prior agreements with us, and our assessment of the business is such that we just do not think it is viable—in other words, there is not sufficient cash coming out of the business to pay any of its debts, let alone us—we will take action. My understanding is that we would not take action in a business sense, for a corporate, say, until the debt was in excess of \$300,000. We did some work and we realised that the average that the private sector would take action on was around \$90,000. So there was quite a disparity between the point of debt at which we would initiate action versus what people would do in the private sector.

This is exacerbated by the fact that there is no credit reference reporting of debts to us, so people were often putting us as the last person to pay, letting our debt grow and trying to get themselves out of some difficulties. If they were not paying their suppliers or their bank, they would have a negative flag on their credit reference reporting and suppliers would then want cash on delivery and all that sort of stuff. So we are in a difficult position there because we cannot disclose the debt. People knew that and they would often put us last. I am not sure of the threshold figures, but that \$300,000 was accurate. And others used to say to us, 'You letting these debts get too high. You should be taking action earlier.' As I said about the cash economy, this is the same thing. When people have large debts to us, typically we are not the only people they have debts with. Or their suppliers are knocking up debts, they are not paying their superannuation or they are not putting money aside for employee entitlements. There is a host of other factors that come into play here. We do not do this lightly. We do not want to do this. But, at the end of the day, we have an obligation and we use this as a very last resort.

**Mr Ravanello:** And it is in a very small percentage of cases that there is this step up of contacting the client, seeking them to engage and trying to enter a payment plan. We repeat payment plans. So it is not one payment plan. We will typically offer a number of payment plans. If that does not work and a client is still not engaging, we might use garnishees and those kinds of approaches.

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On the question as to whether we are too trigger-happy with bankruptcies and wind-ups, we have 20 per cent of our cases independently reviewed by a third party to say whether we have acted too early in wind-ups and bankruptcies. The feedback is typically that sometimes we are probably a bit too late, rather than too early. There is no evidence that I have that says that we act improperly or too early. In fact, we get feedback to say, 'While you are not acting and while you are not dealing with these cases, the people who are not paying tax get an unfair advantage, particularly small businesses, over the rest of the community.' That is common feedback that we get.

**CHAIR:** The figures I referred to were in an article on the SmartCompany website.

**Mr Jordan:** We can provide the lower level. I would be surprised if it is as low as 30. The 300 that you mentioned was the figure that we had previously. That has come down. As I say, I would be surprised if it is as low as 30.

**CHAIR:** The article was on 17 August. It is titled 'Tax man to axeman: Small business 'carnage' as ATO wind-ups soar'.

**Mr Jordan:** I have seen the article.

#### **Answer:**

The ATO does not initiate wind-up proceedings based on specific debt thresholds.

The ATO considers each case on its merits having regard to a range of factors, including:

- the asset position of the business
- the size and nature of the debt
- the future income of the business
- the risk to the revenue
- the cost of wind-up and the likely return.

Through the use of analytics the ATO is better targeting legal recovery action where there is evidence a business is not viable and putting other businesses and their employees at risk, by trading while insolvent.