

Standing Committee on Environment and Communications

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Inquiry into the Product Stewardship (Oil) Amendment Bill 2020 and the Excise Tariff Amendment
Bill 2020

Department/Agency: ATO

Question: 1

Topic: Excise duty for oils

Reference: Written – 21 July 2020

Senator: Nita Green

Question:

Either in anticipation of, or following the result of the Federal Court ruling of the “*Caltex Case*”, what consideration did the Commonwealth give to determining whether to impose on Caltex an excise duty for oils as outlined under item 15 of the *Excise Tariff Act 1921* in order to recoup the benefit payment that was being claimed? If no such approaches were considered, why not?

Answer:

The statutory tax secrecy provisions contained in the *Taxation Administration Act 1953*, prohibit the ATO from disclosing information that relates to the taxation affairs of an entity and which could identify the entity.

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Question: 2

Topic: Legal and other advice

Reference: Written – 21 July 2020

Senator: Nita Green

Question:

What legal or other advice was provided to the Commonwealth that led to the decision to not seek to apply such a levy, or otherwise recoup the benefit payment to Caltex?

Answer:

The statutory tax secrecy provisions contained in the *Taxation Administration Act 1953*, prohibit the ATO from disclosing information that relates to the taxation affairs of an entity and which could identify the entity.

We note that the disclosure of legal advice, including the possible existence of legal advice, may waive legal professional privilege of the Commonwealth and potentially harm the public interest by undermining confidential communications between the Commonwealth and its lawyers.

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Department/Agency: ATO

Question: 3

Topic: Communication between Caltex and the Commonwealth

Reference: Written – 21 July 2020

Senator: Nita Green

Question:

At any point in the course of this matter did any communication (written or otherwise) take place between Caltex or its representatives and the Commonwealth or its representatives in relation to corporate social responsibility, particularly in relation to Caltex's decision to seek an \$8 million benefit payment from the Commonwealth through the Product Stewardship Oil Scheme in circumstances when it knew the Scheme was not intended to function in that way, and when it ought to have known the pursuit of the benefit payment was in effect the pursuit of a windfall, the technical entitlement to which was of questionable moral basis?

Answer:

The statutory tax secrecy provisions contained in the *Taxation Administration Act 1953*, prohibit the ATO from disclosing information that relates to the taxation affairs of an entity and which could identify the entity.