

STANDING COMMITTEE ON TAX AND REVENUE

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Australian Taxation Office annual report 2012-13

28 February 2014

Topic: Large Liabilities - Disputes

Hansard Page: 7

Question: 1

Ms O'NEIL: Can you give us a sense of how the magnitude of that liability compares to other big liabilities the tax office has engaged in a dispute about?

Mr Jordan: Maybe I should defer to Neil here, because in terms of comparisons it is probably a large one.

Ms O'NEIL: Would it be the largest?

Mr Olesen: We had this discussion yesterday, and I have not had a chance to pull out some comparatives, so I do not have any data here to share with you. But there have been other big cases, and I am pretty convinced there are some others that are bigger than this one. It is the nature of large businesses. There are big transactions and sometimes we find ourselves in dispute over large amounts, and sometimes we lose. There were some other cases earlier this year where there were significant amounts at stake that we were also unsuccessful with through the courts.

Ms O'NEIL: Would that have been the largest in the last year?

Mr Olesen: I just cannot be sure, because there are some others I have in mind that were very significant. I just have not had a chance to do the comparison.

Ms O'NEIL: Is it possible for you to provide us with details?

Mr Olesen: Absolutely. These cases are all on the public record.

Answer:

A comparison of court decisions for the period 2011 to date identified that [FC of T v Messenger Press Proprietary Ltd \[2013\] FCAFC 77](#) was the most significant unfavourable decision for the ATO during 2013.

There were other significant cases in that period, although not of the same magnitude. The next largest unfavourable decision was [FC of T v Macquarie Bank Ltd & Anor \[2013\] FCAFC 13](#). There were also other cases which, although not significant themselves, had wider implications for other taxpayers. Such court decisions included:

- [FC of T v Anstis \[2010\] HCA 40](#), which concerned self-education expenses.
- [AP Group Limited v FC of T \[2013\] FCAFC 105](#), which concerned GST liabilities in respect of four classes of payments in the car industry.
- [Mills v Commissioner of Taxation \[2012\] HCA 51](#), which concerned imputation credits.

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Topic: Tax free threshold

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Question: 2

Dr CHALMERS: This is in the same space: what is the latest estimate for how many people were effectively taken out of the tax system by the tripling of the tax-free threshold? That is the part I would like answered now, and could I also put on notice whether it is possible to give us a sense by electorate or something, perhaps, of the number of people that came out of the tax system as a result of that announcement.

Mr Jordan: I do not know. Do you have a rough estimate?

Mr Olesen: No.

Mr Leeper: It would be some hundreds of thousands, but if we could take it on notice we could be more precise.

Dr CHALMERS: Thank you.

Answer:

Our analysis remains preliminary as processing of individual tax returns for the 2012-13 income year is not yet complete.

It is estimated that overall lodgements have reduced by around 200,000 for the 2012-13 income year. It is not possible, however, to attribute a specific reason for the reduction.

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Topic: Voluntary redundancies

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Question: 3

Ms O'NEIL: Okay. We read today that you have had quite a lot of interest in taking redundancies. Can you provide us with the numbers of redundancies across revenue collection versus other parts of the tax office? You can take that on notice if you would like.

Mr Jordan: We are in the process of reviewing 2,187 expressions of interest, or something of that order. Clearly that is in excess of our target of 500. They are from across the board. Having expressed an interest does not mean that it is automatic.

Ms O'NEIL: I understand that. I am taking from what you are saying that you have had interest from the people working within compliance and revenue collection. It would be great to understand where the numbers have fallen.

Mr Jordan: Yes.

Answer:

For the period 7 September 2013 to 28 February 2014 the following voluntary redundancies have been accepted across the ATO:

- 17 in Compliance
- 4 in Law Design and Practice
- 42 in People Systems and Services (4 of those were in Debt)

As part of the voluntary redundancy expression of interest process, we have made verbal offers across the ATO to:

- 299 in Compliance (of which the majority are administration and support staff)
- 35 in Law Design and Practice
- 11 in Tax Practitioners Board
- 449 in People Systems and Services Group (of which 63 are in Debt)

These numbers are subject to change based on remaining opportunities for employees to withdraw from the process. It is too early in the process to confirm how many will be accepted.

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Topic: Debt - Superannuation

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Question: 4

Mr STEPHEN JONES: I want to follow up the issue which my colleague Ms O'Neil was talking about, regarding the impact of staffing changes on the capacity to recover. I want to drill down into one specific area which has a big impact, not necessarily on government but on taxpayers, and that is the capacity to chase debt in respect of superannuation. I am looking at page 55 of the annual report, where you advise that you are unable to collect \$188.9 million in superannuation payments that were due to employees. It looks like the vast majority of that is because they have gone into administration or some form of insolvency. I note that there is about \$15 million that you say is uneconomical to collect. What makes that debt uneconomic to collect? Is that number likely to go up? Is this one of the areas where you are going to be unable to recover debt?

Mr Leeper: It would be a very large number of very small debts. There are really only two categories for setting aside debt. One is that for the time being we cannot find a way of pursuing it. Internally, the word 'waiver' is used, which I struggle with because most people in the street would say 'waiver' means you set it aside forever but in the tax office 'waiver' means we put it aside and if you pop up again later we will come and find you. But 'uneconomical to pursue' is almost always associated with a very small amount of money which would not be worth our while chasing. We probably even tried to collect it through one of the mercantile debt agents that we use, and even they have not had success. I can take that on notice if you wish, but it is almost certainly large numbers of very small debts.

Mr STEPHEN JONES: Is that an amount of money which is small to the tax office or small to the individual employee, who is either—

Mr Leeper: I will take it on notice if you want me to be precise, but I would expect it would be relatively small to the individual. We are probably talking hundreds of dollars, rather than thousands.

Mr Olesen: I am pretty sure that around super guarantee we have lower thresholds than we have for other kinds of debts because it is other people's money; it is not a typical piece of revenue collection. I need to check that, but my memory tells me our thresholds around collection tolerances and what is economic and not economic are set at a lower level than for other kinds of debt collection.

Mr STEPHEN JONES: Thank you for that. I would also appreciate, if you can, in the same communication a breakdown of how many employees are engaged in chasing debt—or in this function, let me put it that way.

Mr Leeper: Do you mean within the superannuation debt function?

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Mr STEPHEN JONES: Yes, those who are in that function at the beginning of the current financial year and after this round of 900 goes through. If you could provide that communication, that would be very good. Is that clear?

Mr Leeper: Yes.

Mr Olesen: Yes.

Answer:

The ATO is committed to protecting retirement incomes and takes its obligation to the community to ensure employers comply with their superannuation guarantee obligations seriously. When an employer fails to meet their superannuation guarantee obligations, we take all possible action to recover the resulting superannuation guarantee charge (SGC) debt.

In a small number of cases, we determine that an SGC debt is uneconomical to pursue. Such a determination is made in accordance with section 47 of the *Financial Management and Accountability Act 1997*. These decisions are made where the cost of recovery exceeds likely collections as the taxpayer has no assets or funds and there is little chance of their situation improving.

Because employees are direct beneficiaries of our SGC debt collections, the ATO only determines an SGC debt to be uneconomical to pursue where all reasonable recovery options have been exhausted and it is clear that neither the employer nor its directors have any assets that could be used to pay the debt.

In 2012-13 there were 9,172 SGC cases worth a total of \$15.0 million which were determined to be uneconomical to pursue. This represents an estimated average value of \$750 per employee. In 2013-14 to 28 February 2014, we have not pursued \$10.4 million because it was uneconomical to do so.

The ATO Superannuation Debt area pursues outstanding SGC debts from employers who have not responded to our early intervention strategies and require more intensive debt recovery action. Staff in other areas of the ATO are actively involved in the recovery of SGC debts at the early intervention stage.

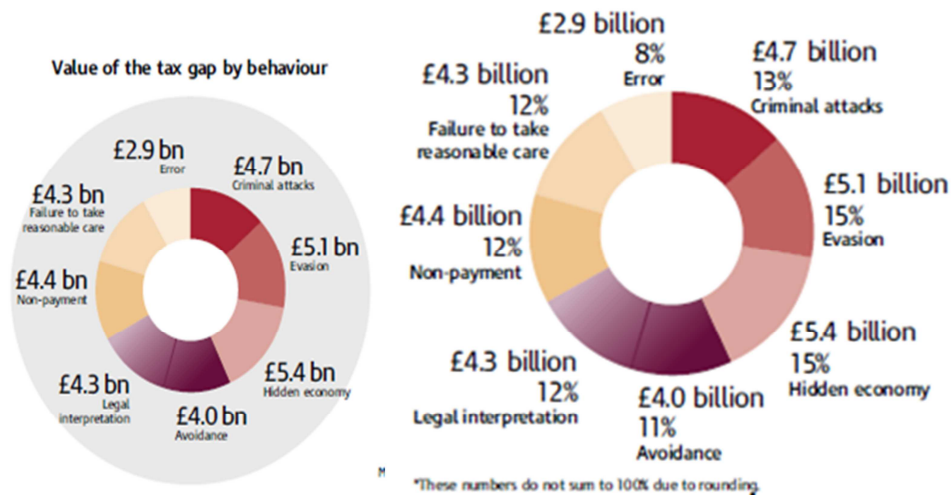
At the beginning of the current financial year - 2013-14 - the ATO had 157 staff in its Superannuation Debt area. At the end of February 2014, there were 154 staff in the area. Ten of these staff have been offered a voluntary redundancy.

Regardless of any staffing changes, the ATO will maintain its strong focus on recovering SGC debts.

Regarding the following statement made by the Commissioner to the Committee:

Particularly in the UK, I recollect, they do attribute part of the tax gap value to the complexity of their system, and we could maybe dig those figures out and provide them to the committee if you would like, because they have, from memory, this pie chart, and part of that is about just differing views on the law.

The information the Commissioner referred to is located on page four (4) of Her Majesty's Revenue & Customs' *Measuring tax gaps: 2013 edition*. This document can be located here and relevant sections are replicated below for ease of reference : <http://www.hmrc.gov.uk/statistics/tax-gaps/mtg-2013.pdf>



The Commissioner of Taxation specifically mentioned complexity due to legal interpretation. The HMRC estimate that legal interpretation is 12% (£4.3 billion) of their gap.