

Senate Economics Committee

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Tax Laws Amendment (Public Benefit Test) Bill 2010

29 June 2010

Question 3

Topic: Administrative decisions and constitutional writs

Hansard Page: E44

Senator Xenophon asked:

Senator XENOPHON—Under either this ruling, 2005/21, or other rulings relating to charities, or, indeed, in terms of the tax-free status of a religious organisation, is this something that is justiciable, in the sense that it could be subject to a writ of mandamus or certiorari—in other words, someone bringing an administrative law action saying, ‘You have not done your job to assess that this organisation has tax-free status’? Is that something that could be the subject of a court action? I do not know the answer. I am wondering whether you need to take that on notice or whether you could proffer an answer now.

Mr Hardy—I will have to take that on notice. Just to understand the question: would this be someone who had perhaps made some complaint or referred some information to the tax office and was concerned that we had taken no action—

Senator XENOPHON—Yes.

Answer

The Commissioner has an obligation to take information provided by a member of the public into account in his administration of taxation and superannuation legislation. But the Commissioner has limited resources and is entitled to apply them according to his assessment of risk. Even where the Commissioner is subject to a constitutional writ, the secrecy provisions of the taxation laws, and the Privacy Act, would continue to prevent the Commissioner from advising the member of the public about the specific decision made or action taken, although it may be that a Court can verify that the Commissioner's duties were performed or a process commenced.

The Commissioner takes into account every disclosure made to the ATO, seeking evidence about the allegation if necessary. This can include monitoring the taxpayer's compliance, requesting further information from third parties, or seeking information directly from the party about whom the allegations are made, through phone calls, letters or visits. It may not be sufficiently specific to be acted on or appropriate to act on the information immediately. Information of this kind is treated as intelligence and is input into the ATO's risk assessment processes or acted upon when the timing is appropriate.

A member of the public who believes that the ATO has failed to act on information it had referred to the ATO can make a complaint to the ATO. Complaints are handled by officers who are separate to the area that first handles a disclosure and can undertake a review of how the referral was handled. A person making a complaint would be informed about the findings of the review, but the secrecy provisions of the taxation laws and the Privacy Act do not allow the complainant to be informed about the action taken in response to the original referral.

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There are other bodies that review the ATO, including the Taxation Ombudsman who investigates individual taxpayer complaints, and the Inspector-General of Taxation whose focus is on systemic tax administration issues rather than individual taxpayer matters.

Finally, our understanding is, that a member of the public who believes the ATO failed to act on referred information could choose to seek a remedy via constitutional writ (the current name for writs of mandamus and certiorari). The Commissioner of Taxation, as a public official would be required to perform his duties in relation to the writ. Legislation has been enacted that allows for applications to the courts for orders of review (in lieu of common law writs). These orders compel a public official to make a decision within a prescribed timeframe.