

Senate Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates

2015 - 2016

Department/Agency: Australian Taxation Office

Question: AET 2598-2601

Topic: Legal Costs

Reference: written - 19 February 2016

Senator: Ludwig, Joe

Question: Since the change of Prime Minister on 14 September, 2015:

2598. List all legal costs incurred by the department or agency

2599. List the total cost for these items, broken down by source of legal advice, hours retained or taken to prepare the advice and the level of counsel used in preparing the advice, whether the advice was internal or external

2600. List cost spend briefing Counsel, broken down by hours spent briefing, whether it was direct or indirect briefing, the gender ratio of Counsel, how each Counsel was engaged (departmental, ministerial)

2601. How was each piece of advice procured? Detail the method of identifying legal advice

Answer:

2598. The ATO's, including Tax Practitioner Board (TPB), legal services expenditure from 1 September 2015 to 29 February 2016 are provided in the table below.¹

Expenditure	ATO (\$) (GST exclusive)	TPB (\$) (GST exclusive)	Total value (\$) (GST exclusive)
External legal services			
Professional fees	10,999,386	7,988	11,007,374
Counsel fees	5,096,949	21,482	5,118,431
Disbursements	9,800,600	399	9,800,999
Total external legal services	25,896,935	29,869	25,926,804
Internal legal services			
Total direct staff costs and salaries	9,216,144	593,566	9,809,710
Total overhead costs	4,529,943	433,512	4,963,455
Total internal legal services	13,746,087	1,027,078	14,773,165
Total legal services expenditure	39,643,022	1,056,947	40,699,969

¹ The expenditure relates to legal expenditure incurred from 1 September 2015 to 29 February 2016, as the ATO receives monthly invoicing from the legal service providers for all costs incurred during the month. These date ranges account for a reporting period and give a 6 month picture. Further breakdown is not captured in ATO systems and the provision of this information would require the individual review of approximately 8900 invoices.

Notes for table above:

- External legal services expenditure excludes costs awarded against the ATO, and the ATO's Test Case Program legal costs.
- Professional fees include fees charged by external legal services providers for the work undertaken by their solicitors.
- Counsel fees include panel counsel briefings and direct briefings (ATO and the Tax Practitioners Board (TPB)).
- Disbursements includes court filing fees, summons fees, expert witness costs, indemnity fees (payments of costs incurred by lawyers or other professionals where the ATO has agreed to provide an indemnity), legal costs for settlement of cases (payments of third party legal costs where a case has been settled) and fees associated with mediating legal disputes.
- Internal legal services expenditure includes ATO (Review and Dispute Resolution and General Counsel) and TPB internal legal services expenditure. We manage tax litigation (under Part IVC of the Taxation Administration Act 1953), debt litigation, general law and freedom of information. There are areas within the ATO where employees perform functions of a legal nature (for example preparation of writs, statutory demands and bankruptcy notices) and provide interpretative advice on the more complex areas of tax and superannuation law. The cost associated with the legal component in these areas is not included.
- Direct staff costs includes direct salary costs, superannuation costs, leave entitlement costs and other salary related staff costs for areas mentioned above.
- Overhead costs include direct overhead costs such as staff travel costs, training and development costs, stationery and other miscellaneous costs such as electronic and hard copy legal information (online database and journals) and indirect overhead costs such as desktop services, accommodation, recruitment services and communication technology services costs for areas as mentioned above.

2599. Legal advice for the ATO is provided by:

- Law firms engaged by the ATO
- Counsel engaged via law firms
- Counsel engaged directly by the ATO (direct briefs), and
- ATO in-house lawyers.

A further breakdown of this information would be an unreasonable diversion of departmental resources.

2600. Counsel break down from 1 September 2015 to 29 February 2016 are provided in the below table.

	Number of counsel brief		Total (\$) (GST exclusive)	
Total Counsel	601		4,818,911	
Male	408	67%	2,773,817	57%
Female	127	21%	667,471	14%
Unidentified	66	12%	1,377,623	29%
Total direct brief	326		1,642,480	
Male	249	76%	1,291,465	79%
Female	77	24%	351,015	21%
Total panel brief	275		3,176,431	
Male	159	58%	1,482,352	47%
Female	50	18%	316,456	10%
Unidentified	66	24%	1,377,623	43%

Notes to table above:

- The cost of briefing counsel is broken down by the manner of engagement. Counsel is either engaged indirectly through a panel firm of solicitors on behalf of the ATO or the ATO directly brief counsel.
- All engagement of counsel was by or on behalf of the ATO – i.e. Departmental.
- The unidentified category in the above table is due to Australian Government Solicitor system issues preventing the provision of gender of counsel for the past 4 months.

A further breakdown of this information would be an unreasonable diversion of departmental resources.

2601. The ATO has negotiated parcelling arrangements with a number of legal firms from the Attorney-General's Legal Services Multi-Use List.

Counsel is briefed by the ATO to provide advice or appear on behalf of the Commissioner in accordance with the Legal Services Directions 2005.

Please refer to tenders.gov.au for the published procurement method. Please note that counsel are not engaged through the tender process and are briefed by the ATO to provide advice or appear on behalf of the Commissioner in accordance with the Legal Services Directions 2005.