

Department/ Agency: Australian Taxation Office

Question: BET 735

Topic: Grain Inquiry

Reference: Hansard page 78-79

Senator: Heffernan

Question:

SENATOR Heffernan asked

Senator HEFFERNAN: There is just one final thing on tax, which was the—

CHAIR: You can put it on notice.

Senator HEFFERNAN: —in our inquiry into a certain grain entity, we discovered a \$700 million fine by the US court against a particular company in South America who used a derivative swap for the tax dodge. Are you familiar with that?

Mr Jordan: No, but we will certainly take it on notice.

Senator HEFFERNAN: Take it on notice.

Mr Jordan: I know derivative swaps are very complex instruments.

Senator HEFFERNAN: They are. There are not many that can—

Mr Jordan: We will certainly take that on notice.

CHAIR: Thank you again Commissioner.

735. The ATO is familiar with the publicly available information concerning derivative transactions by Archer Daniels Midland Company, whom we assume is the entity referred to.

Generally, the use by businesses of financial products, including derivatives, to manage risks associated with fluctuating interest rates, currencies or commodity prices is a common and regular part of commerce.

Sometimes, the use of these products can give rise to tax risks. These arise when the product is “mispriced” to facilitate profit shifting or tax avoidance. We have ongoing strategies to address this risk. For example, we have recently been working with stakeholders to address tax issues associated with internal derivatives used within financial institutions, to ensure a proper allocation of profits to branch operations.

Our strategies aim to ensure that derivative products are priced on an “arm’s length” basis to avoid profit shifting. These strategies include improved intelligence gathering, the provision of advice and rulings, and investigative approaches (including work with other countries’ tax authorities). Our work allows us to better understand multinational enterprise commercial models and practices, and so helps support law reform considerations, especially the base erosion and profit-shifting work of the Organisation for Economic Co-operation and Development and the G20.