

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

TREASURY

Australian Taxation Office

Additional Estimates 25 February 2009

Question **AET 6**
Topic: **AID/WATCH – Charitable Status (ATO)**
Hansard Page: **Written**

Senator Bob BROWN asked:

Following the ATO's attempts to remove charitable status from the non-government organisation AID/WATCH:

1. Is the ATO taking it upon itself to apply a narrow legal definition of the types of activities a charitable organisation can undertake to get tax deductibility, or has it been asked to pursue a narrow definition by the government?
2. If the ATO has made the decision without government direction, why is it pursuing a narrow definition of charitable activities rather than adopting the broader definition recommended in the 2001 Treasury inquiry into the Definition of Charities?
3. If the Government has directed it to pursue a narrow legal definition, who in the Government has issued this direction?
4. Were there any discussions between the ATO and Government about the AID/WATCH case before the ATO decided to launch a Federal Court appeal over the Administrative Appeals Tribunal decision in favour of AID/WATCH? Did the Government agree with the ATO's decision to appeal the AAT decision?
5. Has the ATO identified any other NGOs which it believes should not have charitable status? If so, please list the names of these organisations.

Answer:

1. No. The Tax Office applies the current law as interpreted by the courts. A charitable organisation is entitled to be endorsed as a deductible gift recipient (DGR), not on the basis of its charitable status alone, but on the basis of whether it satisfies the legislative requirements of the relevant DGR category. The Tax Office has not been asked by the Government to pursue a narrow definition, nor would it be appropriate for Government to make such a request given the independence of the Commissioner in the application of laws within his responsibility.
2. The recommendation of the 2001 Treasury inquiry into the definition of charities was not legislated and therefore is not used by the Tax Office.
3. Not applicable.

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4. A decision to seek clarification from the courts about the interpretation of the law is a matter for the Tax Office, independent of Government. Given the secrecy provisions in the tax law and the fact that the Parliament gave the administration of the tax laws to the Commissioner of Taxation, it would be inappropriate for the Commissioner to raise individual cases with the Government and vice versa.

5. As part of the Tax Office's compliance program, it has a program of reviewing the initial and ongoing entitlement of organisations to seek non-profit and charitable tax concessions. In 2007-08, over 5000 such reviews were carried out. The secrecy provisions in the tax law generally prevent the Tax Office from providing taxpayer details to others. Having regard to the policy underlying these provisions, hopefully the thrust of these questions may be answered by the assurance that the Tax Office review of NGOs is based on an understanding of the legal requirements and is no way influenced by the Government.