

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates

23 – 24 February 2011

Question No: AET 41

Topic: CHANGES TO THE ALIENATION OF PERSONAL SERVICES INCOME RULES

Hansard Page: Written

Senator Ryan asked:

1. What work has the ATO done on the possible changes to persons who have ‘employee-like’ characteristics but operate in a ‘business-like’ way?
2. According to the ATO, how many independent contractors are there?
3. How many independent contractors did the ATO expect to become employees under the previously proposed changes to the Alienation of Personal Services Income rules?
4. What additional revenue (in total) does the ATO expect to generate if the proposed changes to the Alienation of Personal Services rules goes ahead?
5. The Board of Taxation indicated that “the ATO (is) not being seen to be widely monitoring and auditing compliance with the alienation of personal service income rules is that it may have contributed to complacency among some taxpayers and advisors.” Has the ATO engaged in any compliance programs directed at the Alienation of Personal Services Income? If so, please provide a list of the compliance programs, when they were initiated, when they were completed, additional revenue generated, number of violations discovered, number of cases prosecuted.
6. Please provide a list of meetings, including the date, where the Treasurer or Assistant Treasurer has had where PSI was discussed?
7. Has anyone from the ATO formally briefed any non-government person, on the proposed changes to the PSI rules?
8. Have any meetings been held where representatives of unions were present and this issue was discussed?

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Answer:

1. The ATO has noted the Board of Taxation's recommendation on changes to the Alienation of Personal Services Income rules that will have an impact on those with 'employee-like' characteristics but operate in a 'business-like' way.
2. The ATO is not able to accurately estimate the number of independent contractors in Australia. In the context of personal services income rules, there are around 292,000 taxpayers who declared personal services income in tax returns processed for the 2009-10 income year to date.
3. The ATO has not undertaken any analysis on this.
4. The ATO has not undertaken work to estimate possible additional revenue as a result of the recommendations of the Board of Taxation.
5. The ATO has engaged in a number of compliance programs directed at the Alienation of Personal Services Income. Results, including review and audit casework, are as follows:

Income Year	Cases completed	Revenue
2009-2010	143	\$3.5m
2008-2009	231	\$4.8m
2007-2008	350	\$4.9m
2006-2007	280	\$3.8m
2005-2006	450	\$2.6m
2004-2005	607	\$4.3m

For the 2010-11 year to date 82 cases have been completed with revenue of \$1.48 million.

No cases have been prosecuted by the ATO in relation to Alienation of Personal Services Income.

In relation to activities outside the Alienation of Personal Services Income, the ATO received funding under the banner of 'Promoting a Level Playing Field' for Australian business in the 2009-10 Budget to target 'sham contracting'. 4,304 field audits are expected to be completed for this activity by the end of 2013.

From 1 July 2009 to 28 February 2011, 1,639 field cases have been completed, raising average adjustments of around \$24,000 per case, over a third of which is superannuation guarantee. No cases have been prosecuted.

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In carrying out this work the ATO also collects information from business about payments they make to contractors. This information is matched with ATO data including small business benchmarks to check whether the contractors are properly reporting their income.

Field work including visits to employers is helping to increase and contextualise our understanding of contracting. The ATO has been collecting and examining data that is building a picture of how businesses are using contractors and how the contractors are engaging in the tax system. The ATO has observed and differentiated between legitimate contracting, and arrangements that demonstrate some effort to comply with the law but are ultimately arranged to fit pre-determined outcomes, through to flagrant and blatant abuse of the tax system and the employers' responsibilities to their workers.

In addition, the ATO is in receipt of information about government programs including payments to business recipients of the economic stimulus packages, tip-offs from competitors who resent the 'unfair playing field', citizens' advocacy groups, migrant resource centres, tax agents and concerned parents. This information will be investigated.

6. The Commissioner of Taxation met with the then Assistant Treasurer, Senator the Hon Nick Sherry on 14 September 2009 where Alienation of Personal Services Income was discussed.

7. No

8. No