

## Senate Standing Committee on Economics

### ANSWERS TO QUESTIONS ON NOTICE

#### Treasury Portfolio

#### Additional Estimates

16 February 2012

**Question No:** AET 24

**Topic:** Proceeds of crime

**Hansard Page:** 94

**Senator HEFFERNAN:** In New South Wales we have the New South Wales Crime Commission. Much to the horror of the Australian Crime Commission and the AFP, they have in recent years had a curious habit of negotiating the proceeds of crime in lieu of prosecution of some criminals. Mr Bradley has, fortunately, retired and we might change the practice. I am wondering what the view of the Taxation Office is of the tax status of proceeds of crime where the proceeds have been negotiated in lieu of prosecution—so the crim takes half and the New South Wales Crime Commission takes the other half. By the way, this is now in the budgetary considerations for the department.

**Mr D'Ascenzo:** We have worked with the New South Wales Crime Commission and the Australian Crime Commission very cooperatively in law enforcement areas. Ultimately, when it is a law enforcement—

**Senator HEFFERNAN:** You may take it on notice, if you want to.

**Mr D'Ascenzo:** That might be a better idea, to give you a more exact answer.

#### **Answer:**

The ATO works collaboratively, including through task force approaches with state and federal law enforcement agencies, to remove the profit from organised crime by applying tax remedies such as audits, penalties, taxation debt recovery and enforcing lodgment of taxation returns.

The Commissioner can raise income tax assessments to the extent a taxpayer makes profit or capital gain from their criminal activities. This is separate from any activities undertaken by law enforcement agencies under proceeds of crime action.

The Commissioner has a statutory discretion to waive all or part of the right to payment of the tax liability if it is connected with the proceeds of crime and the waiver will facilitate an outcome under the *Commonwealth Proceeds of Crime Act 2002*.

However this discretion does not extend to proceeds of crime action taken by state law enforcement agencies. In these circumstances, normal ATO debt recovery considerations would apply.