

# Senate Standing Committee on Economics

## ANSWERS TO QUESTIONS ON NOTICE

### Treasury Portfolio

Additional Estimates

16 February 2012

**Question No:** AET 22

**Topic:** Litigation trends

**Hansard Page:** 92

**Mr D'Ascenzo:** At the moment we have 1,200 tax litigation matters on hand (Part IVC only includes admin law), of which 774 are disputed income tax assessments. That is about 0.005 per cent of those objected.

**Senator CORMANN:** Do you have a figure there on what the litigation value across these 1,200 is?

**Mr D'Ascenzo:** No, I do not have the value figures.

**Senator CORMANN:** Just in order for us to get a bit of a sense on the trend, could you give us, at this point in time and then for each year over the last four or five years, the number of court cases you were involved in at that point in time and how that number has been tracking? Is that something that you can provide us on notice?

**Mr D'Ascenzo:** We can, yes.

#### Answer:

In his response to Senator Cormann's question on Litigation Trends at the hearing on 16 February, the Commissioner responded "At the moment we have 1,200 tax litigation matters on hand (Part IVC only includes admin law), of which 774 are disputed income tax assessments. That is about 0.005 per cent of those objected." Please note the following clarifications:

- the first sentence should be amended to "At the moment we have 1,200 tax litigation matters on hand of which 774 are disputed income tax assessments." The 1,200 matters are cases disputed under Part IVC of the *Tax Administration Act*.
- the last sentence should be amended to "That is about 0.005 per cent of the **15.6 million tax returns lodged in 2010-11.**"

#### Litigation value

The litigation value of the 1,264 tax litigation matters on hand as at 29 February 2012 is about \$5.5 billion as outlined in Table 1. Please note that 12 of the Court matters involve disputes over \$50 million each (totalling approximately \$3.2 billion), and a further 22 Court matters have a litigation value between \$10 million and \$50 million (totalling approximately \$443 million). Of the Tribunal matters, one matter has a litigation value of approximately \$1 billion and 14 matters have a litigation value between \$10 million and \$100 million (totalling approximately \$344 million).

There are four matters that originated from the ATO's operational area (three matters in the AAT and one matter in the Court) that have been excluded from the results in Table 1. These four cases do not have any tax in dispute.

**Table 1: Total tax in dispute related to active litigation matters in courts and tribunals**

	Number of active matters	Primary tax in dispute (\$)	Penalty in dispute (\$)	Total tax in dispute (\$)
Court <sup>1</sup>	277	3,606,842,440	257,550,699	3,864,393,139
Tribunal <sup>2</sup>	987	1,298,965,433	246,457,753	1,545,423,186
Total	1,264	4,905,807,873	504,008,452	5,409,816,326

<sup>1</sup>Court includes all Courts including High Court, Full Federal Court and Federal Court.

<sup>2</sup>Tribunals includes Administrative Appeals Tribunal and Small Taxation Claims Tribunal

### Litigation trends

In May 2012, the ATO published the first edition of *Your case matters 2012* booklet containing key data and analysis about tax and superannuation litigation. It can be found on the ATO website at: <http://www.ato.gov.au/content/00318105.htm?headline=yourcasematters&segment=home>.

It shows the following objection and litigation trends for courts and tribunals:

- The number of objections lodged in relation to the number of forms submitted by taxpayers each year is very small.
- The majority of objections lodged each year relate to income tax assessments (72% or nearly 17,400 of about 24,000 objections lodged in 2010-11).
- Most disputes are finalised at the objection stage (around 97% in 2010-11) and do not require litigation.
- Most taxpayers who proceed to litigation seek a review in the tribunals (80% in 2010-11).
- Most appeals to the tribunals and courts are finalised prior to hearing (61% in 2010-11) and there are indications that alternative dispute resolution is having a positive effect on resolving disputes earlier.
- The majority of decisions by the tribunals and courts are favourable to the ATO (65% in 2010-11).

### Court matters

The data for tax litigation matters in the courts (all Courts including High Court, Full Federal Court and Federal Court) over the last five years is outlined in Table 2. Please note that the data contained in this table cannot be reconciled to other sources of data previously published as the counting rules have changed over time. This is more fully explained in *Your case matters*.

**Table 2: Active litigation matters in courts over the last five years.**

	Appeals lodged	Finalised prior to hearing	Finalised by court	Stock on hand (at EOFY)
2007-08	222	137	62	362
2008-09	123	57	69	348
2009-10	148	165	75	245
2010-11	152	35	45	291
2011-12 (to 29 February 2012)	71	29	22	278