

**Senate Economics Legislation Committee**  
**ANSWERS TO QUESTIONS ON NOTICE**  
**TREASURY**  
**Australian Taxation Office**  
(Budget Estimates 30 May 2006)

**Question**                    **BET 140**  
**Topic:**                      **CODE OF SETTLEMENT PRACTICE**  
**Hansard page**            **Written Question**

Senator **Sherry** asked:

To get the ATO to provide information relating to the Settlement Register and to find out if the Code of Settlement Practice is being followed. This has come from an ATO whistle-blower, via a reporter. It is also linked to the Robert Gerard scandal.

This Code has been written with mainly income tax in mind, but the principles are applicable to all laws administered by the Commissioner.

1. How many cases were settled in the 2004-05 financial year and recorded in the ATO's Settlement Register?

**Answer:**

	<b>1 July 04 – 30 June 05</b>	<b>1 July 05 – 30 June 06</b>
Settlements relating to schemes (including Mass Marketed Investments and Employee Benefit Arrangements)	2515	2185
Non-Scheme Settlements	167	211
<b>Total Settlements Registered</b>	<b>2682</b>	<b>2396</b>

2. How many cases have been settled in the 2005-06 financial year and recorded in the ATO's settlement register?

**Answer:**            Please see table above.

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3. How many cases in 1 and 2 have been subject to Technical Quality Reviews under the ATO Practice Statement Law Administration PS LA 2001/11

**Answer:** In accordance with Law Administration Practice Statement PS LA 2001/11 each of the ATO's business lines reviews a random sample of the settlements finalised twice per year. All settlements involving large corporate taxpayers are reviewed. Since 1 July 2004, four technical quality reviews (TQR) have been conducted. The number of settlement cases reviewed during each period is:

Aug 2004	245
Feb 2005	239
Aug 2005	224
Feb 2006	200

4. What issues have been identified by these Technical Quality Reviews?

**Answer:** The technical quality review process for settlements includes several conformance checks to ensure that the Code of Settlement Practice has been followed. The main conformance issues identified during the technical quality reviews have been:

- insufficient background documentation on some cases related to mass marketed schemes settlements;
- ATO signatories to deeds not following internal administrative procedures and some cases of inaccurate amounts being entered into the Settlement Register.

5. Please provide the names of and positions of any external consultants that have sat on Technical Quality Reviews in relation to q1 and 2.

**Answer:** The names of the community representatives who have been on TQR panels and reviewed settlements since July 2004 are:

Mr B Burge	Senior Partner, Kendalls LMJ
Mr M Cashmere	Faculty of Law University of NSW
Mr T Clinkett	Registered Tax Agent, FASCPA
Ms C Coleman	Assoc Professor in Taxation Law University of NSW

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Mr M Curran	Lecturer in Law Royal Melbourne Institute of Technology
Mr M de Crespigny	Principal Legal Officer Commonwealth Director of Public Prosecutions
Mr D Douglas	Registered Tax Agent, CPA
Mr I Farrow	Senior Manager KPMG
Mr L Hardiman	Senior General Counsel Australian Government Solicitor
Ms J McManus	University of NSW
Ms G Nair	Senior Executive Lawyer Australian Government Solicitor
Ms A O'Grady	Registered Tax Agent
Mr B Pitts	Company Director, CPA
Mr K Robinson	Business Risk Manager Primary Superannuation Services Pty Ltd

6. How many of these cases have been settled at the Commissioner level?

**Answer:** One

7. Is the Settlement Register maintained on a computer or is it in a hard copy or both?

**Answer:** The Settlement Register is maintained only on computer.

8. Who inputs information onto the Settlement Register after the ATO has settled an audit with a taxpayer?

**Answer:** Case officers input the data into the settlement register once the settlement is concluded

9. Who can access the Settlement Register?

**Answer:** The Settlement Register has restricted access consisting of 3 permission levels according to the following officer roles:

- 'User' level allows case officers to enter and view data for their cases only;

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- 'Co-ordinator' level allows access to cases within a specific business line to enable case reporting and monitoring. 16 officers have this level of access;
- 'Administrator' level allows access to add new users and make system changes and upgrades. 5 officers from the Office of the Chief Tax Counsel have this level of access.

10. Has the Settlement Register been subject to any scrutiny by any authority outside the ATO such as the Inspector General of Taxation, Auditor General or Parliamentary Committee?

**Answer:** The Settlement Register has not been subject to a formal review by an external party. However, officers from the office of the Inspector-General of Taxation have been provided with an extensive demonstration of the system.

11. Why aren't statistics such as the number of settlements, the amount settled and the issues settled, recorded in the Settlement Register included in the ATO Annual Report?

**Answer:** Data on the number and amount of settlements and the issues settled has not previously been collated and aggregated for inclusion in the Annual Reports. The Commissioner will consider what additional information relating to settlements may be included in future Annual Reports.

12. Does the Commissioner believe that those statistics should be supplied to Parliament and in turn, the Australian people?

**Answer:** The Commissioner will be including data detailing the number of settlements completed for the year and the reasons for settlements in the 2005/06 Annual Report.

13. Does the Commissioner believe there is adequate transparency in the settlement process in view of the lack of accountability to Parliament at the present time in relation to large case audits?

**Answer:** The ATOs Code of Settlement Practice (Code) provides guidelines on the settlement of taxation disputes and outlines the processes to be followed by ATO officers in completing settlements. The guidelines and processes detailed in the Code apply to all settlement cases including large case audits.

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14. In the event of a settlement arrangement of a large case audit, what would be deemed “appropriate circumstances” particularly in terms of lost revenue?

**Answer:** The merits of each settlement are assessed using the guidance provided in the Code.

15. How much taxation revenue is lost by accepting settlements, particularly those that are considered to be large?

**Answer:** A settlement does not mean that revenue has been forgone. An important principle is that a settlement agreement should only occur where it is in the best interests of the Commonwealth to settle. The Commissioner is obliged to manage the affairs of the ATO in a way that promotes the efficient, effective and ethical use of Commonwealth resources. The courts have recognised that it is open to the Commissioner to use the “good management rule” when making decisions in regard to the best use of resources available. Settlements are an example of this.

16. Has there been a recent settlement with the ATO (including interest and penalties) that approach the figure of \$100 million?

**Answer:** Yes

17. How many?

**Answer:** In the period July 2004 to 30 June 2006, there was one settlement registered where the amount settled was \$95m. During the same period 5 other settlements were registered where the amount of the settlement was over \$100m. Those cases ranged from \$182m to \$274m. Four of these settlements involved losses disallowed and a notional revenue amount was calculated.

18. Companies or individuals?

**Answer:** All six cases were companies.

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19. What is the highest penalty applied by the ATO in recent times?

**Answer:** In 2004-2005 the highest penalty imposed in a settlement (after remission) by the ATO was \$142,613,438 and in 2005-2006, it was \$43,041,397. In both cases the penalty after remission was at the rate of 25% of the tax shortfall.

**TAX RETURNS AND COMPANY ACCOUNTS**

1. Would the Commissioner welcome publicly listed companies publishing its tax returns?
2. What implication for tax administration would flow from forcing publicly listed companies to public its tax returns?

1& 2) There is no requirement under the current law for companies, publicly listed or otherwise, to publish their tax returns and the secrecy provisions of the tax laws apply to the affairs of all taxpayers including companies. The Commissioner has advised that he has not considered the implications of a proposal to require the publication of tax returns by public companies.