

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

Question **BET-144**
Topic: **TAX RETURNS**
Hansard page **Written Question**

Senator **Sherry** asked:

To highlight the failure of the ATO to enforce legislation which penalises individuals who fail to lodge tax returns or who have dropped out of the tax system.

The Income Tax Assessment Act details the penalties an individual faces for failing to lodge their tax return (Attachment A). In 2004-2005, 60,000 taxpayers failed to lodge a tax return until contacted by the ATO. Aside from high profile crack-downs which target a specific group of taxpayers, does the ATO utilise legislation to punish those who don't lodge tax returns or have dropped off the tax system. And what action is taken to find these taxpayers?

1. *How many individuals pay income tax in Australia?*

Answer: Taxation Statistics reveal that for the 2004 income year, 10,819,176 individuals lodged income tax returns. However, it is not known exactly how many individuals "pay" income tax in Australia. Generally, income tax is collected during the year from individuals via Pay As You Go (PAYG) withholding and instalments; but for various reasons, not everyone in the PAYG system during a year will lodge an income tax return at the end of that year.

2. *Is their data showing how many individuals have dropped out of the tax system and if so, can it be provided to this committee?*

Answer: It is not possible to compile data showing how many individuals have "dropped out of the tax system". Individuals may legitimately be required to lodge one year but not the next (eg because their level of income fluctuates around the tax free threshold) but there is usually no requirement on individuals who are not lodging for such reasons to inform the Tax Office that they do not have to lodge.

3-4. *What action is the ATO currently undertaking to track down these people?
How does the ATO go about tracking down these people?*

Answer: The first thing the Tax Office does is to use data-matching to identify the non-lodgers as opposed to those who are not required to lodge.

Non-lodgers are then followed up according to risk. More information on the risk aspect of the process is published annually in the Compliance Program.

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5. *Of the number of people paying income tax in Australia, how many have failed to lodge a tax return?*

As above, these numbers are not available. Many such people have paid income tax through the PAYG system, but not lodged a return.

6. *How many of these people have consistently failed to lodge a tax return and is this data available to this committee?*

Answer: Again, precise figures are not available, but it is known that there are about 221,000 people who “paid” tax through the PAYG system in the 2004 income tax year, but had not lodged income tax returns for either the 2002, 2003 or 2004 income years.

7. *What action is the ATO taking to crack down on these people?*

Answer: Lodgment enforcement action is initiated according to the risk posed by various taxpayers. Taxpayers from whom tax has been collected under the PAYG system during the year are generally considered to be lower risk in terms of lodgment compliance than taxpayers outside the PAYG system. Taxpayers with more than one return outstanding are generally considered higher risk.

Indicators of revenue at risk and wealth are also used. Individual taxpayers selected for attention are chosen on the grounds that there is significant revenue at risk and/or the community would generally have an expectation that these individuals, including those in various professional and occupational groups, meet all their tax obligations.

The action taken includes reminder to lodge letters, telephone calls and personal visits. Penalties, prosecution action and default assessments are used in the most serious cases.

8. *What penalties does a taxpayer face for failing to lodge a tax return?*

Answer: The key sanctions used to treat non-lodgment are the failure to lodge penalty and prosecution action.

Under the *Taxation Administration Act 1953* (TAA), taxpayers with a requirement to lodge are liable to an administrative penalty, a failure to lodge on time penalty, if they fail to lodge returns, statements or other approved forms on time and in the approved form.

There is a base penalty amount (BPA), which applies to all taxpayers including individuals, or a multiple of the BPA that reflects the size of the entity.

The BPA is one penalty unit for each period of 28 days or part thereof that a document remains outstanding up to a maximum of five penalty units.

The current value of a penalty unit is \$110.

Alternatively, a person who fails to comply with a requirement to lodge an approved form can be prosecuted. If convicted, an individual taxpayer may be fined up to \$2200

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for a first offence, \$4400 for a second offence and \$5500 or up to 12 months imprisonment or both. A corporation may be fined up to \$27,500.

If a prosecution for failing to lodge a tax return is initiated by the Commissioner, then administrative penalties are no longer payable.

Where the use of these sanctions has previously been unsuccessful in securing lodgment, or if it is believed that the use of these sanctions is not appropriate, the Commissioner has the option of raising a default assessment based on income information available to him when a taxpayer fails to lodge. A penalty of 75% of the tax assessed is applied to such assessments. These assessments must be raised on reasonable estimates and taxpayers have the right to challenge such assessments but must prove them to be excessive to have them overturned.

9. *In 2003-2004, 2004-2005 and 2005-2006 how many taxpayers were penalised for failing to lodge a tax return?*

Answer:

Table 1. Number of failure to lodge on time penalties imposed on individuals in respect of late or outstanding income tax returns.

Income year	2003-04	2004-05	2005-06
Number of individuals	1508	6411	5647

The small number of failure to lodge on time penalties imposed during the 2004 income year illustrated in Table 1 can be attributed to a number of factors. Firstly, the system to support automatic penalty imposition was not implemented until July 2002. Secondly, during the first few years of the new tax system, in order to allow taxpayers and their agents an opportunity to adjust to the new tax regime and to minimise the volume of outbound correspondence, the Tax Office was lenient in the application of failure to lodge on time penalties. Further, the Tax Office has a policy that requires taxpayers to be warned about the consequences of not lodging on time. In practice, this means that a taxpayer is warned the first time they lodge late and when a subsequent and consecutive return is lodged late, the failure to lodge on time penalty will be imposed automatically. In respect of income tax returns this means it generally takes two income tax lodgment cycles before failure to lodge on time penalties are applied automatically.

The increase in penalties from the 2005 income year is the result of the Tax Office's increased focus on lodgment compliance and the treatment strategies at their disposal to secure lodgment. This includes the application of penalties. Similarly, this increased focus on lodgment compliance has resulted in an increase in the number of individuals prosecuted and convicted for failing to lodge an income tax return (Table 2).

Table 2. Number of individuals convicted for failing to lodge one or more income tax returns.

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Income year	2003-04	2004-05	2005-06
Number of individuals	430	730	1595