

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates

31 May – 2 June 2011

Question No: BET 94

Topic: ATO – in relation to AET 98

Hansard Page: Written

Senator Bushby asked:

I refer to the ATO answers to my Questions on Notice AET 98 (RE Saxby v R), and now seek answers to the following questions:

1. During the past 25 years is it correct to say that there are no other **reported** cases of taxpayers being prosecuted by the Commonwealth for making a false representation in an objection to a tax assessment?
2. If this is the case then is it correct to say that ATO has adopted a new policy in the administration of its parent Act to prosecute taxpayers who make false representations in objecting to a tax assessment?
3. Does the ATO have an internal policy which sets out which cases will be taken for prosecution and which ones will not (e.g. false statements on tax objections)?
4. Has the ATO published any statements on this matter other than the statement in its answers to QoN AET 98?
5. If there have been no prosecutions in relation to the matter above, other than Saxby, when will the ATO advise the Government of its decision to change a longstanding practice in the way it administers its Act?
6. How many similar cases (false statement in objections to an assessment) are currently before the DPP, and did the ATO bring these cases to notice of the DPP?
7. What is the procedure for ATO bringing a matter before the DPP?
8. Can the ATO advise the Senate to the best of its knowledge whether it knows of any tax cases which have been initiated by the DPP without a reference by the ATO and/or a reference by another Commonwealth Agency other than ATO?
9. Is it therefore correct to say that a taxpayer engaged in an objection to an ATO assessment risks the prospect of three possible outcomes in relation to a tax assessment in dispute:
 - a) Liability for tax owed to ATO plus penalty tax and statutory interest charges;
 - b) Liability for criminal prosecution, for example, for conspiring to defraud the ATO;
and
 - c) Liability for criminal prosecution for making a false statement in a tax objection.

10. If this is the case then has the ATO issued warnings (especially in relation to self incrimination) to taxpayers who object to a tax assessment advising that they could be subject to at least three adverse outcomes should they not be in compliance with their tax obligations if there are such warnings on the objection forms please furnish a copy to Senate.

Answer:

1. The ATO does not keep records relating to reported cases where taxpayers have been prosecuted by the Commonwealth for making a false representation in an objection to a tax assessment.

ATO systems record criminal convictions according to the charge laid under the *Criminal Code Act 1995*, such as Section 134 Obtaining property or a financial advantage by deception. Charges for false or misleading statements can be laid under either the *Criminal Code Act 1995* or the *Taxation Administration Act 1953*. Since 2009-10, eight people have been prosecuted under the *Taxation Administration Act 1953* for making false or misleading statements, and there are a further six cases underway.

In relation to prosecutions for false or misleading statements in an objection to a tax assessment, the ATO is unable to confirm exact numbers, however, it would be rare. Since 2009, no taxpayers have been charged under Section 8N of the *Taxation Administration Act 1953* for providing a false or misleading statement in an objection.

2. There has been no change in policy. If a taxpayer makes a false or misleading statement at any time when providing information to the ATO, including when lodging a tax return, responding to a formal notice or during the objection process, they may be subject to prosecution under either tax laws or the criminal code.

The ATO continues to work closely with the Commonwealth Director of Public Prosecutions to identify appropriate cases for tax offence prosecution under the criminal code and also where appropriate, undertakes prosecution action under the *Taxation Administration Act 1953*.

3. The ATO fraud and prosecution practice statement (PS CM 2007/02) provides guidance for determining when a referral for criminal prosecution is a more appropriate response than other civil sanction, such as administrative penalties.
4. No
5. See response to Question 2.
6. The Commonwealth Director of Public Prosecutions is in a better position to advise on matters currently under their consideration. Since 2009-10, there have been eight prosecutions under the *Taxation Administration Act 1953* for false or misleading statements. Of these eight, only one has been referred to the Commonwealth Director of Public Prosecutions for prosecution as they pleaded not guilty. None of these matters have been for a false statement in an objection. For referrals to the Commonwealth Director of Public Prosecutions in relation to false statements in an objection to an assessment, the ATO's systems cannot readily provide this information however, it would be rare.

7. The ATO refers matters for possible prosecution to the Commonwealth Director of Public Prosecutions in accordance with the prosecution policy of the Commonwealth, the ATO Prosecution Policy and a memorandum of understanding between the two agencies (available at www.ato.gov.au).

Where the ATO has conducted an investigation, and has uncovered sufficient evidence in its view to support criminal proceedings, the ATO will refer the matter to the Commonwealth Director of Public Prosecutions. The ATO will refer such matters to the Commonwealth Director of Public Prosecutions by providing a brief of evidence.

Decisions to prosecute ultimately rest with the Commonwealth Director of Public Prosecutions.

8. Only the Commonwealth Director of Public Prosecutions would be in a position to advise in relation to this question.
9. The ATO's approach to determining objections lodged with it by taxpayers is to have the original decision considered by a person who was not involved in the original decision, taking into account all the known, relevant facts and circumstances of the matter. There is a wide range of possible outcomes, depending on the circumstances of the particular matter. Tax laws specifically give taxpayers who are dissatisfied with the objection decision the right to seek an external review, for example through the Administrative Appeals Tribunal or the Federal Court of Australia.

It is important that appropriate civil and criminal sanctions are applied for serious abuse of the tax system.

The ATO fraud and prosecution practice statement (PS CM 2007/02) provides guidance for determining when a referral for criminal prosecution is a more appropriate response than other civil sanctions, such as administrative penalties. Importantly, if a taxpayer makes a false or misleading statement at any time when providing information to the ATO, including when lodging a tax return, responding to a formal notice or during the objection process, they may be subject to prosecution under tax or criminal law.

The vast majority of cases are dealt with as civil matters.

10. Not applicable.