

Released under FOI Act 1982
Australian Charities and Not-for-profits Commission

From: Natasha Sekulic <Natasha.Sekulic@acnc.gov.au>

Sent: Monday, 30 September 2024 6:42 PM

To: [REDACTED] s 47E(d)

Cc: [REDACTED] s 47E(d)

Subject: RE: Seek Discussion - Israel-Australia DTA - Policy Implications and Enforcement [SEC=OFFICIAL:Sensitive]

OFFICIAL

Hi [REDACTED] s 47E(d),

In addition to what Jennifer has provided below, I provide the following ACNC specific information.

The ACNC is responsible for the regulation of registered charities. Registered charities that undertake activities outside Australia must meet the External Conduct Standards, which require registered charities to comply with Australian laws. Compliance with Australian laws includes an obligation for registered charities to take reasonable steps to ensure they are not breaching international sanctions.

The ACNC initiates compliance action based on a range of available information including:

- publicly available information about the charity
- information provided by the charity to the ACNC
- information from the charity's Annual Information Statement and Annual Financial Statements
- information from members of the public, the media or other government agencies.

The type of compliance action we undertake is determined by the risk and non-compliance we seek to address. We consider several factors in determining the appropriate action, including the severity and persistence of the breach, the risk of harm to the sector and community, and the willingness of the charity to work with the ACNC to address the non-compliance.

The ACNC works closely with other agencies to support the regulation of registered charities. The ACNC works closely with the ATO to ensure registered charities are entitled to their Commonwealth tax concessions which are administered by the ATO.

I have copied in [REDACTED] s 47E(d) to this email who is our acting Director of compliance. I am attending a three day workshop Tues – Thursday this week and will only be attending to email after 5pm each day. If you need any further information please don't hesitate to reach out to either [REDACTED] s 47E(d).

Kind regards,

Natasha.

Natasha Sekulic

Assistant Commissioner General Counsel
Australian Charities and Not-for-profits Commission

[REDACTED] s 47E(d) | W www.acnc.gov.au

Pronouns: she/her



The ACNC acknowledges the Traditional Custodians of country throughout Australia and their connections to land, sea and community. We pay our respects to them and their cultures and elders past and present.

OFFICIAL

From: [REDACTED] s 47E(d)

Sent: Friday, September 27, 2024 12:55 PM

To: Natasha Sekulic <Natasha.Sekulic@acnc.gov.au>

Subject: FW: Seek Discussion - Israel-Australia DTA - Policy Implications and Enforcement [SEC=OFFICIAL:Sensitive]

Hi Natasha,

Jennifer Moltisanti from the ATO's not for profit team as provided your contact details.

I wanted to reach out to see if you would like to provide a comment on a request we have received from DFAT.

DFAT are preparing a briefing for the Foreign Minister on the practical implications of the recent International Court of Justice's advisory opinion that Israeli settlements in the Occupied Palestinian Territories are illegal under international law. They have

raised an issuing relating to advocacy groups concerns that Australian organisations are raising and funnelling funds to support operations in the Occupied Palestinian Territories and that the Australian government may be inadvertently supporting these operations through our tax system.

DFAT have specifically asked if the ATO and the Australian Charities and Not-for-profits Commission (ACNC) work together to review or audit organisations, including what they're doing pertaining to the Occupied Palestinian Territories. Our team have provide a response to this but we also wanted to see if you would like to provide any further comments.

Unfortunately we will need to provide a response to DFAT early next week preferably by COB Monday.

s 47E(d)

Acting Director

International Relations, Capacity Building and Transparency

International, Support and Programs

Australian Taxation Office

s 47E(d)



From: Jennifer Moltisanti <Jennifer.Moltisanti@ato.gov.au>

Sent: Thursday, September 26, 2024 4:19 PM

To: Cathrine Purcell <Cathrine.Purcell@ato.gov.au>

Cc: William Day <William.Day@ato.gov.au>; s 47E(d)

Subject: RE: Seek Discussion - Israel-Australia DTA - Policy Implications and Enforcement [SEC=OFFICIAL:Sensitive]

Hi Cathy

In answer to reaching out to the ACNC, my answer is yes definitely. Contact is Natasha Sekulic at

Natasha.Sekulic@acnc.gov.au

You can also review ACNC conduct standards at the following link

<https://www.acnc.gov.au/for-charities/manage-your-charity/governance-hub/acnc-external-conduct-standards>

s 37(2)(b)

In answer to whether we work with the ACNC, fundamentally our response is that:

- s 37(2)(b) Where we find that individuals or entities are not acting in accordance with their obligations, we will take appropriate action, which may include a review or audit. The ATO will revoke entitlement to tax concessions, including DGR status, when we come to the view that an organisation does not meet the eligibility requirements set out in the tax law.
- The ACNC is responsible for the registration and regulation of charities, while the ATO is responsible for the administration of Commonwealth tax concessions such as income tax exemption and DGR status.
- The ATO has administrative responsibility of all NFPs, including charities, in relation to their taxation and superannuation obligations.
- We work closely with the ACNC to ensure registered charities are operating for purpose and accessing tax concessions correctly. This is especially important given that ACNC registration provides charities with a pathway to significant tax concessions.

On Background

- Gifts made to Australian not-for-profit organisations may be tax-deductible for donors, provided the organisation is endorsed by the ATO as a deductible gift recipient (DGR).
- There are 52 general categories of DGR set out in the tax law, each with specific criteria. DGRs must always comply with legislative requirements and are required to apply their income and assets solely for their DGR endorsed purpose and operate in accordance with their governing rules.
- All endorsed DGRs must meet the 'In Australia' requirement. This means they must be established and operated in Australia, but for many DGR categories, the law allows them to have purposes and beneficiaries outside of Australia.
- There is no general DGR category that provides for the support of Israeli settlement activities in the Occupied Palestinian Territories. However, a charity that operates in this area may be eligible for DGR endorsement under one of the general DGR categories if they meet all the requirements of the relevant category.
- For example, a charity registered with the ACNC as a public benevolent institution (PBI) may be eligible for DGR endorsement by the ATO under the PBI category. These types of charities provide benevolent relief to people in need both in Australia and overseas. The tax law does not restrict them from providing benevolent relief in the Occupied Palestinian Territories.

PS: I've copied s 47E(d) into this email as she is Assistant Director Technical Advice and can explain if this doesn't make sense.

Warm regards

Jennifer Moltisanti (She/Her)

Assistant Commissioner

Not-for-profit and Government Experiences | Small Business

Australian Taxation Office

s 47E(d)



ATO. Working for all Australians



We acknowledge the Traditional Owners and Custodians of Country throughout Australia and their continuing connection to land, waters and community. We pay our respects to them, their cultures, and Elders past and present.

From: Cathrine Purcell <Cathrine.Purcell@ato.gov.au>

Sent: Thursday, September 26, 2024 11:54 AM

To: Jennifer Moltisanti <Jennifer.Moltisanti@ato.gov.au>

Cc: William Day <William.Day@ato.gov.au>

Subject: RE: Seek Discussion - Israel-Australia DTA - Policy Implications and Enforcement [SEC=OFFICIAL:Sensitive]

Do you think I should reach out to ACNC as well or will you cover that angle?

Cathy Purcell

Assistant Commissioner ISP

International Relations, Capacity Building Transparency & MAP

s 47E(d)

Email cathrine.purcell@ato.gov.au

From: Jennifer Moltisanti <Jennifer.Moltisanti@ato.gov.au>

Sent: Thursday, September 26, 2024 11:52 AM

To: Cathrine Purcell <Cathrine.Purcell@ato.gov.au>

Cc: William Day <William.Day@ato.gov.au>; s 47E(d)

Subject: RE: Seek Discussion - Israel-Australia DTA - Policy Implications and Enforcement [SEC=OFFICIAL:Sensitive]

Will do

Jennifer Moltisanti (She/Her)

Assistant Commissioner

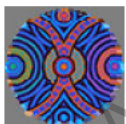
Not-for-profit and Government Experiences | Small Business

Australian Taxation Office

s 47E(d)



ATO. Working for all Australians



We acknowledge the Traditional Owners and Custodians of Country throughout Australia and their continuing connection to land, waters and community. We pay our respects to them, their cultures, and Elders past and present.

From: Cathrine Purcell <Cathrine.Purcell@ato.gov.au>

Sent: Thursday, September 26, 2024 11:38 AM

To: Jennifer Moltisanti <Jennifer.Moltisanti@ato.gov.au>

Cc: William Day <William.Day@ato.gov.au>; s 47E(d)

Subject: FW: Seek Discussion - Israel-Australia DTA - Policy Implications and Enforcement [SEC=OFFICIAL:Sensitive]

Hi Jennifer

We have received a request from DFAT

DFAT are preparing a briefing for the Foreign Minister on the practical implications of the recent International Court of Justice's advisory opinion that Israeli settlements in the Occupied Palestinian Territories are illegal under international law.

Below is a summary of a conversation our TCU had with DFAT yesterday, in short this is not a DTA issue. DFAT's concern relates to advocacy groups raising concerns that Australian organisations are raising and funnelling funds to support operations in the Occupied Palestinian Territories and that the Australian government may be inadvertently supporting these operations through our tax system.

ISP is drafting something to put in writing some information about DTA's (to further clarify why this is not a DTA issue) but DFAT have asked for additional information on the following:

1. The data collected by the ATO on the Australian population relying on the Israel-Australia DTA, - **in progress with International Risk**
2. Any work being undertaken by the ATO with respect to the concerns raised by these advocacy groups, and
3. **Whether the ATO and the Australian Charities and Not-for-profits Commission (ACNC) work together to review or audit organisations, including what they're doing pertaining to the Occupied Palestinian Territories.**

I need assistance with **point 3** to provide to DFAT early next. I think most of the information provided to us is just for DFAT's background knowledge but just to be safe, note any information from the ATO is proposing to include will need to sign off on the brief that goes to the Minister.

If you could assist that would be appreciated, if not you could you steer me in the right direction.

Happy to discuss

s 47E(d)

Acting Director

International Relations, Capacity Building and Transparency

International, Support and Programs

Australian Taxation Office

s 47E(d)

From: s 47E(d)

Sent: Thursday, September 26, 2024 9:21 AM

To: s 47E(d)

Cc: s 47E(d)

Subject: RE: Seek Discussion - Israel-Australia DTA - Policy Implications and Enforcement [SEC=OFFICIAL:Sensitive]

Hi s 47E(d)

Thank you for managing the response to DFAT with respect to their queries on the Occupied Palestinian Territories .

I have summarised our discussion with DFAT below for you to share with internal stakeholders.

At DFAT's request, the Treaties Consultation Unit (TCU) had a meeting with DFAT yesterday to discuss the application of the Israel-Australia Double Tax Agreement (DTA) in light of the definition of the term "Israel" in the DTA.

In particular, DFAT advised the Israeli settlements in the Occupied Palestinian Territories are illegal under international law and noted the recent International Court of Justice's advisory opinion on the matter. DFAT is preparing advice to the Foreign Minister on the potential implications.

However, it became apparent during yesterday's discussion that DFAT's primary concern is not an issue specific to the DTA. DFAT's concern relates to advocacy groups raising concerns that Australian organisations are raising and funnelling funds to support operations in the Occupied Palestinian Territories and that the Australian government may be inadvertently supporting these operations through our tax system.

DFAT was interested to know if the ATO was aware of the concerns raised by the advocacy groups and, if determined to be an issue, the ATO's approach to detect and address those concerns.

We explained the general operation of the DTA and shared our preliminary view that this did not appear to be a specific DTA issue based on our understanding of DFAT's concern. We also advised the TCU had not encountered this as a treaty issue in practice.

We also broadly explained that Australia's income tax system operates on a self-assessment regime and our initial thoughts that perhaps the concern may not arise from a tax perspective unless an Australian resident claimed a deduction associated with the funding of those operations. However any potential tax implications would depend on the specific facts and circumstances, and we would need to consult with the relevant internal stakeholders who are better positioned to consider this matter as this was not a DTA specific issue.

In light of DFAT's concern, DFAT also asked the ATO for the following information:

4. The data collected by the ATO on the Australian population relying on the Israel-Australia DTA,
5. Any work being undertaken by the ATO with respect to the concerns raised by these advocacy groups, and
6. Whether the ATO and the Australian Charities and Not-for-profits Commission (ACNC) work together to review or audit organisations, including what they're doing pertaining to the Occupied Palestinian Territories.
They are seeking a response as soon as practicable as they are currently preparing the advice to the Foreign Minister. We advised the relevant internal stakeholders would need to be identified and consulted to consider their queries. Please let me know if you have any questions and/or would like to discuss further.

Thanks,

s 47E(d)

s 47E(d)

Treaties Consultation Unit
International, Support and Programs

s 47E(d)

I do not work Mondays.

From: s 47E(d)
Sent: Wednesday, September 18, 2024 4:58 PM
To: s 47E(d)
Cathrine Purcell <Cathrine.Purcell@ato.gov.au>
Cc: Louise Andolfatto <Louise.Andolfatto@ATO.gov.au>; s 47E(d)
Subject: RE: Seek Discussion - Israel-Australia DTA - Policy Implications and Enforcement [SEC=OFFICIAL:Sensitive]
Hi s 47E(d)

Further to our conversations, we have now been provided with the relevant background information from TCN on the issue. However TCN prefer not to join the call with DFAT at this stage and we will take any questions or concerns on notice for a further discussion if required.

As such, s 47E(d) and I will attend for TCU.

We propose the following times:

- Tues 24 September – any time but 2-3pm
- Wed 25 September – any time from 12pm
- Thurs 26 September – 2-3pm
- Tuesday 1 October – any time

If those times don't work, we can provide some further availabilities however it would be preferred if the meeting could be arranged to occur before October 4 as we will both be on leave back to back from October 7.

Thanks,

s 47E(d)

From: s 47E(d)
Sent: Thursday, 12 September 2024 10:00 AM
To: s 47E(d) Cathrine Purcell
<Cathrine.Purcell@ato.gov.au>
Cc: Louise Andolfatto <Louise.Andolfatto@ATO.gov.au>; s 47E(d)
Subject: RE: Seek Discussion - Israel-Australia DTA - Policy Implications and Enforcement [SEC=OFFICIAL:Sensitive]
Hi s 47E(d)

I'm acting in s 47E(d) position while she is on leave.

I can reach out and find out a bit more information from DFAT, noting some of the points below and hopefully get a bit more clarity on some questions they would like to ask. It does look like they have spoken to Treasury already and Treasury has directed them to us so it looks like they are trying to cover all basis on the issue.

s 47E(d)

Acting Director
International Relations, Capacity Building and Transparency
International, Support and Programs
Australian Taxation Office

s 47E(d)



From: s 47E(d)
Sent: Thursday, 12 September 2024 9:33 AM
To: s 47E(d) Cathrine Purcell <Cathrine.Purcell@ato.gov.au>

Cc: Louise Andolfatto <Louise.Andolfatto@ATO.gov.au>;

s 47E(d)

s 47E(d)

Subject: FW: Seek Discussion - Israel-Australia DTA - Policy Implications and Enforcement [SEC=OFFICIAL:Sensitive]

Hi s 47E(d)

Thanks for your email.

We would be happy to have a discussion with DFAT however note that we would not be able to discuss policy implications of the Israel DTA as questions of policy should be raised with Treasury.

I also note that it would be helpful to understand the scope of the questions they wish to ask regarding the enforcement of the DTA so that we can determine who is best placed to attend the discussion. s 37(2)(b)

Happy to discuss.

Kind regards,

s 47E(d)

s 47E(d)

A/g Assistant Commissioner

OECD Programs, Treaties and Advice – Technical Leadership

International, Support and Programs

Australian Taxation Office

s 47E(d)

ATO. Working for all Australians

From: s 47E(d)

Sent: Wednesday, 11 September 2024 4:36 PM

To: Cathrine Purcell <Cathrine.Purcell@ato.gov.au>; Louise Andolfatto <Louise.Andolfatto@ATO.gov.au>

Cc: s 47E(d)

Subject: FW: Seek Discussion - Israel-Australia DTA - Policy Implications and Enforcement [SEC=OFFICIAL:Sensitive]

Hi Cathy and Louise

Please see request below for discussion with DFAT the Australia-Israel Double Taxation Agreement (DTA). Are you happy for my team to set up a meeting and if so, who would you like to include?

Also, I've included the correspondence from/to Julian Hill MP that is referenced below.

I'm happy to respond to s 47E(d) with a holding response in the meantime.

Cheers

s 47E(d)

Director

International Relations, Capacity Building and Transparency

International, Support and Programs

Australian Taxation Office

s 47E(d)



ATO. Working for all Australians

From: s 47E(d)

Sent: Wednesday, 11 September 2024 3:51 PM

To: s 47E(d)

Cc: Belinda Darling <Belinda.Darling@ato.gov.au>; William Day <William.Day@ato.gov.au>; Rabia Sharif

s 47E(d)

Subject: Seek Discussion - Israel-Australia DTA - Policy Implications and Enforcement [SEC=OFFICIAL:Sensitive]

EXTERNAL EMAIL: STAY SMART, STAY SECURE.

OFFICIAL: Sensitive

Dear s 47E(d)

I hope this email finds you well.

Here at Middle East Branch (MEB) in DFAT, we are currently the discussing the implementation of the Australia-Israel Double Taxation Agreement (DTA) and questions around its applicability in the Occupied Palestinian Territories (controlled by Israel since 1967).

Article 3 of the DTA's [Explanatory Memorandum](#) specifies that references to the State of Israel are in 'accordance with Australia's obligations under international law'. As you are aware, Australia considers Israeli settlements in the Occupied Palestinian Territories as illegal under international law.

Your department previously responded to correspondence on this issue from Julian Hill MP (attached refers). I understand you are broadly across this issue and have corresponded with my colleague s 47E(d) (CC'd).

Last week, MEB met with colleagues from Treasury to discuss the legal and policy implications of the DTA. They informed us your department would be the first point of call for questions on implementation and enforcement of the DTA.

I would be grateful if you could please let me know whether you and your team (and/or relevant teams in the ATO) would be available for a discussion (*either in person or virtually*) on the policy implications of this DTA and in particular, questions of enforcement given our interpretation of the State of Israel.

Thank you very much for your assistance.

Kind Regards

s 47E(d)

Department of Foreign Affairs and Trade

s 47E(d)

dfat.gov.au | [Twitter](#) | [Facebook](#) | [Instagram](#) | [LinkedIn](#)

IMPORTANT

The information transmitted is for the use of the intended recipient only and may contain confidential and/or legally privileged material. Any review, re-transmission, disclosure, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited and may result in severe penalties. If you have received this e-mail in error please notify the Privacy Hotline of the Australian Taxation Office, telephone 1300 661 542 and delete all copies of this transmission together with any attachments.

Released under FOI Act 1982
Australian Charities and Not-for-profits Commission