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ATO submission to the inquiry into financial related crime



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INTRODUCTION

- 1 This submission is made by the Australian Taxation Office ('**ATO**') in response to the terms of reference for the inquiry into financial-related crime adopted by the Parliamentary Joint Committee on Law Enforcement ('**PJCLE**') on 5 March 2014.
- 2 The ATO has a direct interest in addressing financial related crime, in particular tax crimes such as tax evasion and refund fraud, which are perpetrated against the community through the tax and superannuation systems. Financial related crime is a significant and emerging risk, as discussed in the *ACC Summary of Intelligence: Financial Crime in Australia* submitted to the PJCLE.
- 3 The ATO works closely with other law enforcement agencies, at both the Commonwealth and State and territory levels, to support the Commonwealth's strategic, capability-led approach to combat serious and organised crime, including financial related crime.
- 4 The ATO's tax treatments are recognised as a valuable component of Commonwealth, State and territory strategies to target serious and organised crime, including financial related crime. The ability to share information within the law is key to agencies working together successfully to address serious and organised crime.
- 5 The success of Project Wickenby, tackling international financial related crime, has in large part been due to having a joint response to a priority risk, capitalising on cross-agency expertise and co-ordinated operations in relation to common targets. This joint response has been underpinned by the ability to appropriately share information via a broad legislative information-sharing provision enacted for the taskforce. Project Wickenby ends 30 June 2015.

ATO CONTRIBUTION TO THE COMMONWEALTH'S STRATEGIC, CAPABILITY-LED APPROACH TO COMBATING ORGANISED CRIME

- 6 The ATO makes an important contribution to the wider fight against crime, including financial crime.
- 7 The ATO's contribution generally aligns with the following capabilities that support the Government's strategic approach to combating organised crime:
 - Capability 1: Intelligence, Information Sharing and Interoperability
 - Capability 2: Targeting the Criminal Economy
 - Capability 3: Investigation, Prosecution and Offender Management
 - Capability 4: Preventative Partnerships with Industry and the Community
 - Capability 5: International, Domestic and Commonwealth Partnerships.
- 8 The remainder of this submission will describe the ATO's operations in relation to each of these capabilities.

CAPABILITY 1: INTELLIGENCE, INFORMATION SHARING AND INTEROPERABILITY

- 9 The ATO draws on its substantial data holdings and analytical capabilities to share information with law enforcement agencies to assist those agencies to detect and disrupt crime, including financial crime. We work closely with the Australian Crime Commission (ACC) and have staff seconded to the ACC Fusion Capability.

Tax confidentiality provisions

- 10 Taxpayers entrust sensitive financial information to the ATO in order to allow it to administer the tax system. Accordingly, the law treats information about taxpayers in the ATO's possession as confidential ('protected information').
- 11 The legislative framework for this confidentiality, and the limited exceptions under which protected information can be disclosed, is found in Division 355 of Schedule 1 to the *Taxation Administration Act 1953* (Cth).

Disclosure for the investigation of a serious offence

- 12 Tax law allows protected information to be disclosed for the investigation of an offence punishable by at least 12 months in prison. Commonwealth, state and territory law enforcement agencies thereby use protected information to investigate specific cases of financial crime such as fraud.
- 13 However, the use and on-disclosure of information disclosed under this exception can only be used for that specific purpose. The information cannot be obtained as part of criminal intelligence activities before a specific offence is identified, nor can the information be used for intelligence purposes.

Prescribed taskforces

- 14 Protected information can also be shared with members of a prescribed taskforce for any of the purposes of that taskforce. This includes criminal intelligence activities conducted as part of the taskforce, as well as administrative actions by taskforce agencies, and thus enables a more proactive and effective approach.
- 15 The more streamlined information-sharing environment created by a prescribed taskforce offers a substantial advantage to the ATO in supporting law enforcement agencies to deal with priority threats.
- 16 The prescribed taskforce provisions were modelled on a specific legislative exception that exists for agencies involved in Project Wickenby.
- 17 The current process for prescribing a taskforce involves the Governor-General issuing a regulation, rather than an administrative arrangement such as a memorandum of understanding or legislative instrument. The development and promulgation of regulations generally takes up to six months. This length of time is significant in the context of ever-evolving criminal behaviour. A shorter process would allow the ATO to be more responsive in supporting law enforcement priorities.

18 There are currently three prescribed taskforces: the Criminal Assets Confiscation Taskforce, the National Criminal Intelligence Fusion Centre, and the National Anti-Gang Taskforce.¹

Project Wickenby

19 Project Wickenby was established as a multi-agency taskforce in 2006 to protect the integrity of Australian financial and regulatory systems.² The taskforce's purpose is to prevent people from promoting and participating in the abusive use of overseas secrecy jurisdictions for tax avoidance and evasion. The success of Project Wickenby is reflected in additional tax collected, the reduction in funds flows to secrecy jurisdictions, and successful prosecutions against promoters and facilitators. However, the risk of the abusive use of secrecy havens remains endemic.

20 Under Project Wickenby, agencies are able to efficiently share information about common targets in order to select and execute the best treatment, whether criminal or administrative, for the given risk. However, the Project Wickenby exception will cease to operate on 1 July 2015 unless extended.³

21 It will be more difficult to share information with other agencies in order to target the international financial related crime previously targeted under Project Wickenby without the specific exception. This is because the legislative provision allows sharing for all matters that fall within the broader risk of abuse of overseas secrecy jurisdictions.

Restrictions on the disclosure of tax file numbers

22 Tax file numbers ('TFNs') are given a unique status under tax law.⁴ They cannot be disclosed for any purpose other than the administration of the tax and superannuation systems.

23 This restriction has prevented the ATO from assisting law enforcement on a number of occasions. In one example, state police were investigating credit card fraud involving identity fraud. Police obtained notices of assessment used as proof of identity to open bank accounts, which it suspected of being forged. The ATO was prohibited by law from confirming to the police whether the TFN actually belonged to the individual named on the forged notice.

¹ Taxation Administration Regulations 1976 (Cth), regulation 48.

² The taskforce comprises the ATO, the Australian Securities & Investments Commission, the Australian Crime Commission, the Commonwealth Director of Public Prosecutions, the AFP, AUSTRAC, Attorney-General's Department and the Australian Government Solicitor.

³ *Taxation Administration Act 1953* (Cth), Schedule 1, section 355-70(1) item 3.

⁴ *Taxation Administration Act 1953* (Cth), section 8WB.

CAPABILITY 2: TARGETING THE CRIMINAL ECONOMY

24 The ATO uses its powers for the purpose of administering the tax laws, to ensure the integrity of the revenue system. In doing so, the ATO supports wider law enforcement priorities in the following ways:

- Civil powers – administrative action primarily in the form of:
 - conducting audits into syndicates and individuals identified by law enforcement agencies to ensure that the correct amount of tax is paid;
 - issuing tax assessments and imposing appropriate administrative penalties; and
 - exercising debt collection powers such as garnishees.
- Criminal investigations capability – where organised criminals are suspected of tax offences the ATO can undertake investigations and co-operate with other law enforcement operations having common targets.
- Intelligence – the ATO holds significant data and has the capability to extract and analyse this information, which assists other agencies to understand the wealth structures and tax characteristics of organised criminals.

25 Removing the profits from these entities both disrupts those entities and erodes the profit motive for engaging in crime.

26 Administrative action can also support specific law enforcement operations by disrupting syndicates and individuals. In one example, debt collection action by the ATO against a law enforcement target put pressure on that target to communicate with associates more frequently and disrupted their efforts to avoid law enforcement surveillance. This resulted in law enforcement obtaining evidence for non-tax investigations which they would not otherwise have obtained.

CAPABILITY 3: INVESTIGATION, PROSECUTION AND OFFENDER MANAGEMENT

27 As well as supporting law enforcement agencies, the ATO has a direct role in investigating and prosecuting tax crimes.

28 Under the *Commonwealth Fraud Control Guidelines*⁵, the Australian Federal Police ('**AFP**') has the primary law enforcement responsibility for investigating the most serious fraud against the Commonwealth, while individual agencies such as the ATO are responsible for investigating more routine instances of fraud.⁶

29 The ATO maintains a risk and intelligence capability with a sophisticated risk understanding, which allows the ATO to institute protective measures against tax crime and

⁵ The *Commonwealth Fraud Control Guidelines 2011* establish the policy framework and articulate the Government's expectations for effective fraud control for all agencies. They are available at: <http://www.ag.gov.au/CrimeAndCorruption/FraudControl/Pages/CommonwealthFraudControlGuidelines.aspx>

⁶ *Commonwealth Fraud Control Guidelines 2011*, page 16.

identify targets for investigation. The ATO also maintains an investigations capability which gathers evidence of frauds for prosecution.⁷

- 30 Matters investigated by ATO criminal investigators include organised, systematic attacks on the tax system involving attempts to obtain Commonwealth funds by deception. Organised, systematic attacks on the ATO's systems are a significant and emerging risk. As in other countries, the tax refund system is seen as an attractive target for financial criminals.
- 31 Two examples of organised, systematic attacks on the tax system in the last 12-18 months are:
- a an attack consisting of large number of fraudulent claims for tax refunds, using stolen identities, executed by a syndicate outside of Australia; and
 - b a sustained, systematic series of fraudulent refund claims which continued – and adapted – even as we actively investigated the syndicate.
- 32 ATO criminal investigators do not use the ATO's administrative information-gathering powers, nor do they have access to police powers such as search warrants. Where a witness, such as a financial institution, declines to provide documentation voluntarily, the ATO seeks AFP assistance to execute a search warrant on the ATO's behalf. Where appropriate, the ATO may seek AFP assistance to arrest a suspect.
- 33 The AFP conducts investigations into the most serious frauds. In these cases, AFP investigators utilise the full extent of AFP powers with technical assistance from tax experts from the ATO, either on secondment to the AFP or under a joint taskforce arrangement.
- 34 Where investigations are undertaken by other agencies, not all information can be shared with the ATO. For example, the product from telecommunications intercepts and surveillance devices can only be used by specified agencies, and cannot be given to the ATO, even where the information relates to tax crime.

CAPABILITY 4: PREVENTATIVE PARTNERSHIPS WITH INDUSTRY AND THE COMMUNITY

- 35 The ATO sees proactive engagement with industry and the community as an important part of addressing tax crime risk.
- 36 We provide information to the community to assist people to recognise tax schemes, as well as to encourage people to protect their personal information against identity theft. This includes consultation with key industry stakeholders such as tax agents.
- 37 We provide information about the way we tackle tax crime and the results of our work to promote awareness of tax crime and the consequences of participating in tax crime. A community that understands the potential damage caused by tax crime can work together to strengthen and protect the tax and superannuation systems which are important community assets.

⁷ The ATO's criminal investigation capability is distinct from its audit capabilities.

CAPABILITY 5: INTERNATIONAL, DOMESTIC AND COMMONWEALTH PARTNERSHIPS

- 38 The ATO is a key stakeholder in Commonwealth, State and territory frameworks for addressing serious and organised crime, including financial related crime. The ATO actively participates in a number of strategic forums, such as the Board of the Australian Crime Commission and Heads of Commonwealth Operational Law Enforcement Agencies ('HOCOLEA').
- 39 The Project Wickenby model has demonstrated its effectiveness as a template for a joint response to a priority financial crime risk. With Project Wickenby ending, the ATO is working with the Australian Crime Commission ('ACC') and the AFP to determine the best approach within existing resources and frameworks to respond to specific instances of high priority serious financial crime in a more coordinated and effective manner.
- 40 To make best use of existing resources and to be more efficient, we need to make sure our efforts are directed at the Commonwealth's highest risk priorities. The ACC is preparing a serious financial crime risk assessment to develop risk priorities, based on what we know now, to assist with prioritising operational responses.
- 41 Information sharing is key to agencies working together successfully to address financial related crime. The ability to share information enables each agency to contribute based on its strengths, thus achieving the greatest outcome with the given resources.
- 42 Furthermore, the ATO is currently considering a number of legislative reform proposals to improve its ability to obtain and disclose information. It is important to examine the legislative barriers which limit the ATO's ability share information in relation to financial related crime, such as restrictions on specific kinds of information, and the processes required in order to share information, and consider whether they remain appropriate.
- 43 These proposals would seek to strike the right balance between taxpayer confidentiality and the effective, efficient co-operation of government agencies in fighting financial related crime.