

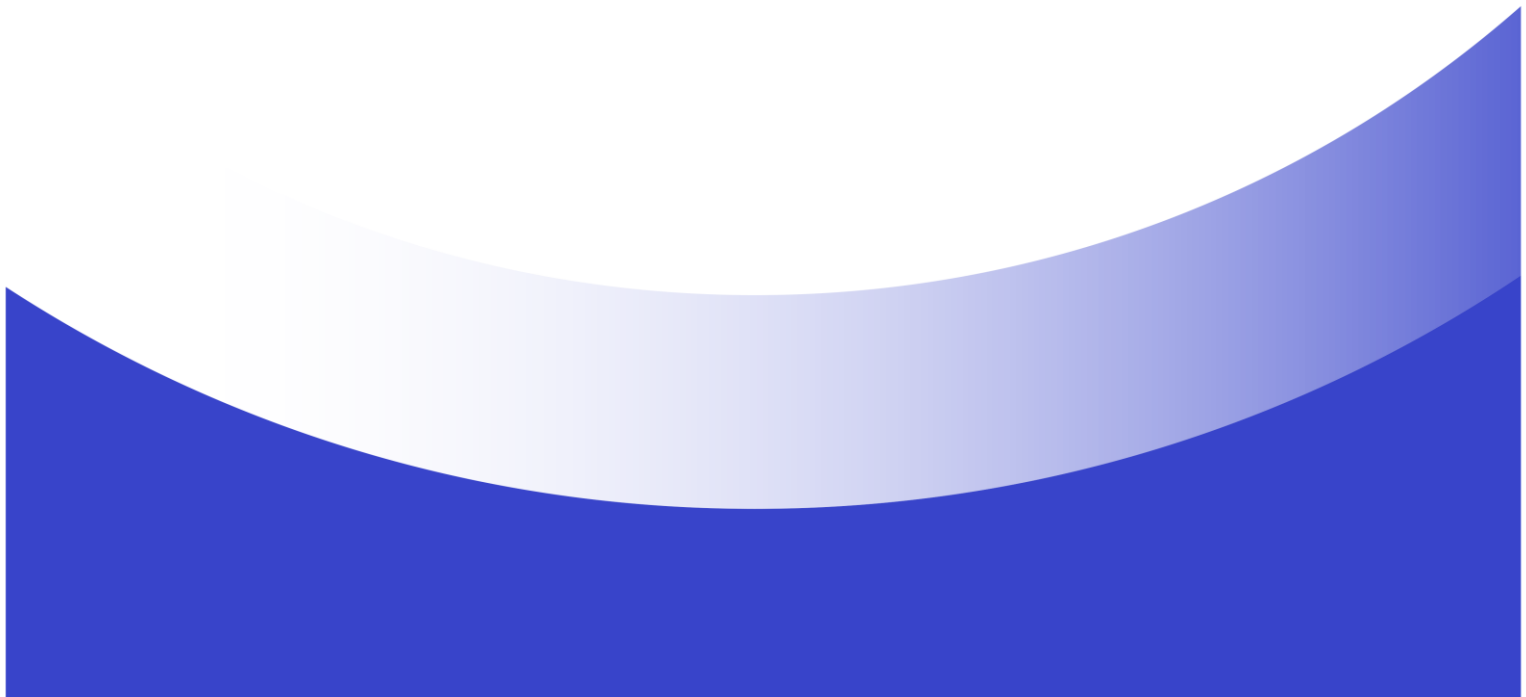


**Australian Government**  
**Australian Taxation Office**

# **ATO Submission**

## **Inquiry into capability of law enforcement to respond to money laundering and financial crime**

**1 August 2024**



## Introduction

1. The Australian Taxation Office (ATO) welcomes the opportunity to provide a submission to the Parliamentary Joint Committee on Law Enforcement inquiry into the capability of law enforcement to respond to money laundering and financial crime.
2. A fundamental aspect of the ATO's role as administrator of the tax, superannuation and registry systems entails identifying, detecting, and addressing evasion and fraud attacks on the revenue system.
3. Those who seek to evade their tax obligations (on licit or illicit activities) or commit fraud on the tax system will often participate in money laundering as either part of committing and/or concealing these activities. As such, the ATO must and does work closely with other law enforcement activities.
4. While carrying on its own investigations of suspected tax evasion and fraud, the ATO can identify money laundering or taxpayers conducting broader illicit activities. Where these behaviours are suspected, the ATO will typically refer the matter to another law enforcement agency such as the Australian Federal Police's Criminal Asset Confiscation Taskforce (CACT) for investigation or support another agency to undertake their role to investigate the crime type.
5. The capabilities developed by the ATO (on both a standalone basis and as part of the broader coalition of law enforcement agencies) to tackle financial crime and money laundering are important given the evolving forms of financial crime and fraud including those arising from the digital environment.
6. The ATO has responded and provided input to consultation undertaken by the Attorney General's Department (AGD) in relation to the proposed 'tranche two' reforms to the AML/CTF legislation.

## ATO and money laundering

7. The ATO is the Australian Government's principal revenue collection agency. The ATO administers the legislation governing taxation, administers significant aspects of the superannuation system, and supports the delivery of government services to the community. The Commissioner of Taxation is also Registrar of the Australian Business Register (ABR) and Australian Business Registry Services (ABRS).
8. In the ATO's role of administering the tax system, where there is potential fraud and evasion, the ATO conducts reviews, audits, and in some circumstances criminal investigations.
9. While conducting tax audits and reviews, the ATO will use information provided by taxpayers, financial institutions, other agencies and third parties to form a view on whether tax has been evaded. Tax evasion is primarily dealt with by raising assessments of tax and penalties that are reinforced by firm debt recovery action.
10. Money laundering is a behaviour of concern from a tax evasion perspective as it is engaged in by criminals to conduct illicit trade or disguise illegal sources of funds, which are usually not declared as income to the ATO.
11. In addition to traditional proceeds of crime and tax evasion typologies, the ATO is increasingly focussed on more sophisticated and scaled attacks using identity takeover to claim fraudulent refunds from the tax system. Identity takeover fraud is notably important to money laundering as

proceeds are almost unanimously undeclared as taxable income, and deliberately obfuscated via money laundering with the added complication that the fraud (and money laundering) actor is much more difficult to identify. This style of fraud has significantly increased in recent times.

12. Where the ATO forms a reasonable suspicions of money laundering, or that there have been proceeds of crime, the ATO will typically refer the matter to another law enforcement agency, including through the Taskforces that the ATO is a member of.
13. The ATO observes that intermediaries have a significant role in influencing taxpayer behaviour and considers that the 'tranche two' reforms to the AML/CTF legislation if passed would have significant impacts on curtailing money laundering, including in relation to money laundering to commit or conceal tax evasion and fraud, as noted below.

## How the ATO works with others

### Working with other Commonwealth agencies, other jurisdictions and the private sector

14. The ATO's working relationships with other Commonwealth agencies, including law enforcement, and with authorities in other jurisdictions, are generally effective and a critical component of our capability to respond to money laundering and financial crime.
15. The ATO uses information from other agencies, jurisdictions and the private sector to detect tax evasion and fraud. This information supplements the ATO's own formal and informal investigation powers and data and analytics capability.
16. The ATO's capability for investigating tax evasion and tax fraud can complement the work of law enforcement agencies in investigating money laundering. Cross-agency cooperation, including through established Taskforces, allows for the expertise of different government agencies to be deployed in a holistic approach to detecting and treating money laundering.

### Sharing protected taxation information

17. The secrecy provisions are in place to provide taxpayers assurance that their sensitive information cannot be distributed, except in limited circumstances. These protections are important and reflect the position of trust the ATO has within the community. Breaching these provisions can result in severe penalties for the tax officer responsible for the breach (including criminal offence consequences).
18. However, government has legislated provisions which on balance result in an ability for the ATO to share information where the need for this supersedes the benefits of protecting taxpayer information. These exemptions fundamentally underpin the ability of the ATO to collaborate with Commonwealth agencies, authorities in other jurisdictions and the private sector in responding to money laundering and financial crime.
19. Significantly, the ATO can disclose protected information to partner agencies which are defined by the legislation as law enforcement agencies, where the disclosure is consistent with the legislated purpose of the exemption. For example, the ATO can disclose information to the Australian Federal Police for the purpose of the AFP investigating a serious offence, or to assist with supporting or enforcing a proceeds of crime order.
20. Treasury is also undertaking a broader review of the secrecy provisions that apply to the ATO.

21. Where an agency does not meet the legislated definition of a law enforcement agency, the ATO can share protected information with agencies that are a member of a 'prescribed taskforce'.

### **Prescribed Taskforces led by the ATO**

22. The ATO leads three prescribed taskforces relevant to this Inquiry: The Serious Financial Crime Taskforce (SFCT), the Shadow Economy Taskforce, and the Phoenix Taskforce. The status of these Taskforces as 'prescribed Taskforces' allows the sharing of protected taxation information for the purposes of the taskforce, one of which must include protecting the public finances of Australia, for example by addressing tax avoidance or evasion.

#### **Serious Financial Crime Taskforce**

23. The SFCT was established on 1 July 2015, and is comprised of ten agencies.
24. From the start of operation until 31 March 2024, the SFCT has delivered results to deal with financial crime such as money laundering and tax fraud, including:
- completion of 2,152 audits and reviews
  - conviction and sentencing of 38 people
  - raised liabilities of over \$2.182 billion, and
  - collections of \$842 million.
25. In the 2022-23 financial year, the ATO made 557 information disclosures to the SFCT.

#### **Phoenix Taskforce**

26. The Phoenix Taskforce brings federal, state and territory agencies together to combat illegal phoenix activity.
27. Since it was formed in 2014 the Taskforce has:
- completed over 12,336 audits and reviews
  - received more than 14,316 tip offs, and investigated more than 5,295 referrals of suspected illegal phoenix activity through the Tax Integrity Centre
  - banned or disqualified more than 100 directors from being involved in the management of a corporation, and
  - successfully prosecuted 27 criminal matters relating to illegal phoenix behaviour.
28. In the 2022-23 financial year, the ATO made 704 information disclosures to the Phoenix Taskforce.

#### **Shadow Economy Taskforce**

29. The Shadow Economy Taskforce includes 11 agencies and has the purpose of tackling the shadow economy.
30. In the 2022-23 financial year, the ATO made 125 information disclosures to the Shadow Economy Taskforce.

### **Prescribed Taskforces led by other agencies**

31. The ATO can also share information with other member agencies as part of its involvement with established prescribed taskforces which are not led by the ATO, such as the Criminal Assets Confiscation Taskforce (CACT) and the Fraud Fusion Taskforce.

32. The ATO has been a participating agency in these taskforces either through direct secondments or through the provision of direct access to specialised skills held by the ATO in these cross-agency efforts to improve coordination and liaison between jurisdictions and partner agencies, as well as promoting and driving capability development for dealing with money laundering.

### **Criminal Assets Confiscation Taskforce (CACT)**

33. The AFP-led CACT was formed in 2011 to enhance the identification and pursuit of potential criminal confiscation matters. The ATO supports the CACT to take the profit out of crime by targeting criminals and the assets derived from criminal activity.

34. In the 2022-23 financial year the ATO made 154 disclosures to the CACT

### **Fraud Fusion Taskforce**

35. The Fraud Fusion Taskforce was established in November 2022, and is made up of 13 government agencies working to disrupt fraud and criminal activity against Government programs such as the NDIS, including serious and organised crime.
36. The ATO has made a number of disclosures to the Fraud Fusion Taskforce since the approval of the relevant Memorandum of Understanding (MoU) in October 2023.

## **Our role with proceeds of crime action**

37. While the ATO is an enforcement agency under the *Proceeds of Crime Act 2002*, under the current CACT Memorandum of Understanding (MOU) all proceeds of crime investigations relevant to ATO matters are undertaken by the CACT. CACT have the infrastructure required to restrain and deal with assets that are the proceeds of crime.
38. There is some alignment of capabilities between those used by the ATO in undertaking civil action, for example in reviews or audits on unexplained wealth, and criminal investigations, with those that would be required to undertake proceeds of crime investigations, such as similar financial statement analysis and financial profiling.

## **Opportunities for enhanced information sharing with the private sector**

39. As part of strengthening collaboration with the private sector on fighting scams and fraud, the ATO has become the first government agency to become a full member of the Australian Financial Crimes Exchange (AFCX).
40. The AFCX coordinates the sharing of data and intelligence across the public and private sector to combat financial crime. The ATO's membership in the AFCX will support efforts across the economy to detect and prevent financial crime, scams, and fraud activity.
41. There are instances where financial institutions are better placed than the ATO or other Government agencies to identify risks, individuals or populations that may be relevant to the ATO in dealing with fraud and financial crime. For instance, the risk assessment of transaction history within accounts, and the KYC identification assurance achieved is known to financial institutions and can complement the risk assessment for financial crime and fraud in the tax system.
42. Conversely, the ATO sharing limited protected taxpayer information can help financial institutions to identify and disrupt tax fraud. Current taxation legislation offers limited coverage for sharing with financial institutions either directly or via the AFCX, where the sharing reasonably supports

the prospect of actions that would assist in the administration of taxation. The ATO is currently exploring what information can usefully and ethically be shared under current legislative settings.

## Proposed 'tranche two' reforms to AML/CTF legislation

43. The ATO has made submissions to the AGD consultation<sup>1</sup> around the proposed 'tranche two' reforms to extend the AML/CTF legislation to services provided by lawyers, accountants, trust and company service providers, real estate agents and dealers in precious metals and stones.

### Impact of 'tranche two' reforms on the ATO's capability

44. The ATO uses information provided to AUSTRAC by reporting entities under the AML/CTF legislation, such as banks, to detect and deal with financial crime and money laundering, including:
- using data from International Funds Transfer Instruction ('IFTI') reports for data-matching against income tax returns, to identify taxpayers who may not have declared foreign source income.
  - using AUSTRAC data including Suspicious Matter Reports and IFTIs to assess candidates for audit and investigation activity; and
  - searching AUSTRAC data in relation to organised crime targets or candidates under audit or investigation to identify bank accounts, identify international links, and to identify possible associates.
45. Under the current regime that there is the potential for 'tranche two' service providers to facilitate or be misused to facilitate tax evasion or money laundering.
46. The proposed 'tranche two' reforms will capture a greater scope of services, reporting entities and transactions within the reporting requirements of the AML/CTF regime. They would require 'tranche two' entities to report the beneficiaries of transactions, and to make suspicious matter reports where they suspect a person is committing a crime, is not who they claim to be, or could be the victim of a crime.
47. Having this information reported to AUSTRAC would significantly assist the ATO, as a user of this information, to enhance our efforts to address and tax evasion and fraud and in turn identification of any underlying money laundering and financial crime.
48. There is also likely to be the effect that the existence of tranche two reporting obligations will reduce the level of money laundering facilitated by intermediaries, through both intermediaries refusing to act for certain individuals, but also individuals no longer laundering money through mechanisms that require the involvement of covered intermediaries (noting that this would likely not eliminate the activity, but would shift activity to other, more easily disrupted methods).
49. As such, the ATO considers that the 'tranche two' reforms to the AML/CTF legislation if passed would have significant impacts on curtailing money laundering, including in relation to money

<sup>1</sup> In June 2023, the ATO provided a confidential response to the Attorney-General's Department (AGD) consultation paper 'Modernising Australia's anti-money laundering and counter-terrorism financing regime.' In June 2024, the ATO provided a confidential response to a second round of this consultation.

laundering to commit or conceal tax evasion and fraud. The 'tranche two' reforms would support increased detection of these risks and reduce the potential for misuse.

## **ATO insights into money laundering and financial crime in Australia**

50. The Australian Transaction Reports and Analysis Centre (AUSTRAC) has led work to examine current money laundering and terrorism financing threats and vulnerabilities in specific parts of Australia's financial sector.
51. The financial crime environment remains agile and threats are likely to become increasingly difficult to detect and respond to as serious and organised crime groups engage with and effectively exploit emerging technologies.
52. Virtual assets such as cryptocurrency can enable the rapid transfer of value across borders or between parties, without the same reporting requirements that would apply to the use of fiat currency. Some digital currency services now offered on the market are not covered under existing AML/CTF legislation.
53. The ATO has contributed to and supports AUSTRAC's National Risk Assessment on Money Laundering in Australia, which identified that criminal use of digital currency, digital currency exchanges, unregistered remitters and bullion dealers is increasing.

## **Conclusion**

54. The ATO contributes to the whole of government efforts to deal with money laundering and financial crime, by applying its capabilities and powers, including as part of Taskforces.
55. While the ATO's working relationships with other agencies are generally effective, there are some current legal limitations with sharing information. These limitations have generally not been significantly detrimental to effective collaboration with our partner agencies and our combined ability to address the most serious instances of money laundering and financial crime, and there is an important balancing of considerations.
56. The ATO notes the Treasury-led review of the Taxation Secrecy Framework may result in changes, including increased ATO information disclosure powers, to benefit the mitigation of money laundering risks.
57. The money laundering and financial crime environment remains agile and responsive to opportunities, including those that arise from emerging technologies. As such, the ATO views continued investment in cross-agency initiatives as important to build capability and fight against money laundering and financial crime.
58. The ATO considers that the 'tranche two' reforms to the AML/CTF legislation if passed would have significant impacts on curtailing money laundering, including in relation to money laundering to commit or conceal tax evasion and fraud.