

tabled by Mr Brett Mathh ATO @ 11.15am 10 Sept 2014

Opening statement to the Parliamentary Joint Committee on Law Enforcement

**Australian Taxation Office
DD MMMM 2014**

Inquiry into financial related crime

1. Thank you for the opportunity to appear before the Committee today. I request that this opening statement be tabled.
2. My statement today will address how the ATO deals with financial related crime, including joint-agency efforts, and the importance of information-sharing in those efforts.

Tax crime

3. The ATO has a direct interest in addressing financial related crime, in particular tax crimes such as tax evasion and refund fraud.
4. Most people are law-abiding and comply willingly with their taxation obligations. However, a small, criminal, minority see us as an attractive target, seeking to benefit financially through dishonest behaviours against the taxation system.
5. For example, criminal networks use false, bought or stolen identities to lodge false claims with us, trying to get access to refunds that they are not entitled to. As in other countries, our tax refund system is seen as an attractive target for financial criminals.
6. Tax crime is not limited to refund fraud. Other emerging tax crime behaviours include phoenixing, where a person systematically avoids paying tax by leaving companies unable to pay their debts. This behaviour is used to avoid income tax, GST and employee entitlements such as superannuation contributions. So-called "straw" directors are used to register companies without implicating the true principals. This is not a legitimate use of the limited liability of companies.
7. The key drivers of this behaviour appear to be the desire to obtain a competitive advantage against law-abiding competitors, as well as simply accumulating wealth. Where we have observed organised phoenix networks,

we have also seen links to money laundering and serious non-financial crime.

8. Tax crime is of course not just a crime against us as the tax office. Tax crime is an attack on the community.
9. Accordingly, we maintain an intelligence capability and criminal investigation capability to detect, deter and deal with tax crime.
10. Our intelligence capability gives us a sophisticated risk understanding, so that we can design risk models and other means to prevent tax crime. We stop high-risk refunds and subject them to additional scrutiny. Our aim is to make the process seamless for the majority who do the right thing, while stopping fraudulent refund claims in their tracks.
11. Our criminal investigation capability steps in when fraud is suspected to have occurred, gathering evidence to present briefs to the DPP for prosecution. Criminal prosecutions send an important message to those considering engaging in crime that the community finds this behaviour unacceptable and there are serious consequences for it.
12. The AFP plays an important oversight role in our criminal capability, ensuring that our training and evidence management meets the Australian Government Investigation Standards. Since our criminal investigators have no formal information-gathering powers, the AFP executes search warrants on our behalf, for example at banks, to collect evidence of the flow of funds and to prove who controls a bank account.
13. Where a case is sufficiently serious, it is referred to the AFP. The AFP is the Commonwealth's primary law enforcement agency, and has access to powers and methods which we do not. Where a tax-related investigation is led by the AFP, the ATO provides tax experts to support this.

Financial crime more generally

14. Stepping beyond tax crime, the ATO is involved in the wider fight against financial related crime. We work closely with the AFP, ACC and State Police to support their operations.

15. We seek to tax the profits of criminal activity, as well as use our particular powers and data holdings to assist law enforcement agencies to disrupt and dismantle organised crime groups.
16. The ATO supports wider law enforcement priorities in two main ways.
17. The first is that we take administrative action such as conducting audits into syndicates and individuals identified by law enforcement agencies to ensure the correct amount of tax is paid.
18. Administrative action is done for the purpose of protecting the integrity of the tax system, but where opportunities present themselves to co-ordinate the timing of our administrative action with law enforcement action, we can increase the disruption effect on criminals.
19. The other main way is by drawing on our vast and unique data holdings, and our analytical capabilities, to provide information and intelligence that assists other agencies to understand the wealth structures and tax characteristics of organised criminals.
20. Removing the profits from criminal groups both disrupts those groups and erodes the profit motive for engaging in crime. This protects the community.

Information sharing

21. Our ability to cooperate with law enforcement agencies is reliant on our ability to lawfully exchange information with them. Without communication there can be no cooperation. The ability to freely exchange information is one of the reasons why Project Wickenby has worked so well.
22. The efficient dissemination of intelligence and data between agencies is central to how we work together to fight financial related crime.
23. The Project Wickenby model has demonstrated its effectiveness as a template for a Commonwealth agency response to a priority financial crime risk.
24. With Project Wickenby coming to a close next year, we need to work out how to keep the pressure on those who decide to engage in financial related criminal behaviours. To that end, the ATO is working with the ACC and the AFP to determine how best to use existing resources and frameworks to

respond to specific instances of high priority serious financial crime in a more coordinated and effective manner.

25. What Wickenby teaches us is that the way to tackle a significant and emerging risk is a joint agency approach, where each agency contributes based on its strengths, thus achieving the greatest outcome with the given resources.
26. Our submission to this inquiry describes our secrecy provisions. These provisions play an important role in ensuring the confidentiality of the information that taxpayers entrust to us. These are the provisions that protect the majority of taxpayers who are willing to comply with their tax obligations, and who wouldn't even think of engaging in financial related crime.
27. The provisions also contain a number of exceptions that allow us to share information help fight financial related crime.
28. One example is allowing us to give tax returns to police investigating a serious offence such as fraud. Where a specific offence is being investigated, tax information becomes available.
29. Another example is allowing us to share information about assets held by organised crime elements under the Criminal Assets Confiscation Taskforce. Where a taskforce has been prescribed, there is greater scope to share tax information for intelligence and proceeds of crime purposes, to help law enforcement identify and target persons of interest and assets.
30. Project Wickenby has a specific statutory exception in the tax secrecy provisions, allowing us to share information freely for the purposes of that taskforce. That specific exception will cease on 30 June 2015. The exceptions for disclosure to a prescribed taskforce will remain, but they rely on the prescription of a taskforce by regulation.

Conclusion

31. That concludes our opening statement. Thank you.