

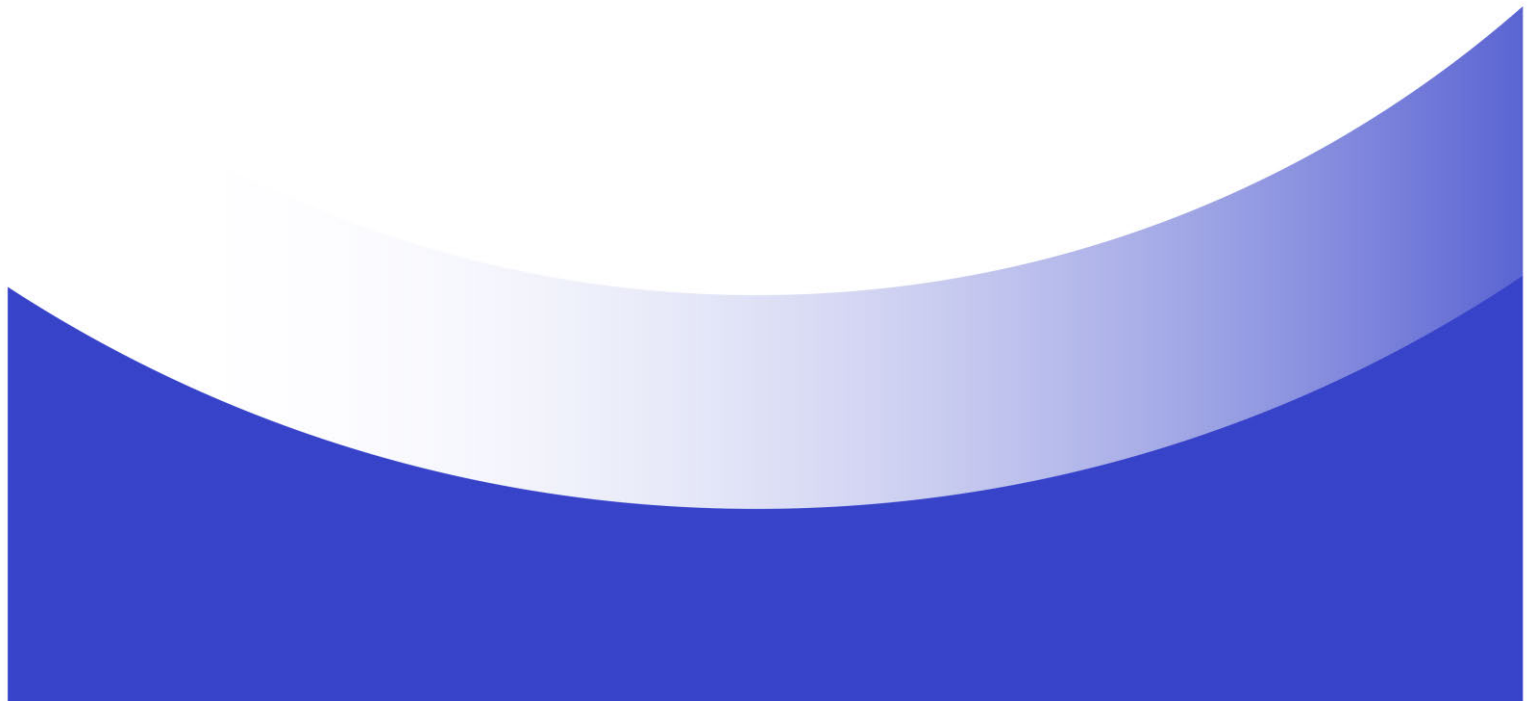


Australian Government
Australian Taxation Office

ATO Submission

Inquiry into the administration of Commonwealth regulations

29 August 2024



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Introduction

1. The Australian Taxation Office (ATO) welcomes the opportunity to make a submission to the Joint Committee of Public Accounts and Audit's inquiry into the administration of Commonwealth regulations, with particular regard to the Auditor-General's Report into the *ATO's Management and Oversight of Fraud Control Arrangements for the GST*.
2. In an increasingly digitalised world, it's imperative we make it easy for all Australians to engage and comply with their tax and superannuation obligations. In the Australian "self assessment" system, the underlying assumption is that Australians are honest in their interactions with the tax system (with penalties for those who are not).
3. However, all revenue systems have an inherent level of susceptibility to fraud. This is particularly the case for value-added taxes where refundable credits are claimable, such as the GST. Here there is a difficult balance between rapidly refunding money to legitimate businesses, particularly small and startup businesses, and stopping fraudulent refunds.
4. Traditionally the ATO has been able to respond to fraud largely through compliance activity, combined with preventative work where possible. This setting reflects that in general, taxpayers are legitimately engaged with their tax and superannuation obligations.
5. Operation Protego addressed a large-scale GST fraud event and was the first time this setting changed and our traditional approach to fraud became intolerable. This occurred because of the scale at which a section of the community undertook to deliberately engage with the us, not for the purposes of meeting their obligations but, for the purpose of fraud. The promotion of this fraud on social media played an important role in its proliferation.
6. As a result of this rapid and large change in taxpayer behaviour, our response required us to change our approach to suspicious GST refunds and also to significantly re-prioritise our compliance program shifting our focus from other important taxation risks.
7. As a result, by mid-2023 the ATO had successfully contained the fraud, protecting \$2.7 billion in suspect GST refunds from being paid to fraudsters.
8. Consistent with the experiences of other revenue agencies, we expect to continue to see increases in the sophistication of scaled fraud attempts. To combat this risk, we are continuing to increase the security and integrity of our fraud controls and, through Treasury, advocate for law reform which will support the effective operation of our fraud controls.
9. Our submission will outline in more detail an overview of the ANAO's audit into the effectiveness of *The ATO's management and oversight of fraud control arrangements for the GST* and our fraud control environment.

Part 1: ANAO audit into the effectiveness of the ATO's management and oversight of fraud control arrangements for the GST

10. The ATO values any opportunity to evaluate our processes and operations to identify ways to continually refine and improve.
11. The objective of the ANAO audit was to assess the effectiveness of the ATO's management and oversight of fraud control arrangements for the GST. To form a conclusion against the objective, the following criteria were adopted:
 - a) Has the ATO implemented effective strategies to prevent GST fraud?
 - b) Has the ATO effectively implemented strategies to detect and respond to GST fraud?
 - c) Has the ATO implemented effective arrangements to oversee, monitor and report on fraud control arrangements for the administration of GST?
12. We assisted the ANAO by providing 10 walkthroughs on topics including the ATO's mandatory staff training, fraud incident reporting, risk reviews, the *Contemporising the GST Risk Models project*, and internal and external fraud. In addition, we arranged interviews with 4 of our Senior Executive Service staff and responded to 25 requests for information.
13. In the ANAO report¹ published on 12 February 2024, it concluded that the ATO's management and oversight of fraud control arrangements for the GST was partly effective. The audit found that the ATO:
 - a) had implemented partly effective strategies to prevent GST fraud, but the framework for assessing and managing GST fraud risk was not fit for purpose.
 - b) had implemented largely effective strategies to detect and deal with GST fraud and observed the changes being made to improve the ATO's fraud management processes.
 - c) oversight, monitoring and reporting of GST fraud was partly effective, however roles and responsibilities were not clear.

ANAO recommendations

14. The ANAO made 5 recommendations for the ATO, which the ATO agreed to in full. The details of the recommendations are listed in the **Appendix**.
15. The ATO has fully implemented Recommendation 4, and we are on-track to implement the remaining recommendations by the end of 2024. **Table 1** provides a summary of the progress of the ATO's implementation plans for each of the recommendations.

¹ [ANAO Report No. 15 of 2023-24](#)

Table 1: Summary of ATO implementation plans – as at 22 July 2024

Recommendation	Summary of implementation plans and next steps	Status
Recommendation 1	<ul style="list-style-type: none"> Roles and responsibilities for fraud prevention, detection and treatment have been clarified. A redesigned External Fraud Conformance process to support these roles and responsibilities has been implemented. The Chief Executive Instructions for External Fraud and Internal Fraud are in the process of being updated to align with the above changes. 	<p>In progress</p> <p>On schedule for completion by 24 December 2024</p>
Recommendation 2	<ul style="list-style-type: none"> A GST fraud risk assessment has been completed and is awaiting endorsement. Frameworks have been put in place to ensure the GST governance committees are regularly discussing assessments of key risks (including fraud) in the GST system and have a contemporary and holistic view of GST risks. 	<p>In progress</p> <p>On schedule for completion and implementation by 31 October 2024</p>
Recommendation 3	<ul style="list-style-type: none"> An enterprise 2022-23 external fraud risk assessment was completed and endorsed, with the 2023-24 risk assessment currently being finalised. The ATO's Fraud and Corruption Control Plan will be updated to incorporate the fraud risks identified in the external fraud risk assessment. 	<p>In progress</p> <p>On schedule for completion and implementation by 24 December 2024</p>
Recommendation 4	<ul style="list-style-type: none"> A Fraud Surge Response Strategy for large-scale fraud events has been developed, implemented and tested. 	<p>Completed</p> <p>Implemented on 17 April 2024</p>
Recommendation 5	<ul style="list-style-type: none"> References to the 'AGD Fraud Benchmark' and ATO Fraud Benchmark' have been removed from the ATO's External Fraud dashboard one-page report. A proposal for an alternative benchmark has been developed and is being consulted on internally. 	<p>In progress</p> <p>On schedule for completion and implementation by 18 December 2024</p>

Part 2: ATO fraud control environment

16. Protecting the ATO's systems and the broader tax ecosystem from the constant risk of fraud is a responsibility that we take seriously. We are managing this risk by continuing to focus on:
- strengthening our digital platforms
 - the development of prevention measures designed to reduce the risk of external fraud occurring
 - detection measures designed to uncover incidences of fraud in real-time
 - response measures including assessment, investigation, analysis, referral, prosecution, and recovery.
17. The ATO's ability to address the fraud risk has been bolstered through the announcement of the *Strengthening Tax Compliance: ATO Counter Fraud Strategy* in Budget 2024, which has provided an investment of \$187 million over four years to tackle the growth in identity crime enabled fraud and scaled fraud attacks across digital services. These attacks are agile, prolonged, and persistent, and the risk is amplified by global threats, organised crime and increasing numbers of data breaches in the community.
18. The *ATO Counter Fraud Program* will:
- place more control in the hands of taxpayers making it easier for them to recover and to continue to interact with us digitally when their identity is compromised
 - make it easier for taxpayers whose identity has been compromised by helping them adopt stronger security and improving how we address fraudulent activity on their ATO account
 - implement real-time messaging to protect taxpayers against high-risk online transactions.
19. Additionally, changes to the *Commonwealth Fraud and Corruption Control Framework*² took effect from 1 July 2024. To comply with the key changes, we are enhancing our external fraud risk assessment process, including documenting key controls for all external fraud sub-risks. This is currently planned to be completed by the end of 2024.
20. These new measures will help us to continue to grow the capability and tools we need to respond to fraud in an increasingly agile and sophisticated way.
21. While the *ATO Counter Fraud Program* will address some of the known vulnerabilities, we expect that other risks and treatments will be identified over time, as the environment changes and as the fraudsters respond to our strengthened controls. Ongoing investment in treatments and targeted law reform will help ensure we maintain downward pressure on the risk.

GST fraud control improvements

22. We continue to strengthen and enhance the management and oversight of GST fraud control arrangements, including those actions implemented in response to the ANAO's Recommendation 2,

² [Commonwealth Fraud and Corruption Control Framework 2024](#)

such as the GST fraud risk assessment process to better understand and enhance our management of GST fraud.

23. We have appointed a GST Fraud Advisor to assist relevant areas of the ATO identify, assess and treat the level of GST fraud within their client market and/or part of the GST administration system, and to include a GST fraud lens in their risk assessments and treatment strategies.
24. We are designing new analytical risk models to target risks and behaviours that impact on the integrity of the GST system, and which will increase our capability to effectively manage GST compliance risks, through the *Contemporising GST Risk Models (CGRM) project*³ funded under the *GST Compliance Program 2023-27*.

Law reform opportunities

25. In the 2024-25 Federal Budget, the Government announced a legislative measure to strengthen the ATO's ability to combat fraud by extending the time the ATO has to notify a taxpayer if it intends to retain a BAS refund for further investigation. Under the proposal the current retention period will be extended from 14 to 30 days to align with time limits for non-BAS refunds.
26. This extra time will enable us to review suspect GST refunds before they are required to be paid, helping us to strengthen our ability to combat fraud during peak fraud events.
27. Legitimate refunds will be largely unaffected by this change and therefore the impact on legitimate businesses will be minimal. Any legitimate refunds retained for over 14 days would result in the ATO paying interest to the taxpayer (as is currently the case).
28. We will publish BAS processing times online to ensure transparency of processing timeframes.
29. The *ATO Counter Fraud Program* will undertake a gap analysis to help inform the design and development of a contemporary operating model for future fraud investment. This work will look at longer-term solutions to combatting fraud through the development of tools and capabilities.
30. We look forward to sharing our insights and experience to inform the development of opportunities for law reform which might further support our ability to safeguard Australia's tax and superannuation systems from fraud. We are actively engaging with Treasury on this issue.

Operation Protego

31. In relation to the second criterion of its audit, the ANAO found the ATO's processes to detect and deal with suspected GST fraud are largely effective, including that the ATO has:
 - a) implemented effective processes to confidentially report allegations of suspected fraud
 - b) methods to detect potential GST fraud
 - c) processes for investigating suspected fraud and taking action.

³ [Contemporising GST Risk Model project](#)

32. The ANAO also found that the ATO did not have a procedure to respond to a large-scale fraud event. As noted earlier in this submission, a fraud surge response strategy for large-scale fraud events was implemented on 17 April 2024.
33. Nevertheless, the ANAO found that in April 2022 the ATO launched Operation Protego, a multi-agency rapid response to a large-scale escalation of GST refund fraud.
34. The attempted fraud involved individuals applying for an Australian business number (ABN) for a business that doesn't exist, then submitting fictitious business activity statements (BAS) – to attempt to gain a false GST refund. The individuals involved were not genuine small businesses and were seeking to exploit the tax system. The fraud was proliferated through its promotion on social media channels.

Our actions

35. We alerted the public to the significant GST fraud in May 2022, to warn of the consequences of being involved and to not engage in this fraudulent behaviour. We outlined the strong action we were taking and urged those involved to come forward and worked with social media platforms to remove content promoting this fraud.
36. Traditionally, our focus has been on making it easy for businesses to get an ABN and to register for GST. The behaviours we saw as part of Operation Protego meant we needed to modify our approach. We implemented changes that strike a different balance between making it easy for people to get into the business tax system (and comply), and harder to get in for those who should not be there.

Results

37. The operation successfully contained the fraud by mid-2023 and protected \$2.7 billion in suspect GST refunds being paid to fraudsters.
38. Our investigations also led to the total primary liabilities raised between the commencement of Operation Protego in mid-April 2022 and 30 June 2023 to just under \$2.0 billion. Penalties of more than \$126 million have also been issued to 30 June 2024. Statutory interest will continue to accrue on fraudulently obtained amounts and penalties not repaid, and was an additional approximately \$470 million, at 30 June 2024.
39. This fraud has been contained, with more than 90% of the primary liabilities relating to fraudulent claims up to 30 June 2022. We have taken a range of compliance actions against more than 57,000 perpetrators, and our strategies have driven a continuous reduction in these GST fraud attempts.
40. The most serious offenders were referred to the ATO-led [Serious Financial Crime Taskforce](#) (SFCT), which is taking firm action against individuals, facilitators and promoters suspected of being involved. Through the SFCT, and with the support of state law enforcement agencies:
 - a) at 31 May 2024, criminal investigations have resulted in more than 100 arrests, 43 convictions and asset confiscation under proceeds of crime. Jail terms of up to 7 years and 6 months have been imposed and investigations are continuing, and
 - b) at 30 June 2024, we have recovered more than \$142 million since the commencement of Operation Protego.

41. We also quickly identified and took appropriate action of any perpetrators with an association to the ATO, including 12 people who may have participated while employed in the ATO. Those people have been held to account with a range of actions including termination, administration action and criminal prosecutions. These individuals no longer work in the ATO.
42. While some matters remain before the Court, two former ATO officers have been convicted of offences relating to Operation Protego.

Conclusion

43. The ATO will continue to work with the community, tax professionals and partners to shut down any potential pathways for fraudsters and protect revenue to help keep Australians safe from fraud and scams.
44. We will continue to contribute to whole of government and international efforts to deal with non-compliance and fraud, including participation in relevant Taskforces.
45. The ATO is available to respond to any questions the Committee may have and will attend a hearing as required.
46. The ATO looks forward to the outcomes of this inquiry.

Appendix

ANAO audit recommendations

47. The ANAO audit made 5 recommendations with regards to ATO's management and oversight of fraud control arrangements. These are:

Recommendation 1: The ATO, as a matter of priority should finalise its work on:

- Clarifying and documenting the roles and responsibilities for fraud prevention, detection and treatment;
- Redesigning the external fraud conformance process to support the revised roles and responsibilities; and
- Making necessary changes to the external fraud and internal fraud Chief Executive Instructions.

Recommendation 2: The ATO should conduct and document assessments of its GST fraud risks regularly and ensure that it has a contemporary and holistic view of its GST fraud risks.

Recommendation 3: The ATO ensures that its fraud and corruption plans are based on identified fraud risks that are documented in risk assessments.

Recommendation 4: The ATO should develop and implement a response for large-scale fraud events that do not meet the criteria specified in the extant Integrity Incident Response Framework. The response should encompass:

- the ability to monitor early warning signals from the disparate fraud detection methods across ATO business lines, including 'tip-offs' received by the Tax Integrity Centre;
- identification of escalation triggers and the pathways that will be followed to develop an ATO response;
- a clear allocation of decision-making authority and accountability for initiating and finalising a rapid response;
- a prioritisation approach for action, emphasising the prevention and containment of revenue leakage;
- actions to recover losses; and
- criteria to evaluate the success of the framework's use to contain fraud events, and the ability to adjust the framework in response to evaluation findings.

Recommendation 5: The ATO should:

- consider an alternative benchmark for ATO fraud indicators; and
- remove references to the 'Attorney-General's Department fraud benchmark'.