

Australian Taxation Office

Submission to the Parliamentary Joint Committee on Law Enforcement Inquiry into Commonwealth unexplained wealth legislation and arrangements.

Introduction

The ATO is included in the Commonwealth's Organised Crime Strategic Framework as an agency with shared responsibility for addressing the impact on Australia of serious and organised crime. Our role is particularly relevant given the profit driven nature of this activity and the ATO has skills that can help to identify unexplained wealth generated from illegal profits.

The ATO's Strategic Statement 2010-15 emphasises the importance of protecting the community by deterring, detecting and dealing with those who have not complied with their tax and superannuation responsibilities. This is particularly important when organised criminals compete with legitimate businesses, creating an unlevel playing field for honest businesses.

Within the parameters of the law, the ATO works closely with other law enforcement agencies at both the Commonwealth and State level to support efforts to deal with serious and organised crime.

Tax Crime Environment

The Tax Crime environment is dynamic, borderless and involves factors outside the direct control of the ATO. Increasingly, revenue collection agencies globally are being used as a vital source of intelligence and expertise in financial investigations in the fight against organised crime.

The ATO has seen an increase in the complexity, use of new technologies, and sophisticated methods to manipulate the tax and superannuation systems including:

- more flexible and entrepreneurial structures that are often highly interconnected,
- simultaneous engagement in criminal markets and legitimate enterprises,
- sophisticated money laundering methodologies, which include the use of family members, businesses, companies, partnerships and / or trusts to provide a façade of legitimacy in order to hide the proceeds of crime; and
- transient groups, who covertly form for a common purpose and then disperse to avoid detection.

Tax Remedies

Where there is taxation revenue at risk, the ATO complements wider law enforcement strategies by applying tax remedies such as:

- Civil powers - audits, penalties and debt recovery provisions. Default assessments, which can be raised by the ATO and require a taxpayer to show that the amount of the income assessed by the Commissioner is excessive, can also be used to assess unexplained wealth.
- Investigations capability - where organised criminals have committed offences against the tax and superannuation laws, the ATO can undertake and/or support other agencies with investigations and refer these to the Commonwealth Director of Public Prosecutions for prosecution.
- 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.

- Leverage opportunities- where common facilitators are identified, the ATO is able to play a significant role in influencing behaviours and applying relevant sanctions, for example referring matters to the tax practitioner's board to apply relevant sanctions.

How the ATO works with other law enforcement agencies

Taxation secrecy and disclosure provisions are designed to keep protected tax information confidential and only allow provision of protected information by the ATO to other agencies in certain, limited circumstances.

These circumstances include for the purpose of investigating a serious offence or when disclosure is in connection with a prescribed taskforce and one of the main purposes of the taskforce is protecting the public finances of Australia. The process for sharing information with other law enforcement agencies and for collaborative and co-ordinated activities has been enhanced through the ATO's involvement in taskforces such as Project Wickenby.

The ATO is currently working with the Australian Federal Police and the Australian Crime Commission in the Criminal Assets Confiscation Taskforce. The ATO encourages the use of these taskforces to enable the ATO to assist law enforcement agencies to deal with serious and organised crime.

Areas for possible law reform

Success in tackling organised crime depends largely on sufficient information sharing powers for law enforcement agencies. It is expected that further taskforces will be established both at the Commonwealth and State levels to address serious and organised crime. Prescription of a taskforce allows the ATO to disclose information to an officer of an agency in any prescribed taskforce for a purpose of that taskforce. The ATO considers the prescription of taskforces as imperative for effective information sharing with law enforcement agencies.

Given the transient nature of organised crime groups and increasingly sophisticated methods used, timing is often a critical factor in effectively addressing this threat. Streamlining the process in the setting up and prescription of taskforces would allow for a more rapid joint agency response to the threat of serious and organised crime.

Enabling the ATO to receive and use intercept information that law enforcement agencies have obtained under telecommunication laws for the purposes of raising taxation assessment would enhance the Commonwealth's ability to address unexplained wealth associated with organised crime. It would also enable the ATO to better support law enforcement agencies in their activities through being able to analyse intercept material relating to financial transactions and structures so as to provide insights back to the referring agency.