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AUSTRALIAN  
TRANSACTION REPORTS  
AND ANALYSIS CENTRE

GM04 - 99/1044

22 October 1999

Mr David Hawker MP  
Chairman  
House of Representatives  
Standing Committee on Economics  
Finance and Public Administration  
Parliament House  
**CANBERRA ACT 2600**

Dear Mr Hawker

**INQUIRY INTO TAX FILE NUMBERS: SUBMISSION**

I refer to your letter of 29 September 1999 in relation to the Committee's review of the Tax File Number (TFN) system. I am pleased to forward 2 copies of AUSTRAC's submission.

A copy has also been faxed to you under separate cover.

Yours sincerely

Elizabeth Montano  
Director

Encl.

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**SUBMISSION TO THE**  
**HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON**  
**ECONOMICS, FINANCE AND PUBLIC ADMINISTRATION**  
**INQUIRY INTO TAX FILE NUMBERS**

**1 BACKGROUND**

1.1 The Australian Transaction Reports and Analysis Centre (AUSTRAC) is a federal agency established under the *Financial Transaction Reports Act 1988* ("FTR Act"). One object of the FTR Act is to facilitate the administration and enforcement of taxation laws.<sup>1</sup> To achieve this object, AUSTRAC:

- collects Financial Transaction Reports information<sup>2</sup> ("FTR information");
- analyses FTR information; and
- where appropriate, disseminates FTR information to law enforcement and revenue authorities.

1.2 AUSTRAC is one of Australia's primary anti-money laundering and anti-tax evasion agencies, and has the following three roles:

- anti-money laundering regulator of the Australian financial system;<sup>3</sup>

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<sup>1</sup> Complementary State and Territory legislation extends the operation of the financial transaction reports regime to State and Territory matters.

<sup>2</sup> Reports are collected in respect of cash transactions of \$10 000 or more ("Significant Cash Transactions"), International Currency Transfers of \$ 10 000 or more ("ICTRs"), International Funds Transfer Instructions (such as telegraphic transfers, known as IFTIs") and Suspect Transaction Reports (where a cash dealer forms a suspicion that a transaction of any amount whether or not in currency, may relate to criminal activity or tax evasion). Over 98% of the Reports received are made electronically. This reduces the finance sector's compliance costs and ensures timely reporting. These reports are collected from: cash dealers which are defined in section 3 of the FTR Act as, financial institutions (banks, building societies and credit unions); financial corporations; insurers or insurance intermediaries; securities dealers; futures brokers; Registrar of Commonwealth Inscribed Stock; trustees or managers of unit trusts; issuers and sellers of travellers cheques or money orders; bullion sellers; remittance dealers; casinos; bookmakers and totalisator agency boards. In addition, Significant Cash Transaction Reports are collected from solicitors.

- on-line financial intelligence unit for law enforcement and revenue agencies; and
- analyser of FTR information.

1.3 The FTR information collected by AUSTRAC is used in two primary ways:

- to identify unusual transactions or patterns or networks of financial transactions which may be indicative of money laundering, other criminal activities or tax evasion. This is done in two ways. First, suspect transaction reports lodged by cash dealers are disseminated by AUSTRAC to law enforcement agencies and revenue authorities for investigation. Often, AUSTRAC supplements these reports before dissemination by adding other relevant intelligence from AUSTRAC's database of FTR information, such as other related Suspect Transaction Reports, Significant Cash Transactions Reports, IFTIs or ICTRs. Secondly, analysis is done by AUSTRAC on a daily basis using computer programs which monitor activity on the AUSTRAC database; and
- the information is stored in AUSTRAC's database in Sydney and is available on-line <sup>4</sup> to the Commissioner of Taxation (Commissioner), law enforcement and other revenue agencies via encrypted data lines.

1.4 The ATO has advised that during the year ended 30 June 1999 the use of FTR information was directly responsible for over \$46 million in assessments issued by the Australian Taxation Office (ATO). In addition, substantial indirect contributions were made towards the ATO collecting revenue in a wide range of its business areas.<sup>5</sup>

1.5 Discussions take place on a regular basis between representatives of the ATO and AUSTRAC to continually improve the processes by which FTR information is provided to the ATO and by which FTR information can be matched for tax revenue raising purposes.

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<sup>3</sup> AUSTRAC oversees compliance by cash dealers in respect of their reporting obligations and requirements to identify signatories to accounts and provides guidelines and other material to assist them.

<sup>4</sup> Subject to privacy and security considerations set out in relevant Memoranda of Understanding between the Director of AUSTRAC ("Director") and the CEO of each agency granted access under the FTR Act.

<sup>5</sup> AUSTRAC's 1998-1999 Annual Report - at page 95: See Commissioner's statement.

## 2 ISSUES TO BE CONSIDERED BY THE INQUIRY

2.1 The House of Representatives Standing Committee on Economics, Finance and Public Administration has decided to follow up the Auditor-General's Report on Tax File Number issues. We note that in its media release of 24 September 1999, the Committee said that it would pick up "critical administrative, policy and tax payer issues from the audit as well as other significant aspects of the TFN management". In the media release, the Committee identified other areas that would be investigated. AUSTRAC is not in a position to comment on the Auditor-General's Report or on the other areas of investigation identified by the Committee, save in respect of one issue, which is:

"Any other important areas for the extension of the use of the TFN (e.g. to financial transactions such as real estate and the *transactions reported to AUSTRAC*".<sup>6</sup>

## 3 ACCESS TO FTR INFORMATION

3.1 It is to be noted that although the Commissioner of Taxation is statutorily entitled to access to FTR information, access by the Commissioner is subject to the Memorandum of Understanding (MOU) between the Director and the Commissioner.<sup>7</sup>

3.2 Under The MOU between the Commissioner and the Director, AUSTRAC provides the Commissioner and his staff with access to FTR information. The MOU stipulates the number of users in the Taxation Office who are granted on-line access to:

- Significant Cash Transaction Reports;
- International Currency Transfer Reports;
- International Funds Transfer Instructions Reports; and
- Suspect Transaction Reports.

3.3 In addition, a number of macro-analytical tools, which have either been developed specifically by AUSTRAC for the ATO or developed for users of FTR information generally, are available for the ATO's use. These macro tools include :

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<sup>6</sup>Italics added.

<sup>7</sup>In 1993 the Senate Standing Committee on Legal and Constitutional Affairs, in its review entitled "Checking the Cash-recommended that the FTR Act be amended to allow the Commissioner to have access to FTR information at the Director's discretion ie. on the same basis as law enforcement agencies. In reply, Government decided (and the current Government has concurred) that, as agreement had been reached between the Commissioner and the Director that access be governed by an MOU between the Director and the Commissioner which placed the Commissioner in the same position as the heads of all other agencies, it was not necessary to amend the Act. There has therefore been a "defacto change" to the FTR Act.

- Data mart - used for analysis of transactions relating to particular industries, occupations and countries;
  - Summary and Management Reports - used to provide certain aggregated information as stipulated by the user making the request;
  - Auto-searching - a tool which enables AUSTRAC to search its data holdings for multiple targeted names and/or addresses for or on behalf of the ATO;
  - Alerts - a system used to identify when a particular person or transactions are received and which will provide an automatic report when initial or further information is received regarding the subject of the inquiry.
- 3.4 Particular sets of information are also data matched by AUSTRAC for the ATO, in accordance with the Privacy Commissioner's data matching principles.
- 3.5 In the usual case, data matching occurs based on the name and address and any other hard matching information, such as identity information, which may be held on either the AUSTRAC or ATO databases. These include such things as bank account numbers and identity documents, such as driver's licences and passports. Under present legislation Tax File Numbers (TFNs) are not reported to AUSTRAC and, therefore are not available for matching purposes.

#### **4 ISSUES RAISED BY THE PROPOSAL TO EXTEND THE USE OF TFNs TO FTR INFORMATION**

- 4.1 AUSTRAC notes that any proposal to require TFNs to be included in reports made to AUSTRAC is likely to raise significant concerns amongst the various bodies AUSTRAC interrelates with. Those concerns would include:
- the costs which would be imposed on cash dealers in requiring them to include TFNs on the reports they make;
  - concerns which civil liberties and privacy groups would be likely to express in relation to the extension of the Tax File Number to Financial Transaction Reports information;
  - AUSTRAC would also incur costs in adapting its information technology systems to collect and analyse TFNs and in its regulatory functions in ensuring that TFNs are reported by cash dealers. There would be further costs in the likely requirement of this change, that is, the need for AUSTRAC to develop systems to quarantine TFN information contained in FTR information from all agencies which access such information, other than the ATO;

- 4.2 Under the FTR Act the Director of AUSTRAC is required to consult with cash dealers and the representatives of cash dealers and to take into account any comments made in the course of consultation<sup>8</sup>. Furthermore, under the FTR Act the Director is required to consult with the Commissioner in relation to the analysis of information by the Commissioner and the Director<sup>9</sup> and to take into account any comments made by the Commissioner. AUSTRAC would also wish to consult with representatives of privacy and civil liberties groups<sup>10</sup>.

## 5 CONSULTATION WITH CASH DEALERS

- 5.1 The usual means by which AUSTRAC consults with cash dealers is through meetings with its Provider Advisory Group (PAG) as well as through communications with individual cash dealers. By way of background, the PAG is a consultative body comprising financial sector representatives and AUSTRAC staff which meets regularly to discuss issues regarding the administration of the FTR Act and any proposals for legislative or administrative change.

The PAG comprises representatives from the following organisations:

- Australian Bankers' Association (ABA);
- Australian Finance Conference (AFC);
- Credit Union Services Corporation of Australia Limited (CUSCAL);
- Reserve Bank;
- Australian Association of Permanent Building Societies (AAPBS);
- AUSTRAC;
- representatives from a number of individual financial institutions.

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<sup>8</sup>Subsection 38(2) of the FTR Act.

In performing the Director's functions, the Director shall:

- (a) consult with cash dealers, or the representatives of cash dealers, in relation to the performance of the Director's functions; and
- (b) take into account any comments made in the course of consultations referred to in paragraph (a)".

<sup>9</sup>Section 38(3) of the FTR Act.

In performing the Director's functions, the Director shall have regard to the desirability of..

- (a) avoiding duplication in the analysis of information by the Director and the Commissioner;
- (b) attaining compatibility and integration of FTR information and other information held by the Commissioner;
- (c) maximising the utilisation of FTR information for taxation purposes; and
- (d) consulting with the Commissioner in relation to the performance of the Director.'

<sup>10</sup>Following the review of the Financial Transaction Reports Act by the Senate Standing Committee and Legal and Constitutional Affairs in 1993, it was recommended that AUSTRAC include consultation not only with cash dealer groups but with members of the privacy and civil liberties groups. In accordance with that recommendation, which was subsequently approved by Government, AUSTRAC set up a privacy consultative committee where issues relating to privacy are discussed. Although this is not a statutory requirement, AUSTRAC has undertaken to consult on such issues.



- 5.2 A proposal to include TFNs in the FTR information reported by cash dealers to AUSTRAC obviously raises changes to procedures and systems which will no doubt impact upon costs borne by cash dealers and AUSTRAC. This issue requires consultation with cash dealers to determine the effort which would be required to attach TFNs to particular report types having regard to the way in which the cash dealers information technology and manual systems are presently organised. In that regard, although cash dealers are presently required to record TFNs, that information is strictly quarantined for taxation purposes. The attachment of that information to FTR information may involve some difficulties and costs. At present, electronic reports work by extracting from the whole of a cash dealer's daily transactions, only those transactions and reportable details of those transactions which should be reported. To link these with the TFNs banks hold now only for taxation purposes may not be easy. There will also, most likely be significant technical variations amongst cash dealers, so that links will not be achievable using the same technological solution for all.
- 5.3 There is also the issue of what should and would occur where a customer chooses not to provide a TFN to a financial institution.
- 5.4 At this stage, no discussions have been held with our PAG, cash dealers or their representatives in terms of any proposal to have TFNs inserted in the reporting details of FTR information.

## **6 CONSULTATION WITH COMMISSIONER**

- 6.1 As noted above, AUSTRAC is required to consult with the Commissioner in relation to the analysis of FTR information for taxation purposes. Again, AUSTRAC believes that this consultation is extremely important to ensure the most effective use of FTR information by the Commissioner.
- 6.2 It is recognised that the present name and address matching of FTR information with taxation information has certain limitations, because ATO records often record addresses for service of notices which are the addresses of agents or other professionals. In contrast, the address information reported by cash dealers in FTR information usually contains postal addresses for account statements (usually the residential address of a person or business address of a business entity).
- 6.3 Informal discussions have been held with ATO officials on this point. We propose to undertake further discussions with ATO officials in the near future, to clarify how the reporting of TFNs in FTR information would assist in practice.

## **7 CONSULTATION WITH REPRESENTATIVES OF PRIVACY AND CIVIL LIBERTIES GROUPS**

- 7.1 In relation to privacy and civil liberties issues, AUSTRAC consults through meetings of the AUSTRAC Privacy Committee (APC).



- 7.2 By way of background, the APC is a body which is made up of privacy and civil liberties groups, law enforcement and revenue agencies and AUSTRAC. The APC was set up to consult with the Director on the privacy and civil liberties implications of the FTR Act and the use of FTR information by law enforcement and revenue agencies. It was established in 1994 following a review of the FTR Act.
- 7.3 The APC comprises representatives from the following organisations:
- Liberty Victoria;
  - Privacy Commissioner;
  - Electronic Money Information Centre";
  - Australian Taxation Office;
  - National Crime Authority;
  - Australian Federal Police; and
  - AUSTRAC.
- 7.4 Having regard to the history of the introduction of TFNs and public concerns regarding the extent to which such information would be used by government, any extension in its use to FTR information should be carefully considered, with due regard given to these concerns. AUSTRAC believes that a process of consultation with those groups is most important and that until that is done AUSTRAC cannot express any considered view on whether to support this proposal. At this stage, AUSTRAC has not consulted with the APC on the proposal to include TFNs in FTR information.

## **8 AMENDMENT TO REPORTABLE DETAILS OF FTR INFORMATION - OTHER CONSIDERATIONS**

- 8.1 The reportable details required to be included in the various report types of FTR information are set out in Schedules to the FTR Act and in the Regulations. The reportable details may be amended by Regulation, so that it is relatively easy to amend those requirements if it is decided to do so. However, the process of determining which particular Regulations need to be amended requires much more effort as consideration would need to be given to the particular report types which might benefit from a TFN being inserted.
- 8.2 By way of example, it is most unlikely that, as a matter of practice, T17Ns could be included in the International Currency Transfer Reports reported by persons importing or exporting cash into or out of Australia.

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" This organisation is to be replaced (at its request) by another.



- 8.3 Further, in relation to International Funds Transfer Instructions it is unlikely that inwards instructions i.e. transfers of funds from another country to Australia could be required to include TFNs. In that regard, the reportable details specified in the Regulations require limited mandatory information plus additional information “as appear in the instructions.” The Regulations go on to list the requirements such as, the ordering customer's account, the beneficiary's names and location and so on. These requirements are less onerous than for outgoing instructions as persons sending funds into Australia may genuinely not know or be able to reasonably ascertain all of the information which might otherwise be sought. The ordering party may not know the TFN of the receiving entity. On the other hand, for outwards messages, cash dealers are required to report more mandatory information, because they often know more about the ordering party. Having said that, it is also apparent from law enforcement experience that many International Funds Transfer Instructions are effected by ordering parties using false names. Unless cash dealers were to be required to sight identification documents and ATO issued advices of TFNs allocated to the ordering parties, the integrity of collecting TFNs may be diminished.
- 8.4 Although there would appear to be no reason why there could not be a change made to require mandatory reporting of additional information such as TFNs, such a change would need to recognise the agreement reached between government and cash dealer industry bodies when International Funds Transfer Instructions reporting was introduced. At that time, it was agreed that the government's requirements would be satisfied if the cash dealers reported what they collected in the ordinary course of business to complete the SWIFT<sup>12</sup> messages used to make the international instructions. This reduced dramatically the compliance costs the cash dealers bear as a result of this reporting requirement.
- 8.5 AUSTRAC believes that any proposal to include TFNs in both inwards and outwards IFTIs should be the subject of extensive consultation with cash dealers organisations as well as the ATO and civil liberties and privacy groups.

## **9 RESTRICTED ACCESS TO TFN INFORMATION**

- 9.1 Presently there are 24 organisations, other than the ATO, which have access to FTR information. These organisations include Commonwealth, State and Territory law enforcement and revenue agencies. If the proposal to include TFNs in the reportable details in FTR information was to go ahead, we would envisage a requirement to quarantine this information. AUSTRAC would need to develop systems which would enable it to capture that information for tax purposes but to limit its access to other agencies.

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<sup>12</sup> Society of Worldwide Interbank Financial Telecommunication (SWIFT) is a body set up by banks from a number of countries which decides international standards and provides shared infrastructure to carry international funds transfer instructions around the world.

9.2 There would be some cost involved by AUSTRAC in re-engineering its systems to allow the capture of TFN information for both on-line and analysis purposes by the ATO, but to restrict that information from all other users. Although this is technically feasible, it could not be done without cost, which AUSTRAC could not currently bear.

## **10 CONCLUSIONS**

10.1 AUSTRAC has not yet formed a considered view as to whether, on balance, TFNs should be included in the reportable details of FTR information.

10.2 Before AUSTRAC can give a firm view on the proposal to add TFNs to the reportable details, there are a number of issues which require close consideration and consultation. Although there would appear to be little doubt that inclusion of TFNs in FTR information would improve matching of information, we believe that the utility of adding TFNs needs to be weighed against the factors discussed above, being:

- costs to both cash dealers and AUSTRAC; and
- privacy and civil liberties concerns including possibly restricting access to TFNs to the ATO.

10.3 In our submission, we have pointed out that AUSTRAC is required to consult on such issues with:

- cash dealer representatives;
- the Commissioner; and
- privacy and civil liberties representatives.

10.4 As you are aware from our submission, AUSTRAC has not yet consulted on these issues.

Elizabeth Montano  
Director