Senate Economics Committee

Inquiry into the Performance of the Inspector-General of Taxation

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

DECEMBER 2019

Department/Agency: ATO
Question: 1
Topic: Internal investigations

Question:

SENATOR PATRICK: […] In the case of Mr Boyle it was the ATO investigative team that conducted the investigation and the police were only used to the extent it was necessary to assist with the search warrant on his property. Is there any reason why you didn't simply refer the matter to the AFP?

Mr Jordan: Our Fraud Prevention and Internal Investigation group basically has a function to carry out those investigations […]

SENATOR PATRICK: Normally you are conducting investigations about persons external to the ATO in breach of taxation law, in some sense this is quite different. You are investigating the actions of an employee or former employee […]

Mr Jordan: We have a number of investigations about alleged unauthorised access to taxpayers' records, and that group would be the group that would investigate that […]

[…]

Ms Sinclair: The Fraud Prevention and Internal Investigations group reports to me in the ATO. A lot of the work that is undertaken actually does involve internal employees, and whether that might be access issues or there may be other matters that are referred by managers to the area, in particular if there was some behaviour that was untoward. The external lens is actually in the minority.

SENATOR GALLACHER: How many of these cases actually end up in court?

Ms Sinclair: I don't have those numbers with me

SENATOR GALLACHER: Could you take that on notice?

Ms Sinclair: We would be very happy to take that on notice

SENATOR GALLAGHER: If they are likely to end up in court do you get a fresh pair of eyes on it? A la the AFP or do you just rely on your internal–

Ms Sinclair: Again it will depend on what the matter is–

[…]

SENATOR GALLACHER: Your investigation process - is it entirely internal or do you get the AFP involved?

Mr Todd: We can take that on notice

Answer:

The ATO has an independent and qualified internal investigations team that assess the factual basis of allegations of serious misconduct, internal fraud and/or corruption by ATO employees. All matters are initially assessed by this team unless it is considered to be a serious or complex crime, in which the ATO are obliged, under the *Australian Government Investigation Standards*, to refer directly to the AFP.

Referrals to the AFP can result in joint operations, however, more routinely the assistance of the AFP is only obtained in the execution of search warrants under Section 3E of the Crimes Act and the provision of seized material to the ATO. There are occasions whereby our internal investigators are sworn as ‘special members’ of the AFP to assist with law enforcement action on ATO employees under investigation.

The primary purpose of the internal investigations team is to gather admissible evidence for any subsequent action whether under criminal, disciplinary or administrative sanction, however they do not recommend or impose any actions. There are occasions where the ATO outsources investigations (for example if a matter is particularly complex or there is a potential conflict of interest) to external investigators including law firms.

- If the matter is found to be a breach of the APS Code of Conduct it is referred to the Working Well branch in ATO People for disciplinary and/or administrative action.
- When a breach of criminal law is identified, a brief of evidence is prepared and submitted to the Commonwealth Director of Public Prosecutions (CDPP) for independent assessment and consideration of prosecution action.

The number of matters that proceed to court are determined by the CDPP in accordance with the *Prosecution Policy of the Commonwealth*. The decision on whether to prosecute is an independent discretionary process and a number of factors are considered by the CDPP before a prosecution is commenced, such as there must be sufficient evidence and it must be evident from the facts of the cases that prosecution would be in the public interest.

Over the last five years the ATO has submitted 11 criminal briefs of evidence to the CDPP and a decision was made to prosecute on nine occasions.