

28/7/15 Affidavit (purportedly in response to 29/6/15 IGT s.9 notice) reference to Operations Whip, Onion, Feline, Cohort, Zodiac

Breach of controls – Operation Whip

1. Para 9 lists “serious breaches of controls” including executive management endorsing the use of a fraud work process where evidence of fraud was known not to exist; “pacifying” the case management system by stating that an unknown third party perpetrated ID fraud; not advising the taxpayer of the ATO’s actions or affording review.
 - *[Note: based on Mr Shamir’s evidence, in one case the taxpayer was attempted to be contacted and the phone number was someone else’s who had had that number for 7 years (RS04). In the other case, no attempt to contact the taxpayer was made (RS03). Both cases raised a reasonable suspicion of fraud, albeit it was uncertain whether it was because someone had used another’s identity or that a controlling mind had used related people in designing a complex arrangements of companies and trusts.]*
2. Para 24 – “No substantive action taken addressing the breach of controls in the audit process by senior ATO officials nor the management culture that makes these breaches systematic. ...the senior individuals responsible have all received accolades internally for their management of the [REDACTED] decision...”
 - *[Note: the 8 November 2012 email to [REDACTED] show that the streamlined approach was based on Risk & Intel advice that a streamlined approach could be used. However, recently changes had been made and that notwithstanding any streamlined approach, contact was expected to be attempted and that officers exercise judgement in determining the final outcome based on the information, review at risk and consequences of their decision.]*
3. Para 25 – “...executive level staff had planned and carried out a fraud on taxpayers and the community on a massive scale, and with Senior Executive Service endorsement. At any other time this practice would constitute an abuse of power. Given the timing of the [REDACTED] decision, this practice also constitutes a cynical contravention of the law...”
 - *[Note: The inference of knowingly cancelling legitimate BASs is based on inferences of the timing of the process post-[REDACTED] and an undocumented verbal assurance that the ATO would “find a way” to address [REDACTED]]*
4. Para 26 – “High Court ...decision on 9 December 2011... Assistant Commissioner, ITX Serious Evasion, [REDACTED] and Assistant Commissioner, ITX Risk & Intelligence, [REDACTED] endorsed Operation Whip on 30 January 2012.” In part to achieve revenue targets (para 40)
 - *[Note: need to obtain the Office Minute to understand the basis for the decision and whether there is an inference it was motivated by revenue and the process would disregard taxpayer rights.]*

5. Para 29 (in referring to the FPII email that forwarded [REDACTED] comments on RS' ID takeover work procedures complaint, "[REDACTED] only responded to some of the issues I raised. Some of [REDACTED] responses indicate the ATO finds no fault with operations such as Operation Whip, and intend to continue this practice."

— *[Note: The email shows that taxpayers were told in all cases that the GST role had been cancelled, that the practice was limited to one team in Hobart and that changes had been made. Mr Shamir may be referring to the fact that no repercussions were taken against the ATO management. However, such a view presupposes that the process was unlawful.]*

FOI requests

6. Para 31 "A response in March 2015 to my formal FOI request to the ATO ... failed to produce any documents relating to the 'ID takeover' matter I raised. There is no lawful reason why the ATO did not provide these documents..."

— *[Note: complaints about responses to FOI applications are for the Information Commissioner as we are specifically precluded from investigating these.]*

Senior managers subverting process

7. Paras 32-35 indicates that the [REDACTED] case decision a result due to 'bad' decisions of ATO senior officers and \$800,000 was refunded to [REDACTED] which could be based on fraudulent claims.

— *[Note: No evidence provided for the basis of this belief other than that inferred from Mr Shamir's experience with dealing on SE cases.]*

8. Para 36 – RS says senior officers ignored his advice not to audit the [REDACTED] because the "assessment by ATO management that the entity has outstanding tax of around \$18,000,000 is incorrect" and he was ultimately vindicated.

— *[Note: Mr Shamir's previous team leader addresses this in RS12.]*

9. Para 38-9, RS indicates he gave extensive submission on how "management decisions contributed to systemic failures" but was only told that the feedback would be passed onto the project team.

— *[Note: appears to be a lack of feedback. However, Mr Shamir's old team leader said that he was a representative on the re-engineering of the ITX area as well]*

10. Para 40-44, the profiling unit was abolished as a consequence of Mr Shamir's disclosures

- Now profiling reviews have gone from 90 days to 1-3 days, which means that "a proper review from the taxpayer's point of view cannot occur" and the controls are worked around to "get the job done", resulting in Serious Evasion management not being able to "meet the undertaking provided to taxpayers that an audit will only occur if a preceding 'review' indicates that an audit is necessary to address a risk" (Affidavit, para 55)

- profiling reviews are now conducted by auditors which effectively avoids the control of separation of case selection and case audit to address tax officers' biases and was a control which was recommended by the ANAO and accepted by the ATO (Affidavit, paras 36-37, 56).
 - *[Note: Mr Shamir's previous team leader states that such a view is a philosophical view and that the better metric is the strike rate. Furthermore, the profiling unit was abolished as a part of ITX's broader changes to its pre-audit approaches and as announced by the DC.]]*

Victimisation

11. Para 40-44,

- Mr Shamir was directed to perform a serious evasion audit leader role despite advising that he was not trained or competent to perform the audit role as it required interviewing the ATO's top 5% most agree just taxpayers and their representatives in relation to their complex tax and accounting activities in full awareness that Mr Shamir had little or no tax and accounting knowledge.
 - *[Note: This was the subject of the Fair Work Commission hearings.]*

12. Para 45, lists examples including adverse, malicious reports being made about him to building security, IT's ATO security for team, and the security and Australian Government vetting agency.

- *[Note: no details of the events in question provided. (cf. disclosure to Ecuador where details are provided). Arguably outside of jurisdiction if it goes to Code of Conduct.]*

13. Para 55-6, the Compliance Approved Processes, which are a control to ensure transparency and integrity, are bypassed "in deference to hastily written, ad hoc work processes that are advised to operative staff verbally and by email on a "just-in-time" basis".

- *[Note: No further information provided on this allegation.]*

14. Paras 58-9, indicates that reducing staff working on intelligence and case refinement in preference for a reliance on technology (e.g. Smart data) "have exposed the inaccuracies and low/rights of candidate selection models" and "leave insufficient resources to devote to improving selection models"

- *[Note: Mr Shamir's previous team leader states that such a view is a philosophical view and that the better metric is the strike rate (RS11).]*

Preferential treatment for large entities due to ATO case selection being based on taxpayer segmentation

15. Para 60, the "alleged head of the [REDACTED] group was the architect of the alleged non-compliance activities" who was also known to have "allegedly committed bank fraud, and had been employed for a time with the investment banking firm [REDACTED] (Australia)".

16. Paras 60-5, [REDACTED] (Australaia) had not lodge tax returns for 12 years because it was in a category “we know audit activity... Occurs unless the ATO receive a “complaint””.

— *[Note: We would need to contact the ATO to confirm whether true. In any event the ATO’s recent announcement of reviewing the top 1000 should address this concern].*

Labour hire firms not audited

17. Para 70, there is a recent reluctance by ATO senior management to pursue audit action to labour hire cases.

- In the Serious Evasion area “it has been an unwritten rule that with very few exceptions ‘labour hire’ cases ‘are not done’” as they have been too difficult to collect because participants phoenix the arrangements at the first sign of an audit.
 - Internal submissions with proposals for addressing previous weaknesses have not been generally considered by senior management (Affidavit, para 71)
- *[Note: There was significant ATO action on a number of aspects of labour hire firms, eg. service entity arrangements with the Big 4 in the early 2000s, the PSI legislation which was implemented in 2000 and a Taxpayer Alert (TA 2011/2) on the use of trusts in labour hire arrangements. This is in addition to the significant work done with Phoenixing over the years. Perhaps Mr Shamir is referring to taking criminal investigation against such arrangements, however, even then we have seen recent work in this respect.]*

Fair treatment of taxpayers selected for audit

18. Para 74, ITX refund integrity branch auditors are “‘performance managed’ if the strike rate for their audit cases falls below a set threshold” which result is in case selection being based on factors other than those publicly stated by the ATO, “such as the level playing field”.

— *[Note: this view could also be said to encourage profiling which avoids targeting taxpayers with low risks.]*