

MANAGEMENT OF IDENTITY FRAUD

Stakeholder Concerns

4.117. An allegation has been made to the IGT that the ATO's risk assessment tools do not accurately detect identity fraud and GST refund fraud nor does it differentiate between them. In particular, reference was made to internal ATO operations, active between 2011 and 2012, where it was alleged that crude risk assessment tools incorrectly identified certain cases as involving identity fraud rather than potentially incorrect GST refunds. As a result, the wrong action was taken, including the cancellation of taxpayers' ABNs, denying their refunds without appropriate communication and effectively denying them review and objection rights.

4.118. A related concern identified was that as a result of erroneously classifying certain cases as 'identity fraud', the relevant accounts were 'locked down' and were not subjected to further compliance action for other potential breaches.

ATO materials

4.119. The ATO has advised the IGT that it had in place a number of operations to address specific risks between 2011 and 2012.

4.120. In 2011, one of the automated risk assessment tools discussed in Chapter 3, identified a group of 200 trusts that had been set up using stolen identities.¹⁸⁴ As a result, the ATO initiated a 'fast actioning' operation, codenamed Whip, given the serious nature of the risks. It involved taking a range of actions including retention of refund and cancellation of ABN or GST registrations. In addition, 47 entities were identified for further verifications or audits.¹⁸⁵ This streamlined approach provided ATO officers with discretion as to whether communication with taxpayers was necessary.¹⁸⁶ Interaction or correspondence in these cases would only occur where the taxpayer successfully proved their identity through the ATO's proof of identity process.¹⁸⁷

4.121. Operation Whip was similar to other operations that were active at the time, variously codenamed Zodiac, Cohort,¹⁸⁸ Onion and Feline, to address risks that had been identified within specific groups. In each of these operations, communication with taxpayers was either deemed unnecessary or left to the discretion of the ATO officer. Moreover, in the case of Operation Cohort, the internal ATO instructions stated that no notices of assessments or audit finalisation letters would be issued and therefore no objections rights would be available. However, the instruction also noted that there could be 'some feedback into the ATO Call Centres but any complaints could not proceed until the tax file number (TFN) is reactivated via the Compromised TFN Unit.'¹⁸⁹

184 ATO, 'Office Minute (30 January 2012)', internal ATO document, p 1.

185 Ibid, p 2

186 ATO, 'Refund Fraud Hobart' (undated), internal ATO document.

187 ATO, 'Office Minute', above n 184, p 2.

188 ATO, 'Office Minute' (30 January 2012), internal ATO document, p 1.

189 Ibid, p 4.

GST Refunds

4.122. In discussions with the IGT, ATO senior management have stated that operations such as the ones discussed above were successful in containing the GST fraud risks which had been identified. This has manifested in GST refunds not being issued erroneously and ATO's actions or decisions not being challenged.

4.123. Notwithstanding the success of the operations, in late 2012, the ATO augmented the procedures which guided the above operations through the addition of an addendum which required ATO officers to:

- attempt to contact the affected taxpayer;
- use both information provided upon the allocation of the case to them as well as other relevant information to determine the action required; and
- exercise judgment in deciding the final outcome based on all information available as well as the significance of the risk and the consequences of the decision.¹⁹⁰

4.124. The ATO's objective was to ensure all affected taxpayers were contacted and given the opportunity to address any deregistration or refund cancellation concerns. Reinstatement of their registrations or issue of refunds would be provided upon the taxpayer satisfying proof of identity requirements or upon receipt of relevant supporting evidence. Instructions were also provided in the addendum for the ATO officer to provide contact details to assist the affected taxpayer in addressing the compromised TFN issues through the ATO's Client Identity Incident Management (CIIM) team and Client Identity Support Centre.¹⁹¹

4.125. As part of the current IGT review, the ATO has provided further information in relation to its current approach to potential identity fraud cases:

When identity fraud is believed to have taken place, the ATO's Client Identity Support Centre will make contact with the client. After establishing their identity through the Proof of Record Ownership process, the ATO will ask a series of questions to determine whether it was the client that lodged the return. Where it's identified as identity fraud, the ATO will invite the client to register for voice authentication for additional protection, and will apply a range of safeguard measures to ensure the client's ATO record is protected from any future fraud attempts. The ATO will cancel any fraudulent lodgments, refunds and contact information, and invite the client to lodge their legitimate return. The ATO will provide advice on protecting their personal identity information and will advise that additional monitoring will occur over future lodgments.

The ATO will advise the client they can also contact IDCARE, who has partnered with the ATO to provide clients affected by Identity theft with a toll-free national identity security counsellors service on 1300 432 273 (more information on IDCARE at www.idcare.org).¹⁹²

190 ATO internal email dated 8 November 2012.

191 Ibid.

192 ATO, 'ATO's management of GST refunds in cases involving suspected identity fraud', June 2016, internal ATO document, p 3.

4.126. Importantly, the ATO further explained that:

*The treatments applied to prevent further identity crime enabled refund fraud do not impact on the broader refund integrity suite of models or processes.*¹⁹³

4.127. Specifically, all lodged BASs which claim refunds are subject to automated risk assessment tools that identify potentially incorrect or fraudulent refund claims, regardless of whether the taxpayer has a potential identity fraud indicator or is on a watch list for similar risks. Any BAS identified as being incorrect or potentially fraudulent is then referred to a specialist team that addresses both refund fraud and potential identity fraud.

4.128. As discussed in Chapter 4, the ATO's management of fraud and fraud-related risks within the GST context is set out in the RI Auditor Guide¹⁹⁴ and the ITX guidelines.¹⁹⁵ Both provide overarching guidance on management of suspected identity fraud, including reference to the Law Administration Practice Statement PSLA 2008/11 *Fraudulently altered or created income tax returns or activity statements*.¹⁹⁶

4.129. As noted earlier, in 2016 the ATO undertook an internal Business Improvement Review in relation to refund fraud management. While the report did not specifically mention handling of identity fraud as an enabler for refund fraud, it does note that there is a discrepancy between the numbers of cases identified by the ATO's risk assessment tools (900 in income tax and 348 in indirect tax for the 2014-15 financial year) and potential identity fraud referrals from members of the public (25,658).¹⁹⁷ It also stated that the two avenues for identifying fraud were separate but complimentary. Although no recommendations were made in respect of process improvements on the treatment of identity fraud, the ATO stated that:

*Smarter Data is researching online behaviours with a view to detecting risk exposure prior to the actual fraud event (refund claim). This approach aims to improve client experience by detecting identity crime at the earliest possible point in the process, so that clients can be protected at the earliest opportunity.*¹⁹⁸

IGT Observations

4.130. Given the seriousness of the above allegations, the IGT considered them both at the time that they were raised and in more detail in the context of the current review. It is important to note that the same allegations were also directly conveyed to ATO management who seem to have acknowledged the concerns raised. In response, the

¹⁹³ Ibid, p 3.

¹⁹⁴ ATO, 'RI Auditor Guide', above n 53.

¹⁹⁵ ATO, 'Indirect Tax guidelines for dealing with suspected fraud', 20 September 2017, internal ATO document.

¹⁹⁶ ATO, *Law Administration Practice Statement PSLA 2008/11 Fraudulently altered or created income tax returns or activity statements* (2015).

¹⁹⁷ ATO, 'Business Improvement Review', above n 86, p 12

¹⁹⁸ Ibid, p 13.

GST Refunds

ATO explained that additional procedures had been added to augment the streamline processes used in operations such as Whip or Cohort.

4.131. It seems that taxpayers, affected by the above operations, were provided very limited information and were effectively required to contact the ATO to find out and address any actions that may have been taken against them. Although such situations are far from desirable and raise serious concerns, only a finite group of taxpayers, who were suspected of being involved in fraud, were affected for a limited period of time. Furthermore, these taxpayers could have approached the ATO or, at the time, the Commonwealth Ombudsman, to report their concerns. In the materials made available to the IGT, there were almost no instances of such reporting.

4.132. More importantly, the ATO appears to have addressed the above concerns in 2012 through the additional procedures discussed earlier. The materials provided to the IGT as part of the allegations made as well as other information provided by the ATO do not indicate that the practices in question are continuing. It should also be noted that the IGT has also not received any submissions or complaints indicating that such practices are still in place.

4.133. In the broader context of this review, the ATO has sought to continue improving its ability to detect instances of identity fraud through internal reviews and enhancements of the risk assessment tools, as discussed in Chapter 3. The IGT has also made recommendations for further improvements in this regard. Nevertheless, automated risk assessment tools will never be absolutely accurate and there is a risk of compliant taxpayers being selected for review or audit. In such cases, it is important that these taxpayers have effective avenues through which to raise their concerns and have them addressed. Such avenues are currently available through the ATO's CIIM team as well as the IGT's complaints handling service.