

Senate Legal and Constitutional Affairs References Committee

The adequacy and efficacy of Australia's anti-money laundering and counter-terrorism
financing (AML/CTF) regime

ANSWERS TO QUESTIONS ON NOTICE

Agency: Australian Taxation Office

Topic: International cooperation

Question:

CHAIR: Finally, there's international cooperation. You've mentioned there are some international taxation agreements that, as a matter of course, lead to consultations. While we've had advice here from the Russian Federation, and you're not directly the prime agency with regard to the AML/CTF matters, have you consulted on broader questions beyond the normal taxation agreements with the Russian Federation?

Mr Day: I'm not in a position—I don't know the answer to that. In terms of your earlier question, my gut reaction would be that there is good coordination. From my experience, it's often through the Australian Criminal Intelligence Commission. That includes other Commonwealth agencies—but at the state level as well, bringing in state law enforcement. I certainly will take the question on notice and give it deeper thought, but I do see that degree of coordination on some of those issues that you've given an example of that might be of common interest.

CHAIR: Would you take on notice the question of what international agencies you deal with? We've tabled a document from the Russian Federation, and it's asserted here that there has been no contact on AML/CTF related requests for the last three years. Now, you might say to me that's someone else's problem, but would you like to make any comment on that—if the matter is correct, why that might be; and, if the matter is incorrect, perhaps advise us accordingly?

Mr Day: We're very happy to have a look at that and determine whether it is for the ATO to respond or not, but, certainly, we'll do our best to give you an answer.

Answer:

The ATO is unable to comment on the tabled letter from the Ambassador of the Russian Federation concerning information exchanges between the two countries' financial intelligence agencies.

This is a matter for the Australian Transaction Reports and Analysis Centre.

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ANSWERS TO QUESTIONS ON NOTICE

Agency: Australian Taxation Office
Topic: Major investigations over last 4 years

Question:

CHAIR: Thank you for that. Finally—again, you might wish to take this on notice—I'm interested in the statistical breakdown of actions you've taken on money-laundering, noncompliance, or serious financial crime that you're directly responsible for, matters you've investigated. These are major cases. I'm not talking about people fiddling their tax returns; I'm talking about major inquiries, as you define them. So matters that you've referred to law enforcement agencies, numbers of prosecutions and the numbers of gatekeepers who might have been excluded from professional practice, and let's take it over the last four years on an annual basis. Could you provide us with any advice on those, on a statistical basis, on questions that you've been involved in?

Answer:

Since being established in July 2015, the Serious Financial Crime Taskforce (SFCT) has:

- conducted more than 1400 audits and reviews;
- raised more than \$1.43 billion in liabilities;
- collected more than \$543 million in cash; and
- finalised 29 operations, resulting in 15 individuals being convicted and sentenced.

As of 31 October 2021, the SFCT has 56 ongoing operations and there are currently 46 individuals before the courts.

SFCT operations and prosecutions 2017-18 to 2020-21

Year	Number of operations finalised	Number of prosecutions concluded
2017-18	9	2
2018-19	6	0
2019-20	3	4
2020-21	6	6

SFCT operations are complex and can take multiple years to finalise, as can criminal prosecution proceedings.

The Australian Tax Office does not administer gatekeepers' registration with their professional bodies, and as such does not track or record any actions that have excluded them from professional practice. Professional associations like CPA Australia, the Australian Bar Association and regulators such as the Tax Practitioners Board and the Australian Securities and Investment Commission are responsible for registration of these professionals.

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ANSWERS TO QUESTIONS ON NOTICE

Agency: Australian Taxation Office
Topic: SFCT roles and effectiveness

Question:

CHAIR: You mentioned 10 agencies. On notice, could I get the list of agencies that are involved in the task force? I want to map, in my own head, for the committee's purposes, exactly who does what. I'm trying to get an understanding of how the compliance enforcement role works in practice, in terms of the interrelationship between the other Commonwealth agencies. Can you give us any advice on that—on notice if necessary?

Mr Day: With the second part of that question—maybe I focused too much on the first part—you're interested in the interrelationship. Could you clarify specifically what you're asking?

CHAIR: I'm trying to figure out who does what. It's the old story in the grand scheme of interagency relationships. You've indicated you're the lead agency in particular areas. I just want to know how the bureaucracy actually responds to these issues—how we share responsibilities for effective law enforcement, particularly so that, if it's possible, we can identify where the cracks are in the system. If you've got advice on that, it would be gratefully received. That's at the Commonwealth level. Recent royal commissions into non-banking financial institutions, for instance in the casino area, have highlighted some deficiencies in regard to the crossover with state regulation in terms of financial crime. I notice that the various commissioners' reports have suggested explicitly that they have uncovered quite serious crime. Could you indicate to us how you coordinate with responsible agencies at the state level?

Mr Day: I'll have a go at answering that for you, certainly in terms of the major agencies that form part of the Serious Financial Crime Taskforce. It's the Australian Federal Police, the Australian Criminal Intelligence Commission, the Commonwealth Director of Public Prosecutions, AUSTRAC, the ATO, ASIC, Border Force, Services Australia and Attorney-General's. That covers the major agencies. In terms of that interaction, certainly, whilst we come together as a task force and, at an operation level, we do coordinate our operations—involving all of those agencies bringing to bear their respective powers and responsibilities—it is probably important to bear in mind that, whilst I lead the task force, the individual agencies have their own statutory obligations and, when they're exercising their own powers, they need to make those decisions independently, of course. If you're starting to ask who takes responsibility for things that fall outside of tax crime, I think agencies like the Australian Federal Police and the Australian Criminal Intelligence Commission would probably be better placed to speak to you. I think it is their role.

CHAIR: I intend to ask a similar question. It's one of those areas where different agencies will have different points of view, legitimately, but I think it's important for us to grasp how the different agencies see their role, and we've got to ask the agencies concerned, directly, how they see their role. We've had a conversation about the beneficial ownership tests in this category. I would have thought it was a critical matter that all of you understand who owns what—who is actually involved in a transaction. And it's no good saying it's someone else's responsibility. We need to know where we go to find out information like that. So could you provide us with advice on what you consider to be the effectiveness of that coordination and if there are gaps, in your judgement, and particularly with regard to the states. I make this observation again: the royal commissions have highlighted quite serious deficiencies in the regulatory regime in regard to casinos. I think that's on the public record. I would have thought you'd be interested in some of those comments because of your direct responsibilities in questions of taxation. For instance, in the Finkelstein report in Victoria but also, I understand, in other inquiries in New South Wales, similar sorts of remarks are legitimately being made. How is it that our own Commonwealth agencies didn't seem to be aware of those things, or, if they were, there appears to have been no public comment on those matters? Clearly, an issue arises there.

Finally, there's international cooperation. You've mentioned there are some international taxation agreements that, as a matter of course, lead to consultations. While we've had advice here from the Russian Federation, and you're not directly the prime agency with regard to the AML/CTF matters, have you consulted on broader questions beyond the normal taxation agreements with the Russian Federation?

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Answer:

The Australian Taxation Office (ATO) leads the Serious Financial Crime Taskforce (SFCT), a joint agency taskforce that brings together the knowledge, resources and experience of relevant law enforcement and regulatory agencies to identify and address the most serious and complex forms of financial crime against the tax and superannuation systems.

The SFCT works with a range of international, Commonwealth and state and territory agencies, but primarily includes the membership of the Australian Federal Police (AFP), Australian Criminal Intelligence Commission (ACIC), Australian Securities and Investments Commission (ASIC), Attorney-General's Department, Australian Transaction Reports and Analysis Centre (AUSTRAC), Commonwealth Director of Public Prosecutions, Department of Home Affairs, Australian Border Force (ABF) and Services Australia.

The SFCT is a prescribed taskforce under taxation law that enables the lawful dissemination of tax information among agencies and allows for all intelligence and operations to be centrally coordinated. As lead of the SFCT, the ATO collaborates with member agencies to coordinate activities by leveraging the role and capabilities of each agency and who each exercise their existing powers and functions.

The SFCT works effectively with other Commonwealth, state and territory agencies, on a case-by-case basis, to support joint operations and investigations.

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ANSWERS TO QUESTIONS ON NOTICE

Agency: Australian Taxation Office
Topic: Evidence from Transparency International Australia

Question:

Senator O'NEILL: Would you mind having a look at the evidence from Mr Chevis and that of Transparency International Australia from yesterday? In his article, published in Transparency International Australia, Mr Chevis, who has long been involved in this area, said that the key takeaway that came down from the Bergin report into Packer obtaining a license for the casino in Sydney was:

The key takeaway is: if you want to get away with industrial-scale money laundering in Australia, do it behind a corporate veil and share the blame around.

It also indicates:

If you want your business—be it a bank, casino, tattoo parlour, nightclub, hedge-fund, property development company, winery or some other business—to handle large bags full of dodgy cash from shady characters without risking going to gaol, all you need to do is ensure that no one person is responsible for the entire process. Distributed responsibility currently provides protection from criminal culpability to everyone—from the teller, to the manager, to the CEO.

They are pretty extraordinary claims about the ease with which, in the absence of tranche 2, money is being laundered, and not just somewhere else in a big city with figures that might feature in an episode on ABC at 7.30 on a Saturday night; we're talking about the local shopping centre—the strip mall on the Central Coast. This is right down into businesses operating in every community around the country, who, if they were doing the right thing, should definitely be paying some tax. If you could take that on notice, I would appreciate it.

Answer:

The ATO targets businesses showing the characteristics of operating in the shadow economy by:

- identifying those operating outside of industry benchmarks;
- identifying businesses that are under-reporting transactions and income or over-claiming expenses using sophisticated data matching; and
- responding to community tip-offs.

The ATO has ramped up compliance activities to identify and deal with businesses and intermediaries operating in the shadow economy.

Additionally, the Shadow Economy Taskforce, led by the ATO, shares intelligence across 11 taskforce member agencies. Information disclosures are made for the purpose of investigating shadow economy activities.