



Australian Government

Inspector-General of Taxation

Review into the ATO's Fraud Control Management

Terms of reference

June 2017

BACKGROUND

On 20 June 2017, the Senate Economics References Committee (the Committee) requested that the Inspector-General of Taxation (IGT) examine how the Australian Taxation Office (ATO) addresses the risk of fraud and associated issues. This request follows recent events including those relating to Operation Elbrus and allegations of tax fraud that may be linked to abuse of position by a public official.¹ These events have attracted significant media attention and have led to calls for an independent review of the ATO's fraud control framework and, particularly, how it responds to inappropriate behaviours by its own staff.²

The IGT appreciates the Committee's concerns and the need to provide the community with independent assurance that the tax system is administered with high levels of integrity. Accordingly, on 27 June 2017, the IGT accepted the Committee's request and has commenced this review.³

Australia's democratic system of government consists of robust checks and balances which at the highest level includes the Parliament and its committees. Independent scrutineering agencies, such as the IGT, complement such Parliamentary oversight through in-depth investigation and public reporting providing greater transparency and increased community confidence in the integrity of the system. It is in this context that the IGT has accepted the Committee's request.

As a general rule, government regulators, including tax authorities, must operate, and be seen to operate, with the highest levels of integrity in order to legitimatise their authority, maintain the confidence and trust of those who they regulate and thereby elicit voluntary compliance.⁴ The community rightly expects such authorities and their officials to fulfil their responsibilities as trusted stewards of public funds and make every effort to protect public resources.⁵ There are also legal obligations that require them to take 'all reasonable measures to prevent, detect and deal with fraud'.⁶ Robust governance frameworks, regular risk assessment and fraud controls along with a culture that promotes ethical behaviour are necessary to appropriately address risks of fraud, corruption and abuse of power.⁷

The Commonwealth Government's multi-layered fraud control framework involves a range of individual agencies being responsible for performing specific roles. The development of the fraud control framework is overseen by the Attorney-General's

¹ Australian Federal Police, 'AFP smashes \$165 million tax fraud syndicate' (Media release, 18 May 2017).

² Jacob Greber, 'Too early for probe into Tax Office amid fraud fallout', *Australian Financial Review*, 21 May 2017; Noel Towell, 'Favours granted': ATO's Michael Cranston let taxpayer off prosecution hook', *Canberra Times*, 30 May 2017; Rachel Olding, 'ATO deputy commissioner Michael Cranston suspended during criminal probe', *The Sydney Morning Herald*, 13 June 2017.

³ This review is conducted under paragraph 8(3)(d) of the *Inspector-General of Taxation Act 2003*.

⁴ Eva Hofmann, Katharina Gangl, Erich Kirchler and Jennifer Stark, 'Enhancing tax compliance through coercive and legitimate power of tax authorities by concurrently diminishing or facilitating trust in tax authorities' (2014) 36(3) *Law and Policy* pp 290-313.

⁵ Attorney-General's Department (Cth), *Resource Management Guide No. 201 – Preventing, detecting and dealing with fraud* (July 2014) p 5.

⁶ *Public Governance, Performance and Accountability Rule 2014*, s 10.

⁷ Organisation for Economic Co-operation and Development, *G20/OECD Principles of Corporate Governance* (2015) pp 13, 46-50; Colin Ferguson, 'Fraud in Australia' (2012) 12 *University of Melbourne Faculty of Business and Economics Insights* pp 47-51; Dr. Adam Graycar, Australian Institute of Criminology, 'Fraud prevention and control in Australia' (Paper presented at the Fraud Prevention and Control Conference), Surfers Paradise, (24-25 August 2000) p 4.

Department⁸, including the overarching Commonwealth Fraud Control Policy⁹, the Fraud Rule¹⁰ and related guidance.¹¹ Individual agencies determine their own specific practices, plans and procedures to manage the prevention and detection of fraudulent activities.¹² The interaction of these layers may also involve a range of legislative acts and government agencies such as the Australian Federal Police (for investigation of serious and complex internal and external fraud) and the Commonwealth Director of Public Prosecutions (for prosecuting offences).¹³

As a key institution in the Australian economy, the ATO administers tax laws and other legislation which affects some 13.4 million individuals and 3.1 million businesses.¹⁴ The ATO also administers a significant portion of the superannuation system, which impacts the Australian communities' retirement savings, as well as other non-tax regimes such as excise, numerous grant schemes, the Higher Education Loan Program and the Agricultural Land Register. These functions are performed by some 20,600 employees under the leadership of four statutorily appointed Commissioners.¹⁵

In addition to collecting approximately 80 per cent¹⁶ of total net revenue in Australia (\$342 billion in 2015-16)¹⁷, the ATO is one of the largest repositories of valuable, often sensitive, financial information which is also used by other government bodies to determine eligibility for social support services such as pensions and child support.

The magnitude and importance of the ATO's role, both economically and socially is unparalleled in the Australian context and hence, it is not surprising that the community expects very high standards of integrity from its staff and the organisation as a whole. The ATO itself has acknowledged that its 'integrity is fundamental to maintaining community trust and confidence in the tax and superannuation systems'.¹⁸

Accordingly, in this review, the IGT will examine the ATO's fraud prevention and detection policies and how they are practically applied to ensure that its practices reflect the standards befitting of such a key institution. In doing so, the IGT will seek to engage and consult with the relevant Commonwealth agencies involved in the fraud control framework to draw upon their insights as well as minimise any overlap. The IGT is also mindful of not prejudicing any relevant court proceedings.

The terms of reference of this review, as established by the Committee, are set out below followed by guidance on preparing and lodging submissions, together with assurance that such submissions would be maintained in strict confidence by the IGT.

⁸ The Attorney-General's Department is responsible for coordinating fraud control policy: Attorney-General's Department (Cth), 'Fraud Control' (accessed 28 June 2017) <www.ag.gov.au>.

⁹ Attorney-General's Department (Cth), *Commonwealth Fraud Control Policy* (30 August 2016).

¹⁰ Above n 6.

¹¹ Attorney-General's Department (Cth), *Commonwealth Fraud Control Framework* (2014); Attorney-General's Department (Cth), *Resource Management Guide No. 201 - Preventing, detecting and dealing with fraud* (July 2014).

¹² Attorney-General's Department (Cth), *Commonwealth Fraud Control Framework* (2014) p C6.

¹³ Above n 12, p C5.

¹⁴ Commissioner of Taxation, *Annual report 2015-16* p12.

¹⁵ Above n 14, p 86.

¹⁶ Australian Bureau of Statistics, '5506.0 - Taxation Revenue, Australia, 2015-16' (issued 27 April 2017) <www.abs.gov.au>.

¹⁷ Above n 14, p 38.

¹⁸ ATO, 'Integrity' (accessed 28 June 2017) <www.ato.gov.au>.

TERMS OF REFERENCE

The terms of reference from the Committee's request are reproduced below:

A review to examine how the Australian Taxation Office addresses the risk of fraud and associated issues, including:

- the practices, procedures and structures to detect and act on fraudulent activity or potentially fraudulent activity, with a focus on staff conduct;*
- whether risk assessment techniques for identifying fraudulent activity or potentially fraudulent activity are adequate, with a focus on staff conduct; and*
- potential improvements to the practices, procedures and structures to detect and act on fraudulent activity or potentially fraudulent activity.*

The IGT may also examine other relevant concerns or potential improvements, including those that may be identified during the course of the review.

SUBMISSION GUIDELINES

All IGT reviews seek input and views from a wide range of stakeholders and are conducted openly and independently. This approach is particularly important in this review given the serious nature of fraud and its impact on public confidence.

Fraud can be defined as 'dishonestly obtaining a benefit, or causing a loss, by deception or other means'.¹⁹ Fraudulent activities may include, but are not limited to, theft, misappropriation of funds, wrongfully using Commonwealth information (for example, taxpayer records) or unauthorised provision of access to or disclosure of sensitive information.²⁰

The risk of fraud may arise from inside the agency (its officials or contractors) or outside of the agency (taxpayers or service providers)²¹ and may vary depending on their potential exposure to fraud.²² As this review has arisen largely because of fraud allegations that may have been linked to ATO officers, there would be a focus on fraudulent behaviour within the ATO. However, as internal fraud may involve or be part of a broader scheme involving external parties, the review may have to consider other forms of fraud such as phoenix activities and related director identity issues.

Those areas of the ATO which investigate fraudulent or potentially fraudulent activities of taxpayers, for example the Private Groups and High Wealth Individuals area (PGH)²³, may face higher risk of internal fraud and are likely to be an area of particular focus in this

¹⁹ Above n 12, p C7.

²⁰ Above n 5, p 8.

²¹ Ibid.

²² Above n 12, p C10.

²³ The Australian Taxation Office merged its Aggressive Tax Planning and Serious Non-Compliance areas into the Private Groups and High Wealth Individuals area. The newly expanded Private Groups and High Wealth Individuals area was operational by 7 July 2014.

review. As noted earlier, those ATO personnel, who may be linked to Operation Elbrus, were high ranking officers within PGH.²⁴ PGH has also led major programs such as the Project DO IT tax amnesty²⁵ and has the carriage of the ATO's responsibility with respect to the Government's inter-agency Phoenix Taskforce.²⁶

More broadly, this review will examine the ATO's practices, procedures and structures to prevent, detect and address fraudulent or potentially fraudulent activities including the use of diagnostic and mitigation tools and how risk management is embedded into its operations and business processes. The review will also consider the cultural or behavioural aspects within the ATO and how the policies are communicated and enforced within the organisation.

The IGT welcomes submissions from all interested members of the community, including tax and legal practitioners, fraud prevention specialists, current and former ATO officers as well as taxpayers. We envisage that your submission will outline your relevant experiences in dealing with the ATO, be it from an internal or external perspective. We would be particularly interested in any concerns you may have had about the conduct of ATO officers or contractors, its impact on you, whether you reported your concern to the ATO or any other body and the outcomes of such reporting. These experiences may include interactions in an audit or litigation setting.

In addition to international best practice standards, the IGT is also interested to hear about your expectations of the ATO fraud control framework and any opportunities for improvement, be they structural, procedural or behavioural.

CONFIDENTIALITY

Submissions provided to the IGT are maintained in strict confidence (unless you specify otherwise). This means that the identity of the taxpayer and advisers as well as any information contained in submissions will not be made available to any other person, including the ATO. Section 37 of the *Inspector-General of Taxation Act 2003* safeguards the confidentiality and secrecy of such information provided to the IGT – for example, the IGT cannot disclose the information as a result of a Freedom of Information (FOI) request, or as a result of a court order generally. Furthermore, if such information is the subject of client legal privilege (also referred to as legal professional privilege), disclosing that information to the IGT will **not** result in a waiver of that privilege.

²⁴ Commonwealth, Senate Economics Legislation Committee, *Proof Committee Hansard – Estimates*, 30 May 2017, pp 9-17.

²⁵ ATO, 'Project DO IT – the deadline is fast approaching' (accessed 28 June 2017) <www.ato.gov.au>.

²⁶ ATO, 'Phoenix Taskforce continues to put pressure on pre-insolvency industry' (accessed 28 June 2017) <www.ato.gov.au>; ATO, 'Inter-Agency Phoenix Forum minutes - 5 August 2015' (accessed 28 June 2017) <www.ato.gov.au>.

LODGMEN

The closing date for submissions is 28 July 2017. Submissions can be sent by:

Email to: AFCM@igt.gov.au

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