



Second Commissioner of Taxation

Mr Ali Noroozi
Inspector-General of Taxation
GPO Box 551
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Dear Ali

Review into the ATO's Fraud Control Management

Thank you for the opportunity to comment on the final draft of your report on the review into the *ATO's Fraud Control Management*.

The ATO recognises that this report thoroughly examines a challenging area in light of the revelations associated with Operation Elbrus and notes the overall IGT findings that:

- there is no evidence of actual internal fraud or corruption of a systemic nature within the ATO
- the ATO generally has sound systems in place for managing risks of internal fraud.

At the outset, the ATO highlights that we already have an extensive range of strategies, processes and procedures in place to address the underlying issues considered in the this review.

As you have reflected in your report, the examination of ATO practices, procedures and structures, and how they are enforced, is detailed. As the report also recognises, the ATO has undertaken reviews since Operation Elbrus and work following on from these reviews address a significant number of matters dealt with in the recommendations to this report. Where the ATO has agreed with the review's recommendations, we see this as supplementing the already solid foundations the ATO has in place to address the risk of internal and external fraud and associated issues.

The ATO agrees, has implemented, or agrees in part with the 13 recommendations in the report that are not a matter for government. We note within those 13 recommendations there are 41 elements – we agree with 32 of those elements, have already fully implemented five elements and disagree with the remaining four elements.

In this regard, you should note that where our response indicates that a recommendation has already been fully implemented, we will provide evidence of this to our Audit and Risk Committee who will, as per our normal processes, assure the implementation.

In relation to those elements of the recommendations with which we disagree, our position has been informed by the scope of the recommendation and the risk that is being addressed by it. In particular, in a number of these cases, our view is that our

existing strategies, process or procedures are a proportionate response to the risks presented, and accordingly no further action is warranted.

Our detailed response to the review is attached at Annexure 1.

We wish to take this opportunity to reiterate the ATO view that some details in Appendix B are not necessary in light of the purpose of the review. The review's terms of reference focuses on how the ATO addresses the risk of internal and external fraud and associated issues. It is appropriate for Appendix B to consider how ATO practices, procedures, structures and risk assessment techniques were applied in relation to the Plutus arrangements, and there is material appearing in Appendix B which does go to this end.

However, the ATO considers the material dealing with information on the periphery of the arrangements or some of the history associated with key alleged participants, all of which was sourced from media reports, to be in a different category. This material is presented in such a way that a reader may elevate these to matters of fact, when this cannot be verified at this point. In any case we consider the material is not required to sustain the IGT's findings and recommendations.

We also wish to offer our view on the issues dealt with in Appendix D, which is about external fraud risks in the precious metals industry. The ATO view is that these risks reflect significant complexity in the arrangements that are in place in some parts of this industry. The compliance risks have evolved as has the approach taken by the ATO to address them. Our view is that a number of entities operating within the precious metals industry have engaged in a significant fraud on the Australian community with many schemes utilising missing traders/carousel fraud and liquidation or phoenix of entities (bullion dealers, intermediaries and refiners). We undertook extensive compliance activity to identify the schemes with many of those entities involved now in litigation with the Commissioner. The law has now been amended to address the fraudulent activity in the precious metals industry.

The ATO is of the view that the response to this risk was appropriate having regard to the complexity of the issues and the evolution of the risk. Notwithstanding this, the ATO acknowledges improvements can be made in respect to how it identifies and addresses compliance risks and will endeavour to implement those improvements as noted in our response to the recommendations made in Chapter 6 of the report.

Finally, I would like to acknowledge the efforts of all involved in undertaking this review.

If you require further information on our response, please contact Ben Kelly on (02) 62163308.

Yours sincerely



Neil Olesen
Second Commissioner
Australian Taxation Office



Jacqui Curtis
Chief Operating Officer
Australian Taxation Office

Date: 7 June 2018

IGT Review into the ATO's Fraud Control Management – Annexure 1

Potential Recommendation 3.1

The IGT recommends the ATO:

- a) conduct a risk assessment of every position in the organisation to determine the level of pre-employment and ongoing checks required and periodically reassess the risk associated with moderate to high risk positions;
- b) use criminal intelligence databases to determine whether candidates for high risk positions are known to law enforcement, either by reason of their own conduct or that of their associates or relatives;
- c) as part of its pre-employment checks:
 - i) depending on the level and types of risk associated with the relevant position, require candidates to provide declarations about matters such as their financial circumstances; and
 - ii) request information, such as those relating to misconduct, from previous employers of external candidates; and
- d) require all employees to make an annual disclosure about matters that are assessed in the pre-employment checks of their current position and periodically check such disclosures at a frequency rate reflective of the risk associated with the relevant position.

ATO response

- a) **Agree**
The ATO will conduct the risk assessments using the various job types to assess the likely integrity risks.
- b) **Agree**
The ATO will utilise such information for high risk positions to the extent that it is lawful and considered appropriate.
- c) (i) **Agree**

(ii) **Disagree**
The ATO undertakes thousands of engagements each year, the bulk of which are not considered to be in high risk positions. Existing processes involve the declaration of past misconduct by candidates and referee checks with the candidate's current manager / employer. Verification over and above this is done using a risk based approach. A range of other controls are also in place to reduce the risk of fraud from those working for or on behalf of the ATO.
- d) **Disagree**
All staff undergo security, privacy and fraud training to ensure they are aware of their integrity obligations and the ATO undertakes regular awareness campaigns to remind staff to disclose any changes in their circumstances. Additionally, 40% of ATO staff are subject to annual security discussions with their manager as a result of holding a security clearance. This is reflective of the higher risk involved. To further assure the ongoing suitability of ATO personnel, the ATO proposes to introduce a declaration process for all staff as part of the building pass renewal process (every five years).

Potential Recommendation 3.2

The IGT recommends the ATO formalise its fraud risk controls relevant to SES officers and officers in high risk roles including the periodic rotation of officers.

ATO response

Agree

Potential Recommendation 3.3

The IGT recommends the ATO strengthen its fraud awareness and ethics training by:

- a) requiring new staff to complete the mandatory fraud training during their induction process and prior to allowing them access to taxpayer information;
- b) withdrawing access to ATO systems for contractors who fail to complete the mandatory training package within a reasonable timeframe;
- c) incorporating into the assessments of mandatory training packages, a series of practical scenarios that requires staff to apply ethical principles;
- d) requiring managers to discuss with new starters ethical matters as they apply to their work area, including by way of practical scenarios, and ensuring that those managers receive sufficient guidance and support for this process to take place shortly after new starters have completed the mandatory fraud training; and
- e) increasing the level of staff interaction in its mandatory fraud training particularly those delivered by the Fraud Prevention and Internal Investigations unit.

ATO response

a) **Agree**

b) **Agree**

c) **Implemented**

d) **Agree**

e) **Agree**

The ATO has already expanded the channels which employees engage, using internal communication products, which allows for real-time engaging discussions.

Potential Recommendation 3.4

The IGT recommends that the ATO:

- a) update its conflict of interest guidance document to clarify ambiguities and provide further explanation, including practical examples, as well as require officers to register their conflicts of interest as soon as they become aware of them;
- b) bolster its processes for ensuring that former colleagues of current ATO officers do not obtain information or exert influence by virtue of their previous associations;
- c) improve awareness and compliance with its conflict of interest policies and guidance including through its active promotion by the Commissioners and other senior executives;
- d) conduct periodic reviews on the central conflicts of interest register to identify trends, verify the accuracy of the declared information as well as ensure that the appropriate management actions have been taken to address the conflict; and
- e) seek ways to capture and analyse information for detecting undeclared conflicts of interest as part of some of its existing checks as well as from other sources.

ATO response

- a) **Agree**
Enhancements to the Conflict of Interest Chief Executive Instruction and guidance material have been completed. The ATO will consider the report's findings to determine if further enhancements are required.
- b) **Implemented**
- c) **Implemented**
- d) **Agree**
The central conflict of interest register is monitored and reviewed in line with the recommendation. However, further work will be undertaken to mature these processes.
- e) **Agree**
The ATO regularly analyses registers and declarations, and use data mining activities to detect undisclosed conflicts of interest. Further work will be undertaken to mature these processes.

Potential Recommendation 3.5

The IGT recommends the ATO improve the policies regarding senior officer intervention by;

- a) specifying the circumstances in which senior officers are authorised to intervene in individual matters;
- b) where senior officers receives requests to intervene in matters outside their area of responsibility, requiring such requests to be transferred to their counterpart in the relevant area;
- c) requiring intervening officers to document the initial request and all subsequent actions, including the details of decisions made, supporting reasons and resulting outcomes as well as briefings provided to the original decision maker on a single centralised system and in a form which is transparent and easily accessible; and
- d) periodically review senior officers' compliance with such policies.

ATO response

a) **Agree**

b) **Agree**

c) **Agree**

The ATO agrees that changes can be made to our existing records management approaches to make the documenting and recording of intervention requests more transparent and easily accessible to all ATO stakeholders in a case. The ATO will do so in a way that seeks to prevent duplication of effort and the imposition of undue process. As a matter of principle, the ATO considers it is critical that its senior officers maintain an open and healthy engagement with our clients and other participants in the tax system. This is central to putting our clients at the centre of everything we do.

d) **Agree**

Potential Recommendation 3.6

The IGT recommends that the ATO publish more information about its Independent Assurance of Settlements process such as identified improvement opportunities and work undertaken to implement them.

ATO response

Agree

Potential Recommendation 3.7

The IGT recommends the ATO consider incorporating, into its Organisational Behavioural Assessment process, other data sets including employees' technology usage and conflicts of interest disclosures.

ATO response

Implemented

Potential Recommendation 4.1

The IGT recommends the ATO improve its ability to detect internal fraud and corruption by such means as:

- a) acting on the advice it received in its 2017 Corruption Risk Review, including requiring each business line to describe, in detail, potential fraud and corruption events in their area;
- b) retrospectively analysing events surrounding any significant internal fraud case and recording all findings and resulting actions in one central library for future use; and
- c) contemporaneous recording of officers' requests to access information about a particular taxpayer and ensuring availability of such records to its Fraud Prevention and Internal Investigations Unit.

ATO response

- a) **Agree**
Work is already underway to implement a new enterprise fraud and corruption risk register and the ATO will continue to refine our fraud control strategies.
- b) **Agree**
Significant fraud event profiles, to an extent, are already provided in our Organisational Behavioural Assessment and annual reporting. The ATO will draw fraud event profiles from these reports and other intelligence to form a central register.
- c) **Disagree**
The ATO already requires our staff to use Siebel as a contemporaneous record of taxpayer requests, including action, interaction or decisions directed by ATO staff. An 'audit trail' captures such requests and Fraud Prevention and Internal Investigations interrogate this system as part of the investigation process. All ATO staff are required to make notes and follow the processes outlined in the Records Management Chief Executive Instruction and the 'Guidelines for effective notes in compliance' document.

Potential Recommendation 4.2

The IGT recommends that, with respect to its internal fraud investigations, the ATO:

- a) periodically review the appropriateness of sanctions imposed;
- b) conduct appropriate and periodic external and internal quality assurance reviews and publish the results of such reviews;
- c) provide more public information about the investigation process such as timeframes and procedural safeguards; and
- d) develop a formal complaints handling process as well as inform its staff about the process and how such complaints may be lodged.

ATO response

- a) **Agree**
- b) **Agree**
Annual quality assurance has already been incorporated into the Fraud Prevention and Internal Investigations Standard. The ATO will publish results commensurate with the audience and balance transparency with investigative integrity and privacy.
- c) **Agree**
The ATO will include, in our internal communications, material which outlines the standards for internal investigations.
- d) **Agree**

Potential Recommendation 5.1

The IGT recommends the ATO strengthen its oversight of internal fraud risks by:

- a) bolstering the independence of its Audit and Risk Committee by ensuring that, at the very least, the majority of its members, including the chair, are external to and independent of the ATO;
- b) maintaining the role of the Integrity Advisor and providing him or her with all necessary access and support as well as enabling ATO staff to discuss ethical or fraud related concerns with him or her;
- c) requiring the Assistant Commissioner of Fraud Prevention and Internal Investigations to regularly report internal fraud risk trends and issues to the Commissioners and other ATO Executives;
- d) conducting periodic reviews of the ATO's corporate integrity indicators and providing the results and actions arising from them to the Commissioners and other ATO Executives; and
- e) augmenting the existing induction program for new SES officers, recruited from outside the ATO, with specific training on ethical standards and the highest level of integrity expected at such an organisation.

ATO response

- a) **Implemented**
- b) **Agree**
The ATO will periodically review the effectiveness of the role of Integrity Advisor as part of our ongoing integrity assurance activities.
- c) **Agree**
The ATO notes the Audit and Risk Committee already provides assurance to the Commissioner that the ATO has processes and systems in place to detect, capture and respond to fraud and corruption risk. The ATO will strengthen our current reporting processes for the Assistant Commissioner, Fraud Prevention and Internal Investigations to inform the ATO Executive of key fraud risk issues and insights.
- d) **Agree**
- e) **Agree**

Potential Recommendation 6.1

The IGT recommends that the ATO improve the prevention of external fraud by:

- a) requiring its officers to routinely consider whether risks encountered in their case work indicate a potential weakness in the system, ensure such risks are promptly prioritised and investigated as well as publicly reporting the outcomes where appropriate; and
- b) improving its media strategy to increase the reporting of its tax crime investigations, prosecutions and recoveries of proceeds of crime.

ATO response

a) **Agree**

As set out in the report, our existing *Tax Crime and External Fraud* Chief Executive Instruction (CEI) outlines the responsibility of staff to actively assist in preventing, detecting and reporting tax crime by referring suspected tax crime matters to the Private Groups & High Wealth Individuals (PGH) business line. We will consider how this policy might be enhanced to address the issue highlighted in this recommendation. The ATO already has initiatives in place to routinely keep ATO staff informed of the matters they identify and report. The ATO will seek to identify ways to publicise the outcomes where action is taken in these circumstances, which will include a consideration of the best channel through which this might occur.

b) **Agree**

The ATO has a well-established integrated approach to communicating about tax crime matters, and specifically on the results of prosecutions and investigations. We continually review our communications approaches in order to ensure they remain current and contemporary.

Potential Recommendation 6.2

The IGT recommends the ATO:

- a) better inform the public about making tax evasion referrals including by specifying the type of information required and assuring them of confidentiality;
- b) formalise and document consistent processes, across all business lines, for dealing with tax evasion referrals; and
- c) publically report aggregate data about the outcome of its investigations of tax evasion referrals including the extent to which they give rise to compliance activities, any identified trends and the most common types of referrals.

ATO response

a) **Agree**

b) **Agree**

The ATO will seek to formalise and document procedures for all business areas that receive and action tax evasion referrals from the Tax Evasion Reporting Centre, ensuring they are centrally recorded. The ATO notes that the detail of some processes may differ between business areas due to the volumes of referrals received and the nature of those referrals.

c) **Agree**

Potential Recommendation 6.3

The IGT recommends that the ATO consider:

- a) reporting ATO officer referrals, about potential fraud, which have led to successful prosecution along with appropriate recognition; and
- b) requiring all its officers to complete more in-depth training about the range of behaviours and events which may be indicators of fraud being perpetrated.

ATO response

a) **Agree**

b) **Disagree**

The wording of this element of the recommendation suggests that the 'in-depth training about the range of behaviours and events which may be indicators of fraud being perpetrated' will need to be managed through a mandatory training process. This requirement does not address the need for the training material to recognise the different roles and exposure to fraud matters faced by staff in order to ensure it is relevant and appropriate, and thereby properly supporting their ability to identify and report possible fraud matters.

The 'Security, privacy and fraud' training package is a mandatory training requirement for all staff, which includes guidance and direction for staff in respect to their requirement to report matters of suspected external fraud. In support of this, the 'Introduction to tax crime' training package is available and promoted to all staff as a supplementary training package, providing greater detail and illustrative examples of external fraud matters.

Potential Recommendation 7.1

The IGT recommends that Government consider a broad review of the current arrangements for interagency collaboration for combating tax fraud including the following key issues:

- a) optimal models for information sharing between agencies;
- b) the extent to which specialist capabilities should be shared amongst agencies and mechanisms to ensure that each agency has appropriate access to such capabilities;
- c) structure and funding for interagency taskforces including whether they should be headed by an independent leader with appropriate powers and secretariat;
- d) permitting the ATO to use telecommunication interception information obtained in joint investigations of prescribed taskforces in raising assessments for those who are subjects of such investigations; and
- e) in appropriate circumstances, allowing the ATO to issue production orders to third parties such as financial institutions who hold relevant information about persons or transactions of interest.

ATO response

- a) **Matter for Government**
- b) **Matter for Government**
- c) **Matter for Government**
- d) **Matter for Government**
- e) **Matter for Government**