



Australian Government
Australian Taxation Office

Tax havens and tax administration

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PUBLISHED BY

Australian Taxation Office
Canberra
October 2007
JS 8471

Foreword



We published the first version of this booklet in 2004. Since then tax havens have remained high on the global agenda and we have continued our work to counter abusive arrangements involving tax havens and lack of transparency – and will keep on doing so.

Australians who seek to conceal their tax obligations leave other Australians to bear a greater tax burden. There is no philosopher's stone that, through alchemy, transforms Australian or foreign source income derived by an Australian resident into non-taxable income in Australia by the mere transmission through, or concealment in, a tax haven. Abusive arrangements of this kind, if left unchecked, undermine community confidence in our tax system as well as the system's integrity.

Our work in this area is multi-faceted. We are working with other tax administrations on joint compliance approaches and sharing intelligence and information under our tax treaties. We are also working with international forums, such as the Organisation for Economic Co-operation and Development. Australia is negotiating with cooperative tax havens so we can exchange relevant information.

We have in place a compliance program to address promoters and participants in abusive arrangements using tax havens, often based on a multi-agency approach. For example, our joint investigations with other agencies, including the Australian Federal Police, the Australian Crime Commission, the Australian Securities & Investments Commission and the Australian Transaction Reports and Analysis Centre, signal that the Commonwealth will bring to bear its full arsenal of sanctions to counter tax evasion and fraud.

Project Wickenby is a prime example of this joint taskforce approach. Project Wickenby's immediate focus is to take decisive action against identified promoters and their Australian associates and clients. Additional funding for Project Wickenby came with a clear message that participants and promoters shown to be involved can expect to have the full force of the law applied to them. As at 30 June 2007, the project had led to a number of arrests and charges arising from 19 criminal investigations. Over 100 civil investigations were being conducted and we had raised tax liabilities of about \$51 million, as well as indirectly improving compliance levels.

We will also use other new approaches such as the promoter penalty legislation which provides substantial increased penalties – for a body corporate, up to \$2.75 million or twice the profits from the scheme. This legislation is aimed at eliminating unscrupulous operators who peddle unsustainable arrangements to the detriment of both taxpayers and ethical advisers.

Another initiative is the pilot project we launched in July 2007, where the offshore branches or subsidiaries of some Australian banks are contacting their Australian customers with offshore accounts providing them with information on our activities. We have given relevant taxpayers the opportunity to make voluntary disclosures to put their tax affairs in order. Where they fail to do so, the law imposes heavy penalties for evasion or fraudulent conduct which may include criminal prosecution and jail.

Our objective is to ensure there is a level playing field for tax-compliant taxpayers. We will do everything possible to make it easy for people to comply with the law and we will support those people who want to do the right thing – while ensuring there are real and tangible risks for those who don't.

Although Project Wickenby and other activities have drawn the public's attention to the risks associated with using abusive tax haven arrangements, we're still concerned about those investors who are unwittingly lured into tax haven schemes and arrangements and who subsequently find they are potentially liable to pay bills for back taxes, penalties and interest. This publication will help these people make informed decisions and may persuade those thinking about venturing into such abusive arrangements to think better of it.

If you have any doubts about your potential Australian tax liability, you should seek independent professional advice and, where appropriate, please contact us to make a voluntary disclosure about your offshore financial arrangements. Penalties are substantially reduced for those who make voluntary disclosures, so this is an opportunity for everyone to get their tax affairs in order.



Michael D'Ascenzo
Commissioner of Taxation

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Overview

Most transactions between Australia and tax havens are lawful international dealings (in the sense that they take advantage of, among other things, the tax benefits available in those jurisdictions) and not attempts to evade or avoid tax payable in Australia.

Tax havens seek to attract international trade and investment by establishing financial, legal and tax systems that may be beneficial to some activities. Modern communication methods, the internet and people's mobility have made it easier for financial services to be provided from previously remote locations.

The systems that may make tax havens attractive for legitimate purposes can also be used in arrangements designed to evade or avoid paying tax elsewhere, or for other criminal pursuits. Some unscrupulous people try to exploit these systems to evade Australian tax.

Abusive use of tax havens is a problem for many countries. However, our analysis of Australia's situation suggests that the risk of abusive transactions with tax havens may not be as great as other countries, but has increased, particularly among individuals and small businesses.

While Australia's revenue is at risk, those who participate in abusive tax haven arrangements also run risks. Some participants lack financial awareness and – through poor or unethical advice, lack of knowledge or wishful thinking – may believe that an abusive arrangement is legitimate.

Our advice to these people is:

- be wary of secrecy – any arrangement that involves concealment should be treated with suspicion, and
- check before you invest – in particular, get independent advice from a professional who has no connection to the arrangement.

To help people avoid becoming entangled in abusive tax haven arrangements, we issue alerts on our website about some emerging schemes we are concerned about and we explain risky arrangements in publications such as this one. We seek community input to whatever we are doing and publicise our priorities each year in our compliance program. For example, our *Compliance program 2007–08* highlights the abusive use of tax havens as a key focus area.

The important thing for people already involved in abusive arrangements is that they come to us before we approach them. Taxpayers who voluntarily disclose their situation may have their tax penalties waived or substantially reduced and, for all but a very few, the matter can be put to rest. The tax law in relation to penalties is less flexible once we begin investigating a case. However, even then the tax law gives some concession to people who cooperate and seek to correct their tax arrangements.

As for promoters, the new ‘promoter penalty’ laws have increased our power to deal with those who promote abusive arrangements and include substantial monetary penalties.

We use a wide range of intelligence and techniques to identify abusive arrangements. An important source of information is the Australian Transaction Reports and Analysis Centre (AUSTRAC), which monitors international transactions in the financial system. We also have access to information from financial institutions, as well as transaction data for credit and debit cards that have been issued offshore and used in Australia. We receive intelligence from the public, tax professionals, other Australian agencies and international tax administrations.

Our capability to investigate tax haven arrangements has been expanded and we are not working alone. We have a dedicated offshore compliance program, and where we suspect significant tax evasion or criminal activities, we collaborate with law enforcement agencies on joint investigations. The best known of these is Project Wickenby, a multi-agency taskforce established in 2004 to address abusive international tax arrangements more systematically, by linking taxpayers, promoters and the various havens (see page 38). These strategies enhance community confidence in our ability to deter, detect and deal with those who use international structures to hide their assets or income.

We also cooperate with other countries on emerging schemes and develop joint response strategies. Under our international tax treaties, we share information about taxpayers engaged in abusive arrangements.

Tax havens in context

01

In Australia, residents are subject to tax on their worldwide income. The Australian tax system protects confidentiality and privacy but allows us to verify that taxpayers are complying with the law.

Most dealings with tax havens are within the terms of the law.

Unfortunately, some Australian residents try to exploit the secrecy of tax havens to conceal their assets and income and so avoid paying the amount of tax properly payable under the law.

Tax haven abuse is a worldwide issue. Mr Jeffrey Owens, Director of the Center for Tax Policy and Administration at the Organisation for Economic Co-operation and Development (OECD), testified to this in May 2007 before the United States of America's Senate Finance Committee on Offshore Tax Evasion. He said:

We know the offshore evasion problem is big but we do not have a precise estimate of the amount of tax at risk. Given that the main reason that tax evaders go offshore is the secrecy provided to enable them to hide their assets and income from their tax administrations, this is not surprising. We can approach the issue by looking at the size of the offshore sector and its tremendous growth over the last decade:

- Using data from the BIS [Bank for International Settlements], IMF [International Monetary Fund] and OECD, we estimate that a total of \$US5–7 trillion is held offshore.
- Brazil reports a commercial deficit of \$US4 billion with the Caribbean islands.
- Singapore has now joined Luxembourg and Switzerland as the top private wealth centers of the world.
- The Bahamas is now ranked among the top five locations in the world for offshore mutual funds and trust funds and has also developed a significant inter-bank market.
- The Cayman Islands are the world's fifth-largest banking center and the first among offshore jurisdictions, with a prominent position both in the inter-bank business and in private banking.
- The British Virgin Islands has developed into one of the most successful centers for international business companies. Conservative estimates put the number of shell companies at over 300,000.

What is a tax haven?

Tax havens are countries with secretive tax or financial systems. They also have minimal or low taxes for non-residents.

The global community recognises that every country is entitled to run its tax system as it sees fit. This means a country may, for example, choose to create a low-tax regime to attract international investment.

Problems can arise, however, when a country's tax or financial system is secretive. This lack of transparency can be harmful to the tax systems of other countries if it enables people to conceal their assets and avoid tax in their own country. To be able to enforce its own tax regime, particularly where its residents engage in international dealings, a country will often require access to information held by other governments, regulators or banks.

The OECD uses two yardsticks to assess whether a country is a tax haven:

- lack of transparency, and
- lack of effective information exchange.

These criteria are also used by Australia, which is a member of the OECD.

Lack of transparency

The OECD believes laws should be applied openly and consistently and that the information tax administrations need to determine a taxpayer's situation should be made available. Secret rulings, negotiated tax rates and other practices that fail to apply the law openly and consistently are examples of lack of transparency. Inadequate regulatory supervision or a government's lack of legal access to financial records are part of the problem.

Lack of effective information exchange

Laws that strictly protect a bank's secrecy or restrict administrative practices, prevent tax administrations from scrutinising arrangements and inhibit the exchange of information with other countries.

If tax administrations cannot exchange information effectively, it is more difficult and costly to determine which transactions between Australia and tax havens are legitimate and which are not. In many cases, tax administrations have to operate on the basis of reasonable inference and require that the taxpayer prove the bona fides of the arrangement.

For a country to no longer be regarded as a tax haven, it needs to have:

- provisions for collecting certain banking, ownership and accounting information, and
- a legal framework for access to information and the exchange of relevant information with other tax administrations.

In March 2002, the OECD's global forum on taxation developed a model agreement for information exchange on tax matters. Australia has based its tax information exchange agreements (TIEAs) on this.

In some circumstances we can issue an 'offshore information notice', asking a taxpayer for information located outside Australia that is relevant to their assessment. Failure to provide the information may mean it will not be admissible in proceedings disputing the taxpayer's assessment.

Current tax havens and recent developments

The number of tax havens is gradually shrinking but remains a concern. We currently consider 33 jurisdictions to be tax havens (see box on page 8). Most of these have become 'non-OECD participating partners' and have committed to eliminating harmful tax practices through transparency and effective information exchange. Australia continues to review this list and will remove a country once a TIEA is in place or there is an agreement to sign one.

Australia has begun a comprehensive program to negotiate TIEAs with a number of countries. We concluded agreements with Bermuda in November 2005, Antigua Barbuda in January 2007, and the Netherlands Antilles in March 2007; we are negotiating agreements with another seven countries. In addition, the Isle of Man has agreed to sign an agreement with Australia.

OECD principles of transparency and information exchange for tax purposes

- Existence of mechanisms for exchange upon request.
- Exchange of information for purposes of domestic tax law in both criminal and civil matters.
- No restrictions of information exchange caused by application of dual criminality principle or domestic tax interest requirement.
- Respect for safeguards and limitations.
- Strict confidentiality rules for information exchanged.
- Availability of reliable information (in particular, bank, ownership, identity and accounting information) and powers to obtain and provide such information in response to a specific request.

Tax Office identified tax havens	
Andorra*	Malta**
Anguilla	Marshall Islands
Aruba	Mauritius
Bahamas	Monaco*
Belize	Montserrat
Bahrain	Nauru
British Virgin Islands	Niue
Cayman Islands	Panama
Cook Islands	Samoa
Cyprus	San Marino
Dominica	Seychelles
Gibraltar	St Kitts & Nevis
Grenada	St Lucia
Guernsey	St Vincent & Grenadines
Jersey	Turks & Caicos Islands
Liberia	Vanuatu
Liechtenstein	
*These tax havens have not yet committed to transparency and effective exchange of information.	**Malta has a double taxation agreement with Australia.

Tax evasion and bank secrecy

Bank secrecy is often a feature of tax havens. However, some countries that are not low-tax jurisdictions have bank secrecy arrangements that may be exploited to conceal income and evade tax because they do not have effective tax information exchange with Australia.

We are generally unable to obtain relevant information from these countries about Australian taxpayers' offshore bank accounts. In these cases, we use other sources of intelligence, including AUSTRAC, to identify abusive arrangements and we can seek further information using offshore information notices. If sufficient information is available to provide a reasonable basis for the calculation of the taxpayer's income, we can raise a default assessment under section 167 of the *Income Tax Assessment Act 1936* (ITAA 1936).

Australia is actively involved with the OECD in seeking to improve the information flow from countries where bank secrecy is an issue.

In a related development, which does not directly affect Australia, the European Union (EU) has concluded agreements on the taxation of savings income with several member and non-member states. Certain states/jurisdictions have agreed to withhold tax on interest payments to account holders who are resident in other EU countries.

Extent of tax haven use

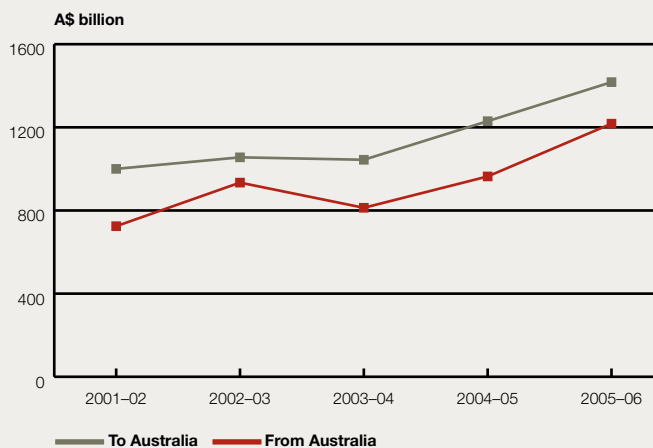
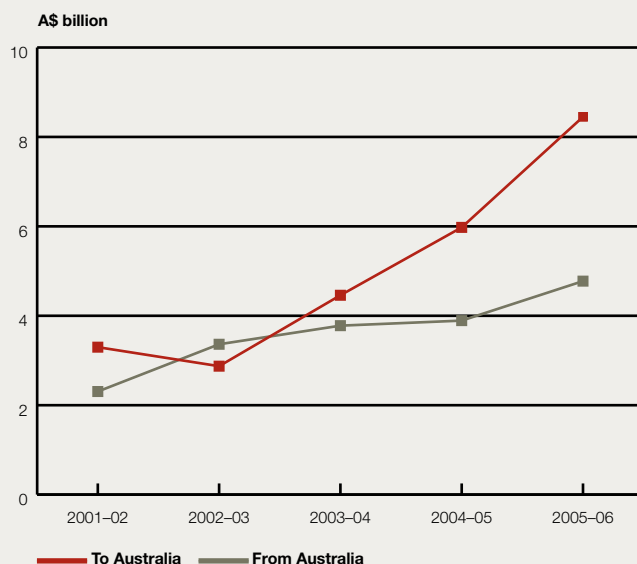
While the flow of Australian dollars to and from tax havens is significant, it needs to be seen in context. For example, in 2005–06 about A\$5.3 billion flowed from Australia to tax havens. This is 0.37% of the A\$1,417.4 billion that flowed from Australia to all countries.

The graphs opposite, sourced from AUSTRAC information, show trends for the total flow of funds to and from all countries worldwide and to and from tax havens.

Analysis of the value of international funds transfer instructions recorded by AUSTRAC indicates that the number of these dealings with tax havens has increased at a rate higher than the rate for such dealings with our major trading partners. Also, more individuals, micro businesses and lower-end small to medium enterprises are now using tax havens (although in aggregate the number is relatively small).

Some fund flows to countries other than tax havens may also represent a tax risk if that country is being used as a conduit to channel the funds to a tax haven. For example, arrangements using countries such as New Zealand have been marketed. We are investigating the promoters of these arrangements and working closely with our tax treaty partners – especially New Zealand – in relation to any conduit flows.

While Mr Jeffery Owens observes that offshore evasion is big internationally and that there is no way to have a precise estimate of the amount of tax at risk, the lack of an inheritance tax, the relative size of the flow of funds from Australia to tax havens, the law-abiding ethics of most Australians, the existence of AUSTRAC, our own vigilance in this area and the message we are sending from our Project Wickenby activities suggest that the risk to Australia may be relatively smaller than for many other countries.

Figure 1: Funds to and from all countries**Figure 2: Funds to and from tax havens**

The amounts in Figure 2 do not include funds to or from Bermuda, Antigua Barbuda, the Netherlands Antilles or the Isle of Man, which are no longer regarded as tax havens because they have signed (or have agreed to sign) a TIEA with Australia.

The law in Australia

Broadly, under Australian tax law a resident is subject to Australian tax on their income from all sources inside or outside Australia. A non-resident is subject to Australian tax only on income from sources in Australia, as well as certain other amounts such as capital gains on some assets.

Residency for tax purposes and income source are central concepts in our tax laws. For example, a company that is not incorporated in Australia may nevertheless be regarded as resident and taxable in Australia if it carries on business in Australia and has its central management and control here (see Taxation Ruling 2004/15).

As Australian residents are taxed on their worldwide income, they must report all relevant foreign income in their Australian income tax return.

However some foreign-source income of Australian residents may be exempt from Australian tax. For example:

- some employment income derived by an Australian resident working overseas
- some dividends and branch profits derived by Australian resident companies
- some capital gains arising from the disposal of shares in a foreign company which are held either by Australian companies or controlled foreign companies (CFCs), to the extent that the foreign company has an underlying active business.

Certain foreign-source income and capital gains of 'temporary residents' may also be exempt. If there is a tax treaty between their country and Australia, non-residents' Australian-sourced business profits are generally non-taxable unless they have a permanent establishment in Australia.

Australia's tax law has specific provisions for international dealings, including dealings with tax havens.

For example:

- under our foreign tax credit system, an Australian resident can receive a credit against Australian tax for foreign tax paid on certain income derived overseas, and
- Australian-sourced income (such as dividends, interest and royalties) paid to a non-resident is generally subject to a final withholding tax (although exemptions to this tax apply in some circumstances).

There are specific anti-tax-deferral provisions for Australian residents engaging in international dealings. These provisions set out the rules for taxing Australian resident taxpayers on the income of non-resident entities in which they have an interest. The income is taxed on an accruals basis, not when or if it is remitted back to Australia. The following information is an introduction to the anti-tax-deferral provisions.

- **Controlled foreign companies (CFCs):** Australian shareholders who have a controlling interest in certain foreign companies are taxed on their share of the foreign company's 'attributable income'. This includes passive income, such as income from investments (for example, rent, some interest, dividends and royalties) and certain sales and services income from related party transactions. This measure will generally not apply where the CFC's income is comparably taxed in certain countries or the income is derived almost exclusively from active business activities. Special anti-avoidance provisions may apply to specific benefits provided (directly or indirectly) by CFCs resident in certain countries, to their associated entities. That is, the benefit may be deemed to be a dividend paid to the recipient taxpayer and assessed accordingly.

- **Transferor trusts:** Where a taxpayer transfers property or services to a non-resident trust for inadequate or no consideration, some of the non-resident trust's income may be included in the taxpayer's assessable income. In certain circumstances, the transferor trust rules may apply to offshore trusts that a taxpayer may have established before migrating to Australia.
- **Foreign investment funds:** Where the CFC and transferor trust rules do not apply, Australian resident taxpayers may be taxed on income sheltered in offshore companies and trusts in which they do not have a controlling interest. This also applies to Australian residents who hold a foreign life insurance policy. Note that there are a number of exemptions to this measure.

There are other specific anti-avoidance provisions, such as measures for transfer pricing, thin capitalisation and value shifting that deal with arrangements to shift profits or value out of Australia. Further, the general anti-avoidance provisions of Australian tax law may also apply to international arrangements when its conditions are met.

➤ For more information, go to www.ato.gov.au

Developments in Australian law

The Board of Taxation is currently (in 2007) reviewing the foreign-source income anti-tax-deferral regimes covering controlled foreign companies, foreign investment funds, transferor trusts and deemed present entitlements.

The review aims to reduce the complexity and compliance costs associated with the anti-tax-deferral regimes, with the possibility of collapsing them into a single regime. It will also examine whether the anti-tax-deferral regimes strike an appropriate balance between effectively countering tax deferral and unnecessarily inhibiting Australians from competing in the global economy. As at 30 June 2007 the Board had not presented its report to government.

Separate from the Board's review, on 24 September 2007, the *Tax Laws Amendment (2007 Measures No. 4) Act 2007* received royal assent. The Act introduces new foreign income tax offset rules that remove the quarantining of foreign losses and foreign tax credits.

Lawful use of tax havens

People across all taxpaying groups in the Australian tax system are becoming increasingly involved in international business and investment.

Most dealings with tax havens are within the law. Some tax havens, including those that have large value dealings with Australian taxpayers, have developed particular niche markets. Others are highly regarded as offshore financial centres. Tax havens are particularly attractive to international businesses involved in portfolio management, such as insurance companies, self-insurers, hedge and mutual funds and offshore investment funds, because they have low or no taxes. These international businesses require access to the huge international foreign exchange markets and 24-hour-a-day management.

For example, the Cayman Islands is a major financial and captive insurance centre with significant flow-through transactions for equity and hedge funds. Jersey and Guernsey have major regulated financial services industries, and many international banks are represented in these jurisdictions.

Some multinational companies have their head office functions in tax havens. Australian subsidiaries of overseas multinational companies may need to transact with tax haven companies that are part of their multinational structure. Governments may also transact with tax havens to provide foreign aid programs in those countries.

Individual dealings we are not concerned about

It is not illegal to deal with a tax haven, provided taxpayers comply with the relevant tax laws of both jurisdictions. For example, an individual may accumulate savings in a bank account in a tax haven while working overseas as a non-resident. When the individual becomes an Australian resident, they need to declare the interest on their account each year to meet their Australian tax obligations.

We are generally not concerned about the following:

- expenditure on tourism – travel and accommodation
- genuine gifts or inheritances from family resident in tax havens (where the source of the funds has no connection to Australian residents)
- earnings from overseas employment that are exempt from tax in Australia (although accumulating earnings offshore without declaring the interest in Australia would be a concern)
- former residents returning to Australia and bringing back savings accumulated while working overseas
- transferring assets and capital to Australia on migration to Australia, and
- investing in property or real estate in a tax haven (where rental or other gains are appropriately taxed in Australia).

Arrangements we are concerned about

Concealment is our main concern – in particular, those schemes and arrangements that use secrecy laws to conceal assets and income that are subject to tax in Australia.

In the simplest case of concealment, a taxpayer may seek to conceal assets and income by setting up a bank account in a tax haven. As the tax haven does not have an agreement to exchange information with Australia, or the country has a strict bank secrecy regime, we cannot directly obtain detailed information about the offshore bank account.

In more complex cases, taxpayers may use an ‘international promoter’ to set up and manage offshore trusts or companies that seek to conceal the taxpayer’s beneficial ownership of assets. The most common form of tax haven structure used to conceal ownership is the ‘international business company’. In these cases, the international promoter may interpose trusts or companies as the shareholders, using their own companies as trustees or nominees. The directors of the offshore company may also be companies associated with the international promoter. Arrangements are put in place to ensure that the Australian taxpayer is still able to influence or control the offshore trust or company.

These complex arrangements aim to conceal the true ownership of assets and so avoid declaring any offshore income or gains in relevant tax returns.

Australians who use these arrangements leave other Australians to bear a greater tax burden. These arrangements erode community confidence in Australia’s tax system.

What we are seeing and doing

Large business – what we are seeing

Proper governance should ensure that large public companies do not use tax havens for concealment purposes but, of course, that depends on the robustness of their governance framework. We are in fact seeing dealings by large business that may involve related companies in tax havens and we will be reviewing such arrangements.

We are also seeing businesses restructuring and, increasingly, transferring functions such as marketing to specialist hubs in low-tax jurisdictions. Transfer pricing may be an issue in these situations. Also, the use of tax havens in some large private equity deals may require monitoring of the payments made to general partners of the equity investing vehicles to determine, among other things, whether some part of the profit is properly attributable to Australian enterprises. In addition, we are looking at whether Australian resident taxpayers who control these offshore entities are correctly applying the foreign income attribution rules.

Large business – what we are doing

To improve compliance as well as our understanding of the use of tax havens and the impact on the Australian tax system, we are examining:

- significant payments that involve entities in tax havens (reported by AUSTRAC)
- transactions that involve related parties in tax havens (as reported in returns and schedules), and
- restructures that involve tax haven entities.

Business restructuring where corporate group functions, assets and risks are relocated to offshore related parties (including offshore marketing hubs, particularly where they are low-tax jurisdictions) and the fees that are subsequently charged to related Australian entities will be reviewed to ensure compliance with the law, including Australia's transfer pricing rules. In particular, we will check large fee payments, such as guarantee fees paid to related parties offshore.

We are reviewing cross-jurisdictional restructures that reduce exposure to withholding taxes, such as deferred subscription arrangements. We are also reviewing large private equity arrangements, in particular those that involve tax havens and low-tax jurisdictions.

We are scrutinising foreign exchange transactions to ensure that the rules for gains and losses have been complied with, the quantum of the gain or loss is appropriate and that Australian entities have not incurred foreign exchange losses that should have been incurred by offshore related parties.

We are investigating any tax arrangements that we believe may be designed to distort capital gains tax outcomes, including those involving complex and changing offshore structures and synthetic or stapled securities or financial arrangements.

We also continue to examine transfers of important intangible assets offshore to low-tax jurisdictions. This includes the capital gains outcomes of the transfer, the pricing of any new related party dealings resulting from the transfer, and significant financing arrangements entered into around the time of transfer.

Small to medium enterprises – what we are seeing

Some SMEs are involved in dealings similar to those large businesses are involved with (see opposite page). Most SMEs disclose dealings involving related parties in tax havens but there are indications that in some cases ownership or control of the tax haven entity is being concealed.

In addition, fabricating deductions presents a risk in some of the smaller SMEs. A significant number of SMEs also make errors when they report complex, unusual or infrequent transactions and/or fail to properly report international transactions.

Highly wealthy individuals – what we are seeing

Most highly wealthy individuals (that is, taxpayers with net assets exceeding \$30 million) have international transactions and offshore structures. In this area, we are seeing situations where some of these individuals have not disclosed relevant offshore interests, income and dealings. This can be with or without their advisers' knowledge.

In some other cases, taxpayers have set up complex offshore structures involving discretionary trusts and offshore companies and then denied that they had control over these entities. In one case, a tax haven entity was used to channel proceeds from the sale of an offshore business back to the individual. Offshore discretionary trusts were set up to receive payments from the sale, and these payments were progressively paid back to the individual and his wife in Australia in an attempt to circumvent the application of the transferor trust provisions. There is one case where the arrangement is considered a sham and is being examined in Project Wickenby.

Small to medium enterprises – what we are doing

We are working to improve compliance by educating and helping SMEs understand and comply in relation to their international business dealings. We are also checking that businesses are properly declaring foreign-source income, accurately reporting international transactions by lodging appropriate schedules with their tax returns and claiming only legitimate expenses relating to overseas transactions.

We are focussing on businesses that have questionable transactions with tax havens and those involved in international tax schemes. We will also focus on profit-shifting arrangements, including more sophisticated transfer pricing issues related to royalty payments, patents, trademarks, rights and management fees.

In particular, we are focusing on arrangements that suggest aggressive tax planning, including transactions conducted or property held offshore in low-tax jurisdictions.

Highly wealthy individuals – what we are doing

We are investigating transactions and arrangements involving tax havens and other low-tax jurisdictions. Issues under examination include:

- offshore concealment of income and capital gains derived from both onshore and offshore sources
- non-transparent offshore structures and dealings, and
- arrangements seeking to circumvent the controlled foreign company, foreign investment fund, transferor trust regime and deemed present entitlement.

We are using information from AUSTRAC, overseas tax administrations and, where authorised, other government departments and law enforcement bodies to examine offshore transactions. In some cases, we make use of notices under section 264A of ITAA 1936 and examine, under oath, relevant players in suspect arrangements.

CASE STUDY

Concealed assets and income

Several highly wealthy individuals (HWIs) anonymously traded in Australian and offshore assets and failed to declare the profits in their income tax returns. Evidence we gathered indicated that they were using bank accounts in tax havens to conceal assets and income. We issued amended tax assessments involving significant additional tax, and imposed significant penalties.

Micro enterprises – what we are seeing

Technology and banking changes are making it easier for micro enterprises to transact offshore, including with tax havens. We are identifying some micro enterprises that have used tax haven structures to conceal ownership or control by Australian taxpayers and have used false documentation and invoicing to support false deductions.

Micro enterprises – what we are doing

To improve compliance we are focusing on businesses with dealings with tax havens, businesses identified as high-risk through Project Wickenby and similar projects, and promoters of tax schemes.

To address micro enterprises misusing tax havens, we are using information about international flows of funds to identify businesses outside the tax system. We may demand lodgment of returns, monitor transactions and review arrangements involving tax havens.

We are encouraging micro business taxpayers to make voluntary disclosures under the offshore voluntary disclosure initiative in relation to any undisclosed dealings with tax havens.

We will undertake reviews and audits of cases involving tax haven dealings.

Individuals – what we are seeing

Some migrants and visitors are not fulfilling their tax obligations. This may be inadvertent, through a lack of awareness, or may be the result of calculation mistakes or failing to seek appropriate assistance.

We are concerned that some individuals who transact with tax havens and promoters of tax schemes do not lodge returns and forms (or lodge them late).

We see some taxpayers not considering themselves to be residents – either deliberately or because they don't understand the law – and some taxpayers who don't understand how the Australian tax law applies to structures and offshore investments that were in place before they migrated to Australia.

We also see some individuals using international transactions with tax havens to avoid or evade tax.

Individuals – what we are doing

We're improving our activities to educate individuals about their tax obligations in relation to international dealings.

To improve compliance we are focusing on individuals who have dealings with tax havens (through the offshore compliance program) and those identified as high-risk (through Project Wickenby and other similar projects).

We're also demanding lodgment of outstanding returns and forms and we're reviewing and auditing the returns of individuals who use offshore credit and debit cards and who have higher risk transactions with tax havens.

We are encouraging individual taxpayers to make voluntary disclosures under the offshore voluntary disclosure initiative in relation to any undisclosed dealings with tax havens.

Risks for taxpayers

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Every investment has risks, but putting your money in an abusive tax haven arrangement has some specific risks.

- You could lose your money through theft by the promoter or lack of consumer protections in the tax haven's financial, regulatory and legal systems. Think carefully about who you deal with – if the promoter is prepared to cheat Australia's tax system, who else are they prepared to cheat?
- You could end up with a big tax bill, plus interest and substantial penalties, on undeclared income or denied deductions.
- You could be prosecuted for tax evasion or fraud or money-laundering offences.
- If any of your assets are tainted by criminality, they could be confiscated.

How do you know if a tax haven arrangement is abusive? The giveaway is secrecy and concealment. Any arrangement that involves disguised ownership, hidden income, anonymous accounts or confidentiality agreements should be treated with suspicion. There is no such thing as a magical black box that converts taxable income into something else or which allows fictitious deductions.

You need to know what to look out for – including arrangements and marketing claims – and you need to know how to check whether or not an investment offer is too good to be true! This section includes examples of tax haven arrangements that ended badly for their participants.

If you're already involved in a tax haven arrangement that may be abusive, talk to us or an independent tax adviser about your situation. You can still put things right but it's important to do it *before* we start investigating you. If you voluntarily disclose undeclared income or over-claimed deductions, you will be entitled to a substantial reduction in the shortfall penalty. We will also take into account your personal circumstances in relation to how much of that reduced penalty and interest is ultimately payable. Visit our website for information about how to make a voluntary disclosure. A voluntary disclosure also reduces significantly your prospects of being prosecuted by the CDPP.

What to look out for

There are a variety of abusive schemes and arrangements that use tax havens. Although they vary in form, they generally aim to:

- move untaxed funds, such as undeclared cash or income, to a tax haven
- create fictitious or overstated deductions in Australia
- accumulate and conceal assets and income offshore, in order to evade any applicable Australian tax
- evade tax on income sourced or derived in a tax haven; and/or
- access funds accumulated in tax havens on which Australian tax has not been paid.

🔍 International transactions are monitored

AUSTRAC records all international fund transfers into and out of Australia. There are no restrictions on how much cash can be transferred but amounts greater than A\$10,000 must be declared and reported to AUSTRAC. In some cases, 'bearer negotiable' instruments may have to be declared if they are being carried into or out of Australia.

We routinely review AUSTRAC information and may query or audit the transaction. We also use AUSTRAC information to identify and investigate suspicious arrangements.

Red flag arrangements – beware

Below is a list of arrangements we have seen marketed that act like a red flag in attracting our attention.

Arrangement	What you should be aware of
Anonymous offshore debit cards Anonymous credit card accounts Bank accounts in tax havens	An Australian resident taxpayer must properly account for income from all sources, regardless of whether it is derived in Australia or overseas. Non-compliance is serious and opens taxpayers up to significant penalties or criminal prosecution.
Companies that are resident in a tax haven (sometimes called an 'international business company')	Where an Australian resident is the controller of a company resident in a tax haven, the controlled foreign company rules may apply.
Trusts based in a tax haven	Where an Australian resident transfers property or services to a trust set up in a tax haven, the income of the trust may be taxed as income of the Australian resident.
Tax-free savings accounts Anonymous international and investment trusts	Interest derived by an Australian resident from sources outside Australia (including a bank account or investment in a tax haven) is subject to Australian tax.
Overseas licensing	An Australian resident who derives royalties from a source outside Australia (including from a tax haven) is generally assessable on the gross amount of royalties.
International business companies based in tax havens that are used as intermediaries between importers or exporters and the customers. This is sometimes called 're-invoicing', a 'substitute purchasing corporation' or an 'offshore sales distributor/purchasing agent' arrangement	Australian taxpayers need to be mindful of Australia's extensive international tax regime that affects these arrangements. We will scrutinise profit-shifting to an intermediary in a tax haven.

If it sounds too good to be true...

There are some promoters of tax haven schemes and arrangements who set out to take advantage of unsophisticated investors. We are concerned about these investors being drawn into investments in tax haven entities, or into transactions through tax havens, with the promise of high tax-free returns from promoters. These investors run a high risk of losing their investment. The Australian Securities & Investments Commission (ASIC) provides warnings about this on their website at www.fido.asic.gov.au

If the arrangement or investment being considered sounds too enticing, remember the old adage, 'if it sounds too good to be true, it probably is'. See the warnings on our website at www.ato.gov.au/atp

Make sure you get tax advice that is independent of the promoter or seek a private ruling from us if you encounter the 'red flag' marketing claims shown on the next page.

Marketing claims	What you should be aware of
'This is a confidential arrangement for our select clients'	There are numerous variations on this theme but they all amount to the same thing – secrecy and concealment.
'Sign this confidentiality agreement – we don't want our competitors stealing our ideas'	A need for secrecy and concealment is a sure sign that something may be wrong. The real reason for secrecy is usually that the arrangement seeks to avoid or evade tax. It may even be a scam designed to steal your money. The promoter doesn't want us or ASIC to find out about it.
'There's no need to ask the Tax Office – we already have a ruling'	Get independent advice from a tax adviser who has no connection with the person promoting the arrangement. If the arrangement or investment is sound, why shouldn't it be subject to a second opinion? If the promoter claims to have a Tax Office ruling, first ask to see it and check our edited versions of written binding advice in the Register of Private Binding Rulings ¹ at www.ato.gov.au/rba to ensure that we issued it. If we did, check whether its terms apply to you or to the particular arrangement being marketed.
'Your money will be protected from Australian tax in an offshore tax haven'	<p>'Protected' might sound like smart tax planning. What they really mean is 'hidden', which may entail tax evasion. Beware of offers to 'protect' your wealth using complex offshore business structures, nominee directors and other strategies that are designed to conceal.</p> <p>Arrangements to hide income or assets are taken very seriously by the Commonwealth. Remember, regardless of what the promoter says, you will be held responsible for your tax obligations. Promoters who conduct your business may be recognised as your 'agent', and their actions and motives can be attributed to you.</p>
'The Tax Office can't trace the money back to you'	<p>An arrangement that distances you from your money usually involves giving someone else control over your money.</p> <p>Don't deal with people or organisations you don't know. Tax haven entities are easily set up, but finding out who is actually behind the arrangement or structure is difficult. Once your money is sent to an offshore tax haven, it may be too late to get it back.</p> <p>Anyway, it can be traced back to you. AUSTRAC tracks all international transactions in the financial system. You may be asked to explain your spending habits against your income flow. In reality, the promoter is hoping we won't look in your direction. The only way the account is tax-free is if you do not derive any benefit from it – and that does not make much sense.</p>
'We'll put your money in a tax-free overseas account'	For Australian residents, interest from sources outside Australia (including a bank account or investment in a tax haven) is subject to Australian tax.
'Your funds will be managed by an international bank'	Don't be fooled by elaborate names. Titles like bank, international trust, fidelity, corporation or group don't mean anything by themselves. Banking licences are easy and cheap to obtain in many tax havens. Banking facilities and products offered in tax havens are often accompanied by high bank fees 'necessary to provide privacy'.
'You'll double your money in 90 days, tax-free'	<p>Definitely too good to be true. We have seen a Panama-based corporation promoting returns of 0.5% daily, 5% weekly or 25% monthly through high-yield investment programs dealing in venture capital. Even if this extraordinary claim were true, it wouldn't be tax-free because Australian residents must account for their income from all sources, including overseas.</p> <p>Real investments come with real risks. As a rule of thumb, the higher the potential return, the higher the risk.</p>
'You pay invoices from offshore then borrow the money back. There's paperwork for everything so it's all legitimate – you can even claim tax deductions.'	<p>There are a variety of 'round robin' or 'round tripping' financing arrangements, some of them very complex. Essentially they involve transactions in which money is moved to a supposedly unrelated offshore entity – for example, as a payment for consulting services or insurance – and returned in another form, such as a loan or refund. Tax deductions are sought in Australia.</p> <p>Whatever the promoter might say, Australian tax law is clear: contrived arrangements such as this may be tax avoidance or tax evasion. We use a variety of methods, including sophisticated data matching, to identify such arrangements. Substantial penalties apply.</p>

¹ The register contains responses to requests for written binding advice received from 1 April 2001 (except for GST-specific rulings, which date from 1 July 2000).

CASE STUDY**Failure to substantiate claims**

AUSTRAC identified large transfers of funds from a Guernsey bank account to a taxpayer and his associates.

The taxpayer was not able to produce evidence to substantiate his claim that a large part of the funds originated from a substantial inheritance, nor could he provide bank statements and other information requested to substantiate his other claims. The funds were assessed as income and there were substantial penalties.

CASE STUDIES: Diversion of Income**Employees and 'stichtings'**

We examined a number of arrangements in which employees sought to avoid tax on employment-type income using structures known as 'stichtings' (see the glossary).

The employer would enter into an arrangement with an associated company, of which the employee was also a shareholder and/or director. Employment-type income, such as sign-on fees and bonuses, was directed to the stichting on behalf of the employee. The stichting was not created in a tax haven but the monies flowed through tax havens.

These arrangements sought to reduce the tax payable in Australia by claiming a deduction for the amount paid to the stichting and/or failing to declare the employment income. The offshore funds were later accessed in a number of ways, including loans, payments to credit cards or channelling funds to an associated entity in Australia. In one case, funds remitted back to an associate in Australia were used to purchase substantial assets. We issued amended tax assessments and imposed substantial penalties.

Accessing profits of a tax haven entity

The taxpayer, then a non-resident, conducted an overseas business venture. The venture was sold and the proceeds were directed to an international business company in a tax haven.

The taxpayer controlled the international business company. The taxpayer's ownership of the company was disguised by using offshore nominee companies provided by an international promoter.

On his return to Australia, the taxpayer, now a resident, tried to remain outside the tax system. Our action resulted in the taxpayer lodging tax returns and paying back taxes.

The international business company acquired properties in Australia and some years later transferred one of the properties to the taxpayer at cost. In effect, some of the gains of the international business company – that is, the amount representing the increased value of the property were distributed to the taxpayer when the property was transferred to him at cost.

This was deemed to be a distribution benefit received by the taxpayer and assessments were issued with interest and penalties.

Tax haven structures created by taxpayers when they were non-residents

Sometimes taxpayers create structures such as trusts, foundations or anstalts (see the glossary) in tax havens at a time when they are not Australian residents, or even contemplating a move to Australia. These structures are expensive to set up and maintain over time. When the taxpayer moves to Australia, we need to examine the key features of their offshore entity and determine the tax consequences for the period after the taxpayer becomes an Australian resident. The question of control is often an important factor in determining the tax implications of offshore structures.

In one case, the circumstances required the unwinding of the tax haven structure. The taxpayer and tax adviser cooperated with us to determine the correct tax consequences. We issued amended tax assessments with interest and with penalties; the latter were reduced due to the taxpayer's cooperation.

In another case, a taxpayer making a voluntary disclosure of his offshore foundation decided that he would wind up the structure and move the assets to Australia. Reduced penalties will apply where a voluntary disclosure is made.

Profits derived by these types of offshore foundations may be attributable and taxed in Australia once the person has become a resident here.

Diversion of sales proceeds

An Australian company was identified as remitting funds to a Vanuatu company. The Australian company indicated that the funds had been received in error from other overseas companies and were therefore redirected to the Vanuatu company.

Analysis of AUSTRAC information showed money was being transferred from Vanuatu to the personal account of the director of the Australian company. The director claimed to be a non-resident.

Assessments were raised both on the company to include the omitted sales income and on the director. Substantial penalties of over 50% of the tax avoided were applied in this case.

Diversion of income offshore

In response to a letter from us about funds sent offshore, a taxpayer indicated that monies sent to Vanuatu represented the net proceeds of stock options, which the taxpayer had received from an employee stock option plan. These funds were deposited into a Vanuatu bank account. The taxpayer was assessed on the profit and interest earned on the bank account with interest and penalties applied.

False names

A taxpayer was a shareholder and director of a manufacturing company based in Australia. The taxpayer created a number of trusts and bank accounts in Vanuatu and then used false names at Australian banks to send funds offshore. Funds from the trust in Vanuatu were then repatriated in a purportedly non-taxable form direct to investments in Australia, for or on behalf of the taxpayer.

Analysis of AUSTRAC information did not show the taxpayer's name, but the regularity and size of the dealings recorded by AUSTRAC raised the suspicions of our analyst. Further investigation linked the dealings to the taxpayer.

The source of the funds being sent offshore was cash from the taxpayer's business.

The preliminary analysis revealed serious concerns about the taxpayer's course of conduct, and this resulted in an unannounced visit to the taxpayer to obtain access to documents and records. We determined that part of the arrangement was a sham and there was also undeclared income. Assessments were raised, including substantial penalties. The case may also result in the taxpayer being prosecuted.

Offshore superannuation funds or trusts

We have identified cases where taxpayers have been involved in establishing what are claimed to be offshore superannuation funds and where funds (including employment income) may have been diverted to the structure. We examine these arrangements to ensure the structure is a genuine superannuation fund and not a trust to which the transferor trust regime or other anti-tax-deferral provisions may apply.

In one case, the taxpayer who was the member and beneficiary of the 'superannuation fund' in a tax haven did not know who his purported offshore employer was. We are continuing our enquiries.

Annuity arrangement

The Administrative Appeals Tribunal (AAT) considered a case involving an annuity arrangement using Vanuatu, in which a taxpayer claimed deductions for interest (Hickman and Federal Commissioner of Taxation [2005] AATA 339).

In essence, the taxpayer borrowed 100% of the annuity sum from a Vanuatu financier and claimed interest deductions each year on interest paid to an associate in Vanuatu. If the scheme had run its course, interest would have been payable for about 20 years, with an annual annuity becoming payable after 29 years (2028) for a period of 15 years (until 2043).

The annuitant had no guarantee that the payments would ever be made and was not asked for security for the loan.

The Tribunal held that the investor did not commit any of his own money and that the annuity and loan agreements were shams. Accordingly, the tax assessment which disallowed the claim for interest was confirmed. In this case we applied a significant penalty and it was affirmed by the AAT.

How to check the legitimacy of an investment offer

If you are asked to join a ‘tax effective’ investment scheme, especially one that involves sending your money offshore, it makes sense to check it out carefully. At a minimum, you should check that the promoter and scheme are legitimate and have some substance behind them. While this is not always easy or obvious, there are precautions you can take.

Before you invest	What you should be aware of
<p>Visit the ASIC website for consumers and investors at www.fido.asic.gov.au to check that:</p> <ul style="list-style-type: none"> ■ the company offering you the investment holds an Australian Financial Services (AFS) licence ■ the managed investment scheme is registered with ASIC, and ■ the organisation operating a registered managed investment scheme is a public company. 	<p>Companies offering financial product advice or products in Australia must hold an AFS licence.</p> <p>The AFS licence will set out what financial services the holder is permitted to provide, for example, authorisation to operate certain kinds of registered managed investment schemes.</p> <p>In most cases, managed investment schemes available to retail investors must be registered with ASIC. You can find out whether a managed investment scheme is registered by searching the ASIC National Names Index Register.</p> <p>Responsible entities (that run registered managed investment schemes) must also be a public company (that is, have ‘Ltd’, not ‘Pty Ltd’, after their name). You can check this by searching ASIC’s National Names Index Register. This will also tell you if the company is Australian.</p> <p>There may be situations where a company may not hold an AFS licence or be registered in Australia but may be allowed to operate in Australia. For example, this occurs in the situation of certain foreign collective investment schemes. ASIC may allow one of these schemes to operate in Australia without holding an AFS licence or without the managed investment scheme being registered. Refer to Regulatory Guide 178: <i>Foreign collective investment schemes</i>, which you will find under ‘Publications’ on the ASIC website at www.asic.gov.au</p> <p>However, if you are dealing with an investment scheme that is not registered, it is particularly important that you should consider seeking professional advice from an adviser who has an AFS licence or is an authorised representative of an AFS licensee.</p>
<p>Check that the investment scheme has a product disclosure statement and get a copy.</p>	<p>Registered managed investment schemes must generally give you a product disclosure statement (PDS) before accepting an investment from you. This is a document that clearly and concisely sets out information about the scheme in enough detail that you can make an informed decision about investing. Some of the information may not be in the PDS – it may be referred to in the PDS and be available on request. A PDS does not have to be given in some situations. For example, an exemption may apply. Refer to Regulatory Guide 178: <i>Foreign collective investment schemes</i>, which you will find under ‘Publications’ on ASIC’s website at www.asic.gov.au</p>
<p>Visit our website at www.ato.gov.au/atp to check whether there is a taxpayer alert.</p>	<p>We issue taxpayer alerts about emerging tax planning arrangements that we have under risk assessment, including arrangements involving tax havens.</p>
	<p>ⓘ Even if the scheme is registered as an Australian entity, this of itself does not guarantee the commercial viability of the investment.</p>

Taxpayer alerts that involve tax havens

TA 2005/5 – Use of an outbound, offshore re-invoicing arrangement to avoid or evade Australian tax

Describes an arrangement to reduce exposure to Australian tax by providing goods or services to an offshore structure below market value, which then provides the same goods or services to a third party at market value, paying no Australian tax.

TA 2005/6 – Use of an inbound, offshore re-invoicing arrangement to avoid or evade Australian tax

Describes an arrangement to reduce exposure to Australian tax by using an offshore structure to artificially inflate the price of goods or services. In extreme cases, no actual goods or services may be provided and no third party may actually be involved.

TA 2005/7 – Asset transfer to an offshore structure at below market value in anticipation of resale to a third party at market value

Describes an arrangement to reduce exposure to Australian tax where an Australian resident taxpayer transfers an asset to an offshore structure below market value. The offshore structure subsequently sells the asset to a third party at market value.

TA 2005/8 – Asset transfer to an offshore structure at below market value with subsequent use to produce income not attributed to the taxpayer for Australian tax purposes

Describes an arrangement to reduce exposure to Australian tax by providing goods or services to an offshore structure below market value, which then provides the same goods or services to a third party at market value, paying no Australian tax.

Investments offered through offshore seminars

An offshore group is promoting training and education courses that offer ownership of a 'tax-free' international business company, information on how to use it and a Swiss bank account with internet and credit card facilities. We are concerned that the company, Swiss bank account and credit card activities may be used as part of a tax avoidance or evasion arrangement. Arrangements involving purportedly 'tax-free' international business companies and any associated international dealings could be illegal and should be avoided.

Sometimes people attending offshore seminars are offered investment opportunities or products. ASIC advises that you should deal only with licensed Australian businesses because your rights are enhanced if something goes wrong. If you deal with unlicensed overseas businesses, you lose the protection afforded by Australia's licensing regime.

Unlicensed advisers and investments

ASIC investigated a former financial planner who was previously an authorised representative of an Australian bank. For a fee, he advised some of the bank's clients to invest in a company based in the Bahamas. This investment was not an approved investment product of the bank.

The clients were told that the Bahamas company was associated with another international bank, which was untrue. The monies were transferred to accounts in the Bahamas and the Dominican Republic. A large amount was subsequently transferred back to an Australian private company controlled by the financial planner, who used the funds in a number of failed business ventures.

The former financial planner was convicted of dishonestly obtaining a financial advantage by deception, two counts of fraudulent misappropriation, and three counts of making and using false statements. He was sentenced to eight years imprisonment with a non-parole period of five-and-a-half years. His clients lost their money.

What to do if you're already using a tax haven

If you're worried that an arrangement you're involved in may be abusive, there are things you can do to put your mind at rest.

First, confirm whether or not the arrangement is lawful from a tax perspective. You may wish to consider obtaining independent professional advice from an accountant or tax adviser who has no connection to the arrangement. You can contact us (anonymously, if you like) on **1300 132 346** to discuss your situation.

There are four main ways we can help you:

- you can use any one of the general information services we provide – for example, individuals who earn foreign income and are Australian residents for tax purposes and individuals who are not Australian residents for tax purposes but who earn Australian income, can find information on our website at www.ato.gov.au/individuals
- you can phone us for general advice and, in some cases, an oral ruling (oral rulings are not appropriate for international dealings where evasion may be involved)
- you can write to us and ask us to provide written answers to your questions, or
- you can ask for a private ruling (you can obtain a form from our website or by phoning **1300 720 092**).

➔ Visit our website for more detailed discussion on these services.

How do you make a voluntary disclosure?

We have announced an offshore voluntary disclosure initiative. If you find that there's a problem, you can put things right by making a voluntary disclosure to us.

You may receive correspondence from your bank or us about our compliance program and the offshore voluntary disclosure initiative.

We have been working on a pilot project with some Australian financial institutions. Through this pilot program, we have asked some of their subsidiaries or branches in Vanuatu to write to their Australian customers telling them how, if necessary, to make a voluntary disclosure.

We are also sending letters to individuals we have identified as having offshore debit or credit cards issued by a financial institution in Jersey, Guernsey or the Isle of Man, or international transactions identified through AUSTRAC information.

This initiative is open to those who hold or have held, either directly or indirectly, an offshore account or investment, or have participated in an offshore tax arrangement whether or not you receive letters about your international dealings. However, under the law, voluntary disclosure concessions are reduced if we have begun an audit.

Eligible taxpayers who contact us before they are subject to an audit and make a full voluntary disclosure will have access to reduced shortfall penalties.

If they have not declared taxable income, the primary tax and interest will be payable. However, they can request a further reduction of any penalties or interest charged, or they can ask for additional time to pay, based on their personal circumstances. If we are to help them, they need to provide (in writing) the full details of their circumstances.

You may wish to contact us or an independent professional adviser to discuss your circumstances and determine whether you have a tax liability. If you want to talk to us about your potential tax liability, you can phone us on **1300 132 346**.

You should make a full and true disclosure of all matters material to assessing your tax liability. Additionally, you should disclose all tax liabilities, including goods and services tax (GST). Your voluntary disclosure should be made in writing by completing an *Offshore voluntary disclosure statement* (NAT 71149) which is available from **www.ato.gov.au**

We will confirm receipt of your disclosure statement and we may also contact you to follow up or clarify issues.

This way you get peace of mind and we get information to help us investigate the promoter of the arrangement. The sooner you disclose, the better – if you wait until we find you, full penalties may apply and you could be prosecuted for tax evasion (see ‘What happens if you’re caught’).

New offshore compliance program

We have also established an offshore compliance program to focus on Australian taxpayers with tax haven dealings. In particular, the strategy will target those taxpayers who have used offshore bank accounts, offshore credit and debit cards, offshore financial products and/or offshore structures to conceal income or assets from us.

This is in addition to the work we are doing under Project Wickenby and similar projects.

What happens if you’re caught

If we review your tax haven dealings and find that you have failed to meet your tax obligations, we will amend your income tax assessments. In some cases, GST or withholding tax may also have been evaded as a result of the tax haven dealings. You will need to pay all outstanding tax, plus interest.

In addition, you may be liable for penalties. Penalties can be as high as 75% of the tax shortfall if there is intentional disregard of the tax law, plus an extra 20% if the taxpayer takes steps to prevent or obstruct us from finding out about a tax shortfall. However, we will take your circumstances into account. In particular, we will consider:

- the reasons for the discrepancy or failure to meet a tax obligation
- how well you have complied with your tax obligations in the past, and
- whether you have cooperated in resolving the problem.

There are rules about how far back we can go to amend your tax. If avoidance schemes or foreign transactions are involved, the period of review is four years. However, if there has been fraud or evasion, we can amend your assessment at any time.

You may be prosecuted rather than penalised. The CDPP is the only person who has statutory authority to give immunity from prosecution. He has advised that he will favourably consider granting an indemnity from criminal prosecution, in accordance with the Prosecution Policy of the Commonwealth, to people who make a voluntary disclosure that indicates possible criminal offences if:

- the case does not exhibit a significant degree of criminality on the part of the taxpayer, with some of the indicators of such criminality including:
 - offences committed over a long period of time
 - offences involving a degree of sophistication, such as the creation of false documents or sham arrangements
 - offences which resulted in the unlawful obtaining of a substantial sum of money
 - the taxpayer's criminal conduct not ceasing voluntarily
- the taxpayer provides information about how the arrangements relating to the commission of the criminal offences operated, including the role and identity of the promoter, such as, for example by:
 - making full and frank disclosure to the authorities, or
 - providing to the authorities original documents and materials, where these are available, which were used in the commission of the offences; and
- the taxpayer cooperates with the investigation and consequential proceedings, such as, for example by:
 - making a formal written witness statement to the authorities setting out how the offences were committed and the role and identity of the promoter, or
 - giving full and frank evidence for the Crown in any proceedings, including confiscation proceedings, relating to any offence that the Crown may nominate in respect of the promoter.

🔑 Cooperation

In cases where the CDPP decides to prosecute a taxpayer instead of granting an indemnity or immunity, Commonwealth legislation requires a sentencing court to take into account the degree to which a person has cooperated with law enforcement agencies. Also, section 21E of the Crimes Act enables a sentencing court to give a 'sentencing discount' to a person if the person has tried to cooperate with authorities in proceedings against others. In such cases the sentencing court must quantify the sentencing discount by specifying the sentence that would have been imposed if the person had not tried to cooperate.

Risks for promoters

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Although abusive tax haven arrangements pose significant risks for the taxpayers who become entangled in them, the risks are even greater for the promoters, intermediaries and associates who organise, promote and sustain such arrangements.

These promoters are our principal targets. The tax law provides both criminal and civil remedies for the activities of those who promote abusive arrangements, and the law has substantially increased the penalties that can be applied.

The role of promoters

A tax haven arrangement typically involves one (or more) promoter and intermediaries both in Australia and overseas.

The role of the promoters and other intermediaries may be incidental or integral to the arrangement. For example, they may be used as conduits to transfer funds between Australia and offshore, provide tax advice, structure and facilitate the registration of entities onshore and offshore, or undertake nominee directorships or public officer functions.

Many types of promoters and intermediaries may perform these roles, including offshore banks, offshore service providers, accountants, tax agents, legal firms, financial advisers, fund managers, private trustees, boutique tax advisers, or even your garden variety 'scam' artist.

Substantial civil penalties for promoters

The promoter penalty laws provide flexible responses and substantial civil penalties to deter entities from promoting tax avoidance and evasion schemes.

Broadly, the laws apply to entities that:

- promote a tax exploitation scheme, or
- implement a scheme that was promoted on the basis that it conforms with a product ruling, in a way that is materially different from the product ruling.

The laws enable us to:

- accept voluntary undertakings from entities to further the objects of the division which, if breached, may be enforced by the Federal Court
- apply to the Federal Court for an interim, restraining or performance injunction to deter the promotion of a tax exploitation scheme, and/or
- apply to the Federal Court for the imposition of a civil penalty in relation to the prohibited conduct.

The penalties are substantial, being the greater of:

- 5,000 penalty units (currently equal to \$550,000) for an individual, or 25,000 penalty units (currently equal to \$2.75 million) for a body corporate; or
- twice the consideration received or receivable, directly or indirectly, by the entity or its associates in respect of the scheme.

We will consider taking action under the promoter penalty laws whenever a tax exploitation scheme involving a tax haven is promoted. Where a tax exploitation scheme is promoted by an international promoter, any Australian entity involved in promoting the scheme in Australia or acting as an intermediary for the offshore promoter may be at risk under the promoter penalty laws. We will look at Australian entities that:

- recommend an international promoter to clients or prospective clients
- provide promotional material prepared by the international promoter to clients or prospective clients
- facilitate direct contact between the taxpayer and the international promoter
- deal with Australian parts of the scheme – for example, setting up structures or arranging for financing, and preparing and lodging documentation
- arrange for the payment of fees
- receive payment from the international promoter (which may or may not be disclosed to the taxpayer), or from clients or prospective clients, or
- represent the international promoter in dealings with Australian entities in respect of the arrangement.

The international promoter may also be at risk if their conduct comes within the jurisdiction of the Federal Court of Australia.

Penalties for taxpayers

Civil penalties imposed under the promoter penalty laws are separate from any administrative penalties assessed on any entities participating in tax haven schemes. Taxpayers are required to pay any tax shortfall and any penalties incurred as well as any applicable interest charges for late payment. Penalties for intentional disregard of the tax law are 75% of the tax avoided. There can also be an additional 20% penalty where the taxpayer takes steps to prevent or hinder us finding out about a tax shortfall.

Criminal investigations

A promoter's conduct may also amount to criminal activity. For example, several promoters are under scrutiny in Project Wickenby and, if evidence suggests a significant degree of criminality, we will investigate and/or refer a matter for investigation by the Australian Federal Police (AFP) or the Australian Crime Commission (ACC) for potential criminal offences. The CDPP may institute prosecution action and/or proceedings under the Proceeds of Crime Act to restrain assets. Promoters may be charged with serious criminal offences that include:

- substantive offences for defrauding the Commonwealth (for offences on or before 23 May 2001) or obtaining property/financial advantage by deception (for offences on or after 24 May 2001)
- conspiring with another person to commit an offence punishable by imprisonment for more than 12 months; or
- aiding, abetting, counselling or procuring the commission of an offence by another person.

An example of how the laws apply

An international promoter based in a tax haven offers arrangements that are tax exploitation schemes to Australian taxpayers. Taxpayers who contact the tax haven entity are directed to approach an Australian resident entity.

The Australian entity:

- provides promotional material to potential clients
- explains how the schemes work and the tax advantages, and
- arranges for the implementation of these schemes.

Taxpayers pay a fee to the tax haven entity. The Australian entity receives a commission, which is related to the level of client participation in the schemes.

Both entities are engaging in conduct to which the promoter penalty laws may apply.

Law enforcement agencies have engaged their international counterparts to obtain evidence for fraud on the Commonwealth against alleged perpetrators, including promoters, using mutual assistance protocols. Promoters subject to convictions may face periods of imprisonment of up to 10 years and up to 25 years for serious money-laundering convictions.

Even the participants in these arrangements are open to criminal prosecution, particularly if they have not made a voluntary disclosure.

One such individual recently pleaded guilty in the County Court of Victoria and was sentenced to two-and-a-half years imprisonment with an order that he be released after serving 15 months. Judge Wood provided a sentencing discount which he applied to reflect the individual's cooperation with law enforcement authorities after he was detected (the sentence is under appeal).

How we identify and deal with promoters and intermediaries

We are actively pursuing promoters, intermediaries and their associates who market or support abusive tax haven schemes. We identify promoters and intermediaries through a broad range of intelligence sources, including:

- advertising material, such as media articles and brochures advertising seminars
- internet sites
- statements about products (including information memorandums and product disclosure statements)
- AUSTRAC analysis
- information from other government agencies
- exchanges of information with the tax administrations of other countries under our tax treaties
- private ruling requests
- Australian Business Number (ABN) and tax file number registrations
- lodgment requirements and return information
- audits and investigations
- Information from their clients who may be under investigation for this and other matters, and
- information from tax professionals and the public (both domestic and overseas).

Our strategies for dealing with promoters generally include:

- requiring high-risk promoters to lodge their tax returns early and provide expanded tax returns
- exchanging information with overseas tax administrations
- using our access powers, including unannounced access visits where appropriate (we have used our formal powers to visit the premises of Australian promoters of tax haven-related tax schemes), and
- working with the AFP, ACC and CDPP on possible criminal prosecutions.

How we deal with tax haven arrangements

04

We are continuing to improve our ability to identify and deal with abusive tax haven arrangements.

We have access to increasingly rich information and sophisticated analytical tools to identify tax haven arrangements and their promoters.

Our strategic capability to investigate tax haven arrangements has been expanded by:

- establishing a dedicated offshore compliance program to focus on taxpayers
- collaborating with law enforcement agencies and overseas tax administrations on joint investigations, and
- Project Wickenby activities.

We are also expanding our relationships with tax administrations in other countries, sharing intelligence and best practice on tax haven risks and compliance strategies. Through our bilateral tax treaties, we are able to share information about taxpayers suspected of being involved in abusive arrangements. We have also signed TIEAs with three countries.

How we identify tax haven arrangements

Hiding money in an offshore tax haven is only half the gamble. For it to be of any use, it usually needs to be brought back to Australia or used by you or an associate. This creates a money trail we can follow. Sometimes there is a pattern of outgoing and incoming transactions that we can link together to identify abusive arrangements or there may be a mismatch between a taxpayer's offshore dealings and their reported tax outcomes. You or your associates might also come within our radar where your (or their) expenditure in Australia or abroad is out of kilter with your (or their) reported income.

We use a variety of intelligence techniques and tools to identify tax haven arrangements and their promoters. In particular, we use computer-based analytical tools to draw links between internal and external data and intelligence and to identify high-risk transactions and the parties involved.

Our information sources include:

- AUSTRAC
- international information exchanges under our tax treaties
- financial institutions and other external sources
- credit and debit card transaction data
- tax returns
- internet research, and
- information from the public.

We are increasing our ability to detect people who are operating outside the tax system. We systematically match data held by AUSTRAC and other organisations against our records to identify those who are not registered in the tax system or whose reported tax position is different from that indicated by the external data. The information provided by AUSTRAC helps us identify taxpayers who have sought to remain outside the tax system despite having been Australian residents and enjoying the benefit of Australian residency for many years.

AUSTRAC

AUSTRAC is a primary source of information that identifies Australian taxpayers who may be engaged in tax evasion using tax havens. AUSTRAC routinely monitors domestic transactions over \$10,000 as well as international transactions. There are currently five types of information reported to AUSTRAC:

- Significant cash transactions reports. These reports must be submitted by cash dealers/reporting entities and solicitors for transactions involving A\$10,000 cash or more (or the foreign currency equivalent).
- Suspect transactions reports. These are lodged by cash dealers/reporting entities when they have reasonable grounds to suspect that a transaction, actual or attempted, may involve the proceeds of crime, the evasion of tax, or other breaches of federal, state or territory laws.

- International funds transfer instructions. These instructions must be reported by cash dealers/ reporting entities for monies being telegraphically transferred or wired into or out of Australia. These instructions are reportable for any amount, whether paid by cash or otherwise.
- Cross-border movements of physical currency (CBM-PCs)/international currency transfer reports. CBM-PCs are reports about the movement of physical currency into or out of Australia. All movements of A\$10,000 or more (or the foreign currency equivalent) must be reported.
- Cross-border movements – bearer negotiable instruments (CBM-BNIs). CBM-BNIs are reports of BNIs being carried into or out of Australia and are not mandatory. A police or customs officer may ask a person to declare whether they have any BNIs in their possession and may then require a report of the BNIs being carried.

New legislation is progressively expanding the range of information reported to AUSTRAC and the types of entities required to report. *The Anti-Money Laundering and Counter-Terrorism Financing Act 2006* covers the finance sector, gambling sector, bullion dealers and some professions, such as lawyers and accountants that also offer financial services. These groups will be required to monitor and report on a wide range of services, such as opening accounts, accepting deposits, issuing travellers cheques and some gambling activities.

Analysis of AUSTRAC information

Of the information gathered by AUSTRAC, the most useful for identifying tax haven arrangements is international funds transfer instructions. These are instructions to transfer funds into or out of Australia. Most are reported by cash dealers, usually banks. For each dealing, AUSTRAC records details of the ordering customer, beneficiary customer, the account to which the funds are to be credited, the amount transferred and the sending and receiving institutions.

We use the information in these reports to identify participants and promoters of abusive tax schemes and tax evasion, as well as taxpayers who are hiding outside the tax system. In addition, we use AUSTRAC data to:

- monitor money movements into and out of Australia
- profile individuals and other taxpayers
- identify high-risk transactions
- identify and quantify compliance risks and develop compliance strategies, and
- select cases for further investigation.

Sometimes funds flow to and from Australia and tax havens indirectly through a third country. We use AUSTRAC information to analyse indirect flows to and from tax havens and, where appropriate, use our tax treaties with other countries to obtain information about funds that may flow through a third country (see page 37). Taxpayers may also need to provide evidence relating to the ultimate recipient of funds sent out of Australia.

Our investigations of a taxpayer or others (or the promoter) on other tax matters may lead us to the connection between the taxpayer and their hidden dealings with tax havens.

Other uses of AUSTRAC data

Analysis and reviews have identified potential new HWIs who have returned or migrated to Australia after accumulating significant wealth offshore through, for example, successful business ventures. We are reviewing these individuals.

International information exchanges

Australia has tax treaties with 42 countries that allow us to exchange information about offshore income and transactions. These exchanges of information are reliable and valuable sources for investigating abusive international arrangements.

Most information exchanges under the tax treaties are automatic – we regularly receive data about the foreign income of Australian residents, which we match against income disclosed in tax returns. Similarly, we provide our treaty partners with information about the Australian income of foreign residents.

In addition there are one-off, spontaneous exchanges of information about specific arrangements or taxpayers. For example, one of our treaty partners may obtain information about Australian taxpayers involved in a particular tax haven arrangement and provide this information to us.

We have also signed agreements with three jurisdictions that will allow us to ask them for information. These agreements will become an increasingly important part of our compliance activities.

Exchange of information – initiated by another country

During an investigation in the United Kingdom (UK), HM Revenue & Customs became aware that two Australian resident taxpayers who owned UK businesses had moved profits to tax havens by way of licensing and management fees. Consulting fees were also paid to a tax haven company for personal services that one of the Australian taxpayers provided.

HM Revenue & Customs provided us with the relevant information under the tax treaty between the UK and Australia. Our enquiries revealed that the two Australian taxpayers had not lodged tax returns in Australia. As a result of this exchange, we initiated action to bring these taxpayers back into the Australian tax system. One taxpayer has lodged outstanding tax returns and we are raising default assessments and penalties in relation to the other.

Exchange of information – initiated by Australia

The Tax Office is investigating an arrangement in which an Australian company received a loan from a UK company where the majority of funds were sourced from a Jersey bank account. It was claimed that the UK company was a financial institution, but there were no public records to confirm this. In addition, there were connections to a tax agent who had previously participated in aggressive tax planning arrangements involving offshore entities.

Australia requested an information exchange from HM Revenue & Customs, which supplied documentation suggesting that the UK company was a nominee for a superannuation fund based in Samoa.

Information from financial institutions and other external sources

We use our access powers to obtain information about transactions with tax havens from banks and other financial institutions operating in Australia. For example, we may request full details of the bank account through which funds have flowed to or from a tax haven, information about related bank accounts, and documentation that shows the background to the transaction.

We can access external data sources to investigate particular taxpayers or as part of a broader data-matching project to identify cases for further action.

External data includes, for example, company information that ASIC holds and data that state and territory bodies hold on real estate acquisitions and disposals.

Credit and debit card transaction data

Offshore credit and debit cards are actively marketed on the internet and have been used to access income or wealth that is hidden offshore in tax havens.

We have developed methods to obtain transaction data for offshore-issued credit cards used in Australia. Other tax administrations have also increased their focus on credit and debit card risk and in some cases have passed on details obtained about Australian residents holding offshore cards. We have started audits on a number of taxpayers who hold offshore credit and debit cards.

Tax returns and supporting schedules

We analyse tax returns and the accompanying Schedule 25A (which some taxpayers must lodge with their tax return) to identify tax haven transactions for review, taxpayers use Schedule 25A to disclose details of specific overseas transactions and interests in foreign companies and trusts. We look for situations where:

- the value of transactions with tax havens as reported on AUSTRAC is disproportionate to the overall income reported or expenses claimed
- AUSTRAC information reveals transactions with tax havens but little or no foreign-source income is included in the tax return
- earnings from overseas employment does not appear to be exempt income, or
- AUSTRAC information reveals dealings with what appears to be related tax haven companies and the taxpayer does not indicate related party dealings in their tax return.

We also identify taxpayers who appear to have dropped out of the tax system but have tax haven dealings reported on AUSTRAC and request lodgment of outstanding returns. Lodged returns are reviewed post-lodgment.

Internet research

We use the internet to identify and monitor activities involving tax havens. We look for new promoters and investment products that may be marketed to Australia from outside our country and for associated Australian networks and contact points. Often the internet provides useful background information that helps us profile a taxpayer or arrangement.

The internet provides valuable sources of information. For example, we may examine more closely dealings with tax haven entities which, apart from details of registration in a tax haven, have no other record on the internet. This may give rise to concerns about concealed ownership of the tax haven entity.

We are also developing sophisticated web trawling software to scan the internet and gather intelligence on the promotion of schemes.

Using the internet to support investigations

Internet research as part of a tax haven risk review revealed that an Australian resident taxpayer and his close associates had a majority ownership through a tax haven structure in an international company owning a well-known product. There is no evidence of the taxpayer's apparent offshore ownership in tax returns lodged in Australia.

How we investigate tax haven arrangements

There are many stages to our investigations, including risk analysis, taxpayer contact, a preliminary review of taxpayer records and an overall assessment of the type and level of risk. Depending on our findings, we may invite taxpayers to correct their tax liability, or we may conduct an audit.

We focus on both boutique arrangements and marketed or networked tax haven arrangements. Our compliance activities focus on promoters and intermediaries, as well as particular taxpayers and groups. In complex private groups, we focus primarily on the taxpayer who is the controller of the group.

We have expanded our ability to investigate taxpayers who use abusive tax haven arrangements by establishing a dedicated offshore compliance program. In some cases – usually where there is a suspicion of significant tax evasion or criminal activities – we collaborate with law enforcement agencies and the tax administrations of other countries on joint investigations.

Offshore compliance program

Our offshore compliance program is targeting taxpayers who seek to conceal assets and income in tax havens. Compliance activities include audits of taxpayers who hold offshore credit and debit cards, those who have high-risk AUSTRAC transactions with tax havens, and other high-risk cases involving tax havens. As well as undertaking complex audits involving tax havens, the program is also involved in the offshore voluntary disclosure initiative, which provides an incentive for taxpayers to come clean before we follow up information already in our possession.

Promoter compliance

When we investigate promoters, we may access their books and records or ask them to supply details of taxpayers who have been involved in tax haven dealings.

We work with other tax administrations when promoters operate across countries. We exchange information under our tax treaties on particular arrangements and on the promoter's general activities. We may also conduct simultaneous audits with other tax administrations to ensure the appropriate tax is paid in each country.

International promoter strategy

The aim of the international promoter strategy is to identify international promoters who are actively operating in Australia and to identify their onshore associates (intermediaries) who are marketing and selling financial services and products. We have now identified over 130 international promoters and their Australian intermediaries.

This strategy examines the drivers of international tax avoidance and evasion, including taxpayer attitudes, the role of promoters and their associates and intermediaries, and high-risk geographical regions from which they operate (for example the Caribbean, the Pacific or Europe).

Our compliance action in relation to international promoters is driven by intelligence. We collect and analyse financial and taxation information and reports provided by other Australian government agencies and other tax administrations.

For each high-risk region we seek to identify key promoters and their associates and clients in Australia. We undertake compliance action in relation to high-risk Australian taxpayers and promoters. At the same time we conduct investigations in Australia and overseas with Project Wickenby partner agencies in relation to some of these high-risk taxpayers and promoters. In some cases, we work in conjunction with other tax administrations.

Based on these investigations we can improve the compliance of Australian taxpayers and the promoters' Australian intermediaries. Importantly, we can also draw together an intelligence scan in relation to tax avoidance and evasion. This intelligence scan will be escalated through other Australian agencies. We may talk with the governments in these high-risk regions about compliance issues and explore reform options.

Tracing the flow of money

Our tax haven taskforce compliance activities uncovered a complex 'round robin' arrangement that involved transactions between Australia and companies in other countries which sought to disguise a tax scheme that operated out of a tax haven.

The arrangement first came to our attention through an analysis of AUSTRAC information. We identified a large number of transactions between Australian taxpayers and certain bank accounts in another country that was not a tax haven. Letters were issued to the Australian taxpayers requiring details of the transactions. The analysis showed that funds were being transferred to and from the bank accounts of companies incorporated in even more countries.

We traced the ownership and control of these companies. To fully understand the flow of funds, we sought information from the tax administration of the country where the bank accounts were located.

This information and our analysis revealed that:

- the international companies involved were all owned or controlled by partners in an accounting firm that was also an offshore service provider and based in a tax haven
- most of the tax haven transactions were through this firm's wholly-owned licensed trust company (but most of the transactions did not involve the movement of funds directly between Australia and the tax haven)
- the arrangements involved many Australian clients of the same tax agent, and
- the international companies and bank accounts were part of an elaborate arrangement to shift funds offshore and create false tax deductions in Australia, then repatriate the same funds to Australia in a 'tax-free' guise.

The following steps (also shown in Figure 3, opposite,) were used in the scheme:

- 1 An Australian resident company (Oz Co) receives invoices for consulting work from Service Co, incorporated in country 2.

There is little evidence that any consulting work has actually been carried out. The registered office of Service Co is at the premises of an accounting firm in country 2. It is listed as 'not trading' by the corporate authority of country 2. Service Co is owned by two tax haven entities that are controlled by the partners of the tax haven (country 5) offshore service provider; the partners are also signatories to Service Co's bank account.

- 2 Oz Co transfers funds to Service Co's bank account in country 4 as 'payment of consulting fees'.

The 'consulting fees' are shown as expenses in the accounts of Oz Co and claimed as tax deductions. This is the primary avoidance of tax – in reality the 'expenses' are not incurred in earning assessable income and are therefore not deductible.

- 3 The funds received by Service Co are transferred to Finance Co, a company registered in country 3, but with a bank account also in country 4.

Finance Co is also controlled by the tax haven offshore service provider and has a loan agreement with Oz Co.

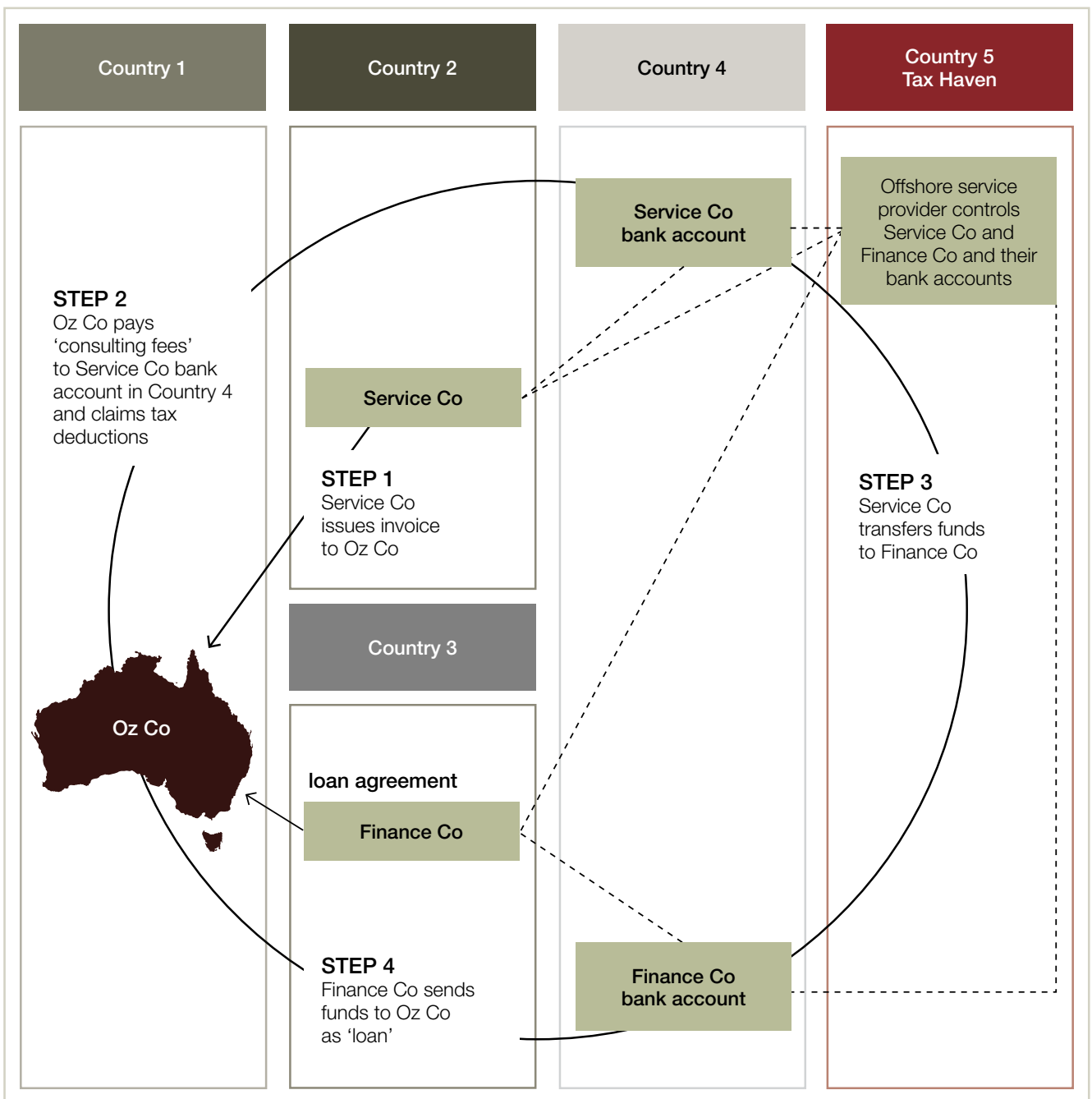
- 4 A few days after the original payment, the funds return to Oz Co in the form of a 'loan draw down' from Finance Co's bank account in country 4.

Oz Co then uses these funds for trading operations and also claims deductions for 'interest' paid offshore on these loans. Where interest is paid, it is also returned to Australia in further 'round robin' arrangements.

A variation of the arrangement has the 'loan' funds returning straight to the directors of Oz Co, without loan contracts being entered into. The directors then use these funds for personal expenditure.

Without this scheme, these funds would be taxable dividends (distributions of profits out of the Australian company) that should be declared by the directors.

Figure 3: The money flow in a round-robin arrangement



What are the possible outcomes for a taxpayer entering into such an arrangement?

Taxpayers who have a tax shortfall because of an intentional disregard of a tax law may be subject to a penalty of 75% of the tax shortfall amount, payable in addition to the tax avoided.

Taxpayers who attempt to prevent or obstruct us may have a further 20% increase in the tax shortfall penalty applied, payable in addition to the tax avoided.

Taxpayers who use dishonest means to avoid paying tax with the intention of defrauding the Commonwealth may be subject to criminal prosecution and up to 10 years' imprisonment if convicted.

Joint investigations with law enforcement agencies

We collaborate with other Commonwealth agencies that have an interest in tax havens. This includes sharing information, as allowed by the law. Our ability to share information with Project Wickenby partner agencies was enhanced when section 3G of the *Taxation Administration Act 1953* was enacted.

Where we suspect that tax havens are being used to evade tax liability or to defraud, we may recommend that promoters and investors be investigated. This is often done with other Commonwealth agencies such as the AFP and the ACC. The investigations may include using the Criminal Code search warrant provisions and may lead to the referral of matters to the CDPP for criminal prosecution. During these investigations, we may liaise with other agencies such as the ACCC and ASIC.

In addition, working jointly with the AFP, we can use the provisions of the *Mutual Assistance in Criminal Matters Act 1987*. Under this Act, Australia can request the assistance of other countries in criminal investigations, prosecutions and matters relating to the proceeds of crime. For example, under Project Wickenby assistance was provided by the Swiss Federal Office of Justice.

Australia can provide similar assistance to other countries. For example, with ministerial approval, Australian law enforcement authorities can obtain search warrants domestically on behalf of other countries.

Project Wickenby

Project Wickenby is a multi-agency taskforce. It was established in 2004 to investigate internationally promoted tax arrangements that allegedly involve tax avoidance or evasion and, in some cases, large-scale money laundering. The project has \$305 million in funding over seven years.

The five agencies involved in Project Wickenby are the Tax Office, ACC, AFP, ASIC and the CDPP. We are the lead agency. This is the first time these five agencies, supported by AUSTRAC, the Attorney-General's Department and the Australian Government Solicitor, have brought their expertise and powers together to deal with tax avoidance and evasion.

Project Wickenby involves both civil and criminal investigations. These cases sometimes include mutual assistance requests whereby Australian law enforcement authorities seek cooperation from their international counterparts to secure evidence located offshore.

In one investigation law enforcement authorities sought access to documents held by an international promoter based in Switzerland for the purpose of criminal investigations.

Through the mutual assistance request process, Australian authorities were able to successfully use their international counterparts, the investigating Swiss Magistrates Office, to issue search warrants and secure the relevant documents. Under the terms of the mutual assistance treaty, the Swiss firm had the right of appeal. On 11 January 2007 the Swiss Supreme Court, the highest court of appeal in Switzerland, adjudicated such an appeal in the matter described as X SA, the complainant v Magistrate of the Canton of Geneva.

The Supreme Court found that the evidence should be provided to Australian law enforcement authorities to support the criminal investigation. In reaching this conclusion, the court had regard to the following factors:

- the Australian authorities had established a prima facie case that the alleged offence was equally an offence in Switzerland
- the alleged offence involved falsification of loan transactions, and
- the false loans related to unnamed people and/or entities linked directly or indirectly to various Australians.

The decision was a breakthrough in the evidence-gathering strategies employed in Project Wickenby and enhances our capability in respect of international investigations involving criminality.

Fraudulent tax scheme

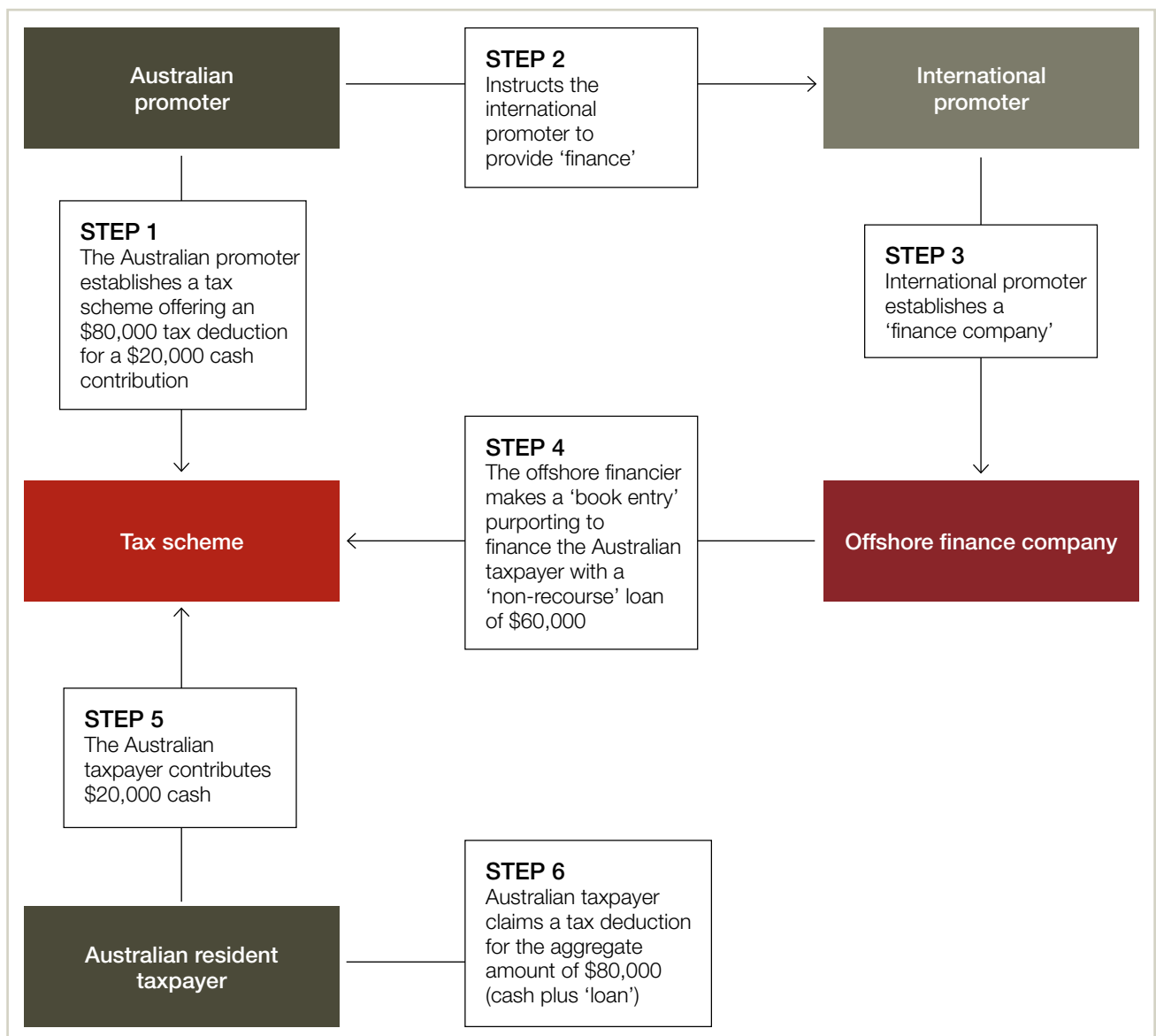
An international promoter provides a sham 'loan' to Australian investors of, say, \$60,000. The Australian investor contributes an additional cash amount of \$20,000. As a result of the 'non-recourse' loan the taxpayer is able to claim a tax deduction of \$80,000. At the 40% margin tax rate, this results in a tax refund of \$32,000.

The taxpayer has therefore obtained a benefit of \$12,000 (\$32,000 – \$20,000) due to their investment in the scheme.

Interest paid on the sham loan may be channelled to the Australian promoter. The scheme deductions will be disallowed because they constitute tax avoidance or evasion. The international and Australian promoters would be subject to criminal investigation.

❗ A 'non-recourse' loan is a loan arrangement where the lender has no recourse beyond a specified security of the borrower. The borrower is not otherwise personally at risk to repay the loan.

Figure 4: International sham loan arrangement



Working with international organisations

Australia is a member of, and contributor to, a number of international forums that concentrate on tax issues, including:

- relevant OECD groups
- the Leeds Castle group
- the seven-country working group on tax havens
- the Joint International Tax Shelter Information Centre, and
- the financial action taskforce on money laundering.

Organisation for Economic Co-operation and Development

Australia is a member of the OECD's Committee on Fiscal Affairs, which was established to bring together senior tax officials from all OECD member governments. We are part of a working party established by the committee to monitor all matters covering tax avoidance and evasion. The working party looks at legal, policy and administrative aspects of tax evasion and avoidance, particularly exchange of information, unfair tax competition, new technologies and compliance programs.

We are also a member of the OECD's Forum on Harmful Tax Practices, which aims to eliminate harmful tax practices from both OECD member countries and non-member countries (such as tax havens).

Members of the forum have agreed to work together, particularly to explore new tools to help detect international non-compliance.

Other areas where effort will be intensified include developing a directory of tax planning schemes (in order to identify trends and measures to counter such schemes) and improving the training for tax officials on international tax issues.

Leeds Castle group

The Leeds Castle group superseded the Pacific Association of Tax Administrators in 2006.

Group members are Australia, Canada, China, France, Germany, India, Japan, South Korea, the United Kingdom (UK), and the United States of America (USA).

The commissioners of these tax administrations meet annually to consider issues of global and national tax administration, particularly mutual compliance challenges.

Seven-country working group on tax havens

In this forum, Australia, Canada, Germany, France, Japan, the UK and the USA cooperate to improve each country's capacity to deal with the risks tax havens pose to their tax systems. Members bilaterally exchange information at a case and promoter level, share research and information on the schemes encountered and strategies adopted, and conduct joint training sessions.

Common issues affecting all members of the seven-country group are the use of e-commerce, the internet and credit or debit cards in abusive tax haven arrangements, intangibles, offshore banking and brokerage, promoters of abusive tax haven agreements and the use of international business companies.

Members of the forum issue international tax alerts to other members. The alerts share experiences about tax haven countries and tax-motivated transactions and schemes. Alerts issued to date have covered a wide variety of topics, including offshore re-invoicing, deferred consideration financing and offshore private annuities.

Joint International Tax Shelter Information Centre

The tax administrations of Australia, Canada, the UK and the USA established the Joint International Tax Shelter Information Centre (JITSIC) in Washington in 2004.

The aim was to supplement the ongoing work of identifying and curbing tax avoidance and shelters and those who promote and invest in them.

Japan joined the group in 2007 when a second JITSIC office opened in London.

Financial action taskforce on money laundering

We know a number of tax havens have been used by money launderers. The financial action taskforce on money laundering develops and promotes national and international policies to combat money laundering. It monitors members' progress in implementing anti-money laundering measures, reviews money laundering techniques and counter measures, and promotes the adoption and implementation of anti-money laundering measures globally. The taskforce collaborates with other international bodies involved in combating money laundering.

The *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* introduced additional reporting of suspicious matters.

If you want to provide information about a tax haven scheme

We welcome any information that could help us deal with this important issue for our country's tax system. You can contact our offshore compliance program by:

Phone: **1300 132 346**
 Email: **offshorecompliance@ato.gov.au**
 Web: **www.ato.gov.au**
 Post: **Australian Taxation Office
 Offshore compliance program
 PO Box 1201
 BOX HILL VIC 3128
 AUSTRALIA**

You can choose to remain anonymous.

Glossary of offshore structures

Structure	Characteristics/features
Anstalt	<ul style="list-style-type: none"> ■ German term for establishment. ■ The founder establishes the anstalt with the transfer of assets, which become the property of the anstalt. ■ A separate legal entity, with no shareholdings.
Foundation	<ul style="list-style-type: none"> ■ A hybrid between a trust and a company. ■ This is a separate legal entity to which assets are transferred by the founder, which holds such assets for the benefit of a particular purpose.
International business company or offshore company	<ul style="list-style-type: none"> ■ A common structure provided by many tax havens. ■ May have ordinary share capital, be limited by guarantee or be a hybrid, for example a combination of ordinary shares and limited by guarantee. ■ Typically not permitted to conduct business in the tax haven where it is registered (although this requirement has changed in some countries). ■ Shareholdings are usually owned by nominee shareholders, often through a series of trusts to disguise ownership. ■ Nominee directors. ■ Offshore debit or credit card may be associated with the entity.
Offshore partnerships	<ul style="list-style-type: none"> ■ Typically, an association of two or more people, formed by agreement to jointly pursue a common objective.
Offshore superannuation fund	<ul style="list-style-type: none"> ■ May be a genuine superannuation fund set up in an offshore jurisdiction. ■ In some cases, the offshore superannuation fund may be an offshore trust rather than a genuine superannuation fund.
Offshore trust	<ul style="list-style-type: none"> ■ A trust set up in a tax haven. ■ Essentially involves the transfer of legal ownership and control from a settlor to one or more trustees. ■ The offshore trustee protects the identity of the beneficial owner of the trust assets. Often the beneficial owner will have in place 'a letter of wishes' to retain some control over the trust assets. ■ Offshore trusts are often used to create another layer of secrecy in the ownership of offshore companies, such as international business companies.
Protected cell company, segregated portfolio company etc	<ul style="list-style-type: none"> ■ The company contains separate or segregated cells that hold particular assets and liabilities, retained earnings etc.
Stichting	<ul style="list-style-type: none"> ■ Formed under Dutch law. ■ Can be described as a foundation. ■ A separate entity, distinguished from its founders or directors. ■ Not a tax haven entity but dealings with stichting, are sometimes routed through tax haven bank accounts.
Stiftung	<ul style="list-style-type: none"> ■ German term for foundation. ■ Often a family foundation. ■ The founder establishes a stiftung with the transfer of assets. ■ The actions of a stiftung are prescribed by the founding deed and acted upon by the administrators on behalf of beneficiaries. ■ Capital is not divided into shares.

Abbreviations

ACC	Australian Crime Commission
AFP	Australian Federal Police
AFS	Australian Financial Services
ASIC	Australian Securities & Investments Commission
AUSTRAC	Australian Transaction Reports and Analysis Centre
CDPP	Commonwealth Director of Public Prosecutions
CFCs	controlled foreign companies
EU	European Union
GST	goods and services tax
HWI	highly wealthy individual
OECD	Organisation for Economic Co-operation and Development
PDS	product disclosure statement
SME	small to medium enterprises
TIEA	tax information exchange agreement
UK	United Kingdom
USA	United States of America



FEEDBACK

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offshorecompliance@ato.gov.au

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visit **www.ato.gov.au**

