

top stories

- G20 Bolsters Global Cooperation
- Tobacco Seized
- Experts' Corner
- Serious Prosecutions

TARGETING TAX CRIME

a whole-of-government approach
issue ten **NOVEMBER 2014**



Australian Government
Australian Taxation Office





UNDERPINNING OUR SYSTEM

- 3. Foreword
- 5. G20 bolsters global transparency and cooperation



UPDATES & CONVICTIONS

- 7. ATO rolls illegal tobacco
- 9. No such thing as a safe haven
- 10. Evidence mounts: Hiding money offshore doesn't pay
- 11. No return on investment for tax evasion
- 12. Share scheme fraudster doesn't escape jail time



EXPERTS' CORNER

- 13. David Williams commentary



UNPROFESSIONAL PRACTICE

- 15. Prosecuted: Tax agent sentenced to jail time
- 16. Let the punishment fit the crime
- 17. Money laundering sentence doubled after crown appeal
- 18. Former accountant's appeal dismissed
- 19. No medals for phoenix operators at commonwealth games sites



SECOND OPINION

- 21. Tax avoidance schemes: get a second opinion



YOUR OPPORTUNITY

- 22. Postscript



ATO DEPUTY COMMISSIONER'S FOREWORD

Underpinning Australia is the tax system. Of the utmost importance is keeping that system fair and effective so that we can fund the essential community services Australia needs in order to thrive.

Tax avoidance, evasion and crime, in all its forms, undermines that fairness.

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Michael Cranston



FOREWORD

In the current environment, the challenge for us is how we continue to make tax evasion harder, through more strategic investment of resources, and smarter ways of leveraging the massive amounts of information now available to identify those seeking to do the wrong thing.

Already, the ATO is recognised as a world leader when it comes to tax administration. We contribute internationally with our work in the G20 and the Study Group on Asian and Tax Administration and Research (SGATAR). We have the latest technology to support our services and compliance work, and a workforce of bright minds leading initiatives to protect the system.

We also have over 100 exchange agreements with other countries, including the recent agreement with Switzerland.

This edition of *Targeting Tax Crime* covers some of our recent key achievements in the fight against tax crime, and how we continue to close the net on tax evaders.

Read about the seizure of a massive amount of illegal tobacco in Victoria, as well as recent prosecutions and resultant jail times for tax crimes. And hear from commentator, David Williams, on why the risks some unscrupulous tax 'professionals' take are not worth the consequences.

Make no mistake; the ATO is up to the task of protecting the tax system. We are there with all Australians, doing the lifting, keeping the economy on track and supporting the community for a better future.

Michael Cranston

ATO Deputy Commissioner
Private Groups and High
Wealth Individuals



G20 BOLSTERS GLOBAL TRANSPARENCY AND COOPERATION

Global cooperation and engagement in international tax matters has been a hot topic for some time, and it was a hot topic at the G20 Leaders' Summit in Brisbane over the weekend.

The G20 got some early runs on the board in February this year when finance ministers endorsed the Common Reporting Standard (CRS) for the automatic exchange of financial account information.

The CRS is a ground-breaking development because it means financial information will be exchanged automatically between countries. It will take global cooperation and transparency of international tax affairs to a whole new level.

Overseas financial institutions will now exchange taxpayer information, such as name, account balances and income, with the relevant tax jurisdiction. This is a significant step towards making it impossible to hide income and assets in secrecy jurisdictions.

The CRS is a single global standard for financial institutions – it covers the collection of financial account information on account holders who are residents in another jurisdiction, the reporting of it to the relevant tax authority, and the exchange of it with other tax authorities on an annual basis.

This sensible and sophisticated approach to analysing this data will vastly improve our business focus, enabling us to be more efficient in the way we select cases for investigation, conduct risk assessments and enact enforcement activities.

In line with other members of the global forum, Australia will implement the CRS from 1 January 2017.

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One of our key considerations in implementing the reform is minimising the costs on financial institutions, so we've been consulting with them to better understand their implementation and systems issues.

And this isn't the only exciting development this year. We have a whole host of domestic compliance approaches that support global transparency measures, including:



- > the *International dealings schedule* (with 7,000 lodgers annually) – a key tool in risk assessment of taxpayers' international affairs
- > the *Reportable tax positions schedule* – requiring disclosure of the most contestable and material income tax positions that have not otherwise been adequately disclosed to us
- > the International Structuring and Profit Shifting initiative – focusing on companies that have undertaken an international business restructure or have significant related-party cross-border arrangements
- > reporting of large-company financials – we will publish limited information about the tax affairs of corporations with a reported total income of \$100 million or more (the first data is expected to be available on our website in late 2015).

Find out more about our global system.





ATO ROLLS ILLEGAL TOBACCO



The ATO, with the Australian Federal Police (AFP), seized the largest ever haul of illegal locally grown tobacco in regional Victoria earlier this year.

Approximately 350,000 mature tobacco plants with an estimated excise value of more than \$15 million were found when the ATO and AFP executed warrants as part of Operation Garnet.

‘Buying illegal tobacco is not just bad for your health, it’s bad for your community. It means lost revenue for infrastructure and services, and that’s bad for everyone,’ said ATO Deputy Commissioner Greg Williams.

‘We’re not just looking at seizing tobacco but also potential links to organised crime when we investigate this kind of illegal behaviour.’

This and other cross-agency initiatives are intended not only to maintain the integrity of Australia’s revenue stream, but also help the broader fight against organised crime and the damage that can do to communities.



NO SUCH THING AS A SAFE HAVEN

In the lead up to Australia hosting the G20 Leaders' Summit, world leaders continued to reiterate their commitment to increasing transparency and strengthening the exchange of information for tax purposes.

Australia's extensive network of information sharing agreements is more than 100, including signatories to Multi-Lateral Convention. We have signed 44 Double Tax Agreements and 36 tax information exchange agreements.

The Project Wickenby taskforce, now in its eighth year, continues to work collaboratively with other tax administrations to share intelligence, undertake risk assessments and take compliance action, making sure there is no such thing as a safe haven.

PROJECT WICKENBY RESULTS AT A GLANCE: *AS AT 31 AUGUST 2014, PROJECT WICKENBY HAS RESULTED IN:*



\$1.991 billion in tax liabilities raised



4,343 audits and reviews completed



76 people charged with serious offences



44 people convicted and sentenced for serious offences



\$851.76 million in cash collections raised as at 31 August 2014

For more information visit **Project Wickenby - getting results** and **A brief introduction to Project Wickenby.**



EVIDENCE MOUNTS: HIDING MONEY OFFSHORE DOESN'T PAY

Australians are sending less money to overseas tax secrecy jurisdictions than they were five years ago, and more money is flowing back into Australia from these jurisdictions.

Funds flow analysis by the Australian Transaction Reports and Analysis Centre (AUSTRAC) shows that in 2012-13, \$13 billion in net funds flowed into Australia from the 13 tax secrecy jurisdictions being watched by Project Wickenby.

In that same period, the value of funds sent to these jurisdictions from Australia decreased by 13 per cent, compared to five years ago.

Reduced funds flows to tax secrecy jurisdictions and an increase in funds flowing from them to Australia demonstrates that Project Wickenby is achieving results.

The evidence is mounting that hiding money offshore doesn't pay. Project Wickenby is making an impact - AUSTRAC data shows that people who thought their money was safe in overseas havens are re-thinking their choices.

AUSTRAC receives information on millions of international funds transfers into and out of Australia each year and can identify transactions that are

Time is running out to disclose offshore income.
For more information, go to
Project Do It: Disclose Offshore Income Today.

likely to be associated with tax avoidance and other crimes, such as money laundering and organised crime.

Intelligence from AUSTRAC has been instrumental in identifying and bringing to account tax evaders and other financial crime offenders.

The cases below – from AUSTRAC's *Typologies and case studies report 2013* – reveal how offenders, who thought they could fly under the radar with complex schemes, were tracked and prosecuted as a result of government detection and investigation.

Find out more about our global network.



NO RETURN ON INVESTMENT FOR TAX EVASION

Two taxpayers who owned unrelated companies in the building industry were both sentenced to three years imprisonment, and will have to pay a total of nearly \$2 million including penalties and interest for their involvement in a complex 'round robin' tax scheme.

Data from AUSTRAC on the financial activities of a Vanuatu-based accountancy firm revealed the intricate scheme, which used overseas companies and bank accounts to obscure the source of funds.

The taxpayers transferred funds to companies in New Zealand, which were controlled by the Vanuatu-based accountant.

They falsely claimed these funds as deductible expense payments to fraudulently reduce the companies' taxable income, and therefore the amount of tax they were liable to pay.

The funds, disguised as loans, were transferred back to the participants disguised as loans through a series of international transactions via accounts owned and operated by the accountant.

'The accountant who promoted and facilitated the scheme received a jail sentence of eight years and 11 months.'



SHARE SCHEME FRAUDSTER DOESN'T ESCAPE JAIL TIME

A wealthy individual was sentenced to eight-and-a-half years imprisonment for money laundering and avoiding millions in tax. He was investigated after declaring minimal income to the ATO while living a luxurious lifestyle.

The individual created several offshore companies to which he sold his shares well below the true market value. By doing so, he artificially reduced his tax liabilities in Australia, while keeping control of the shares.

He later arranged for the shares to be sold through his offshore companies at market value. The proceeds of the share sales were returned to his Australian company disguised as loans, entailing multiple funds transfers over a two-year period.

During the investigation, AUSTRAC information identified that the individual received a total of 15 incoming international funds transfers totalling approximately \$4.7 million.

He was investigated after declaring minimal income to the ATO while living a luxurious lifestyle.

Read more case studies in AUSTRAC's latest **Typologies and Case Studies report**.



ABUSING PROFESSIONAL KNOWLEDGE LEADS TO SERIOUS SENTENCING

David Williams
Chartered Tax Adviser, 2014



Have you ever considered cheating the ATO?

Judging by the number of people my taxes are supporting on 'an all-expenses paid' stay in one of her Majesty's health farms for tax related convictions, quite a few people have thought about it and then taken it further than just wondering. Included in those people convicted of defrauding the ATO are a number of tax professionals.

Five years ago a tax professional caught defrauding the ATO could have expected a head sentence in the order of three years. Today they would be looking at six years.

In part this is as a result of appellate courts telling sentencing judges to make the sentences fit the offence.

This comes from courts saying that tax fraud is a serious offence but then imposing relatively light sentences. It has also been recognised that there needs to be parity between sentences in social security fraud matters and in tax fraud matters.

Judges are making it clear that a tax professional should expect a longer sentence for tax fraud than a person without professional training in tax. Essentially this comes back to the fact that tax professionals should know better than a client who is simply following professional advice, or a mere 'chancer': a taxpayer who has decided to bear the risk of defrauding the system alone.

General deterrence is probably the single most significant or important aspect of sentencing. This has been stated on a number of occasions at both sentencing judge level and appellate court level. Hence, 'advisors' or 'facilitators' can expect higher sentences than 'taxpayers' (including those taxpayers acting alone).

Essentially this is a recognition that if a taxpayer ups the ante, it is less likely that professionals will take the risk of being involved, which therefore lessens the likelihood of the taxpayer being involved in a tax fraud in the first instance.

Those who are considering cheating the system *should think twice*.

For a salutatory reminder of the lengthy jail terms that professionals who are found guilty of tax fraud can expect, see the table of **tax practitioner sentences** compiled by David Williams.



PROSECUTED: TAX AGENT SENTENCED TO JAIL TIME

The courts are sending a strong message to those who use their professional standing to take advantage of taxpayers and the wider tax system.

A former registered tax agent was sentenced to 20 months jail on Friday 4 April after being found guilty of six counts of dishonestly causing loss to the Commonwealth of over \$410,000 while he was working as a tax agent.

The offender, who is now deregistered, lodged false BAS statements on behalf of his clients during 2010. The false statements resulted in losses to the ATO by reducing the amount payable by the client company.

The investigation into the case began when we detected a large refund claim. We then conducted an audit to verify a capital purchase of \$4.4 million by a company the former tax agent was looking after.

The investigation revealed that the business activity statements lodged were false – claiming a GST shortfall of \$411,470 in the attempt to receive a GST refund of \$400,000 to offset the company's tax debt.

In a separate matter being dealt with by NSW police, the tax agent alleged to have taken the money that was given to him by the client in order to repay the outstanding debt to the ATO.

During a cautioned interview conducted by ATO investigators, the offender made full admissions that he altered the figures to reduce the tax liability.

He also admitted to forging documents such as a tax invoice and debtors and creditors ledgers in order to verify the figures claimed in the BAS.

He also advised that the reason behind his actions was that he was in desperate need of the money as he had made some bad investments in the past.

In sentencing, the Court noted that the tax agent's conduct demonstrated a high level of sophistication, deceit to the ATO and breaches of trust. He had, however, admitted to his crimes and behaved cooperatively with investigators, which the Judge acknowledged when issuing his sentence.

His conduct demonstrated a high level of sophistication, deceit to the ATO and breaches of trust.

Find out more about our **prosecution record.**



LET THE PUNISHMENT FIT THE CRIME

Most of us understand that losing tax dollars to tax crime impacts on the whole system and affects the amount of money that is then available to government to provide public services.

However, it becomes even more personal when that abuse involves stealing another taxpayer's identity. In many cases, it can take years for people to recover financially and to get over the emotional effects of having their personal information stolen and used for fraudulent purposes.

Recent results from court cases have reinforced the seriousness of tax related offences, including two cases where the judges stressed the importance of the sentence reflecting the harm caused to victims and the wider community.

PROTECT YOURSELF AGAINST TAX CRIME



The ATO, with the support of the courts, continues to take decisive action against those who abuse their positions of trust.

However, it is always a good idea to be vigilant in protecting your personal information. We've released a video with some tips for protecting yourself from identity theft.

Watch - Protect your personal information.



MONEY LAUNDERING SENTENCE DOUBLED AFTER CROWN APPEAL

The Court of Criminal Appeal doubled an offender's jail sentence to 8 years after the Commonwealth Director of Public Prosecutions appealed the sentence of 3 years 6 months on the basis that the original sentence was manifestly inadequate, in May 2014.

The taxpayer was charged with a money laundering offence in relation to funds obtained from frauds committed against the ATO totalling over \$350,000.

The offender lodged false income tax returns with inflated details to claim refunds on behalf of 21 people whose identity had been stolen for this purpose.

The judge, in the original sentencing, noted that the offence was 'objectively a very serious offence' and that 'to award a lesser sentence would not reflect the seriousness of the offence...'

He also referred to the serious impact of the crimes on those whose identity was stolen, stating that 'there was evidence of the pervasive effect this had upon the victims... which in some cases has only now been resolved.'

'To award a lesser sentence would not reflect the seriousness of the offence...'



FORMER ACCOUNTANT'S APPEAL DISMISSED

The appeal of a now former accountant sentenced to 9 years jail for lodging false income tax returns was dismissed and his application for special consideration to the High Court refused, in April 2014.

In 2011, the former accountant was convicted and sentenced on 49 counts and 8 attempts to obtain advantage in relation to over \$550,000 in fraudulently gained funds.

The offender arranged for false returns to be lodged through registered tax agents using the details of unsuspecting victims, many of them recent migrants and people who were not proficient in English or familiar with the Australian tax system.

The original sentencing judge stated that the evidence had a significant impact on the victims and the wider Australian community:

‘Apart from the damage to the Commonwealth and thereby to each and every member of the community of Australia, there was substantial damage inflicted on each individual taxpayer, either financially or emotionally’.

The original sentencing judge stated that the evidence had a significant impact on the victims and the wider Australian community.



NO MEDALS FOR PHOENIX OPERATORS AT COMMONWEALTH GAMES SITES

Ancient mythology portrays the phoenix as a beautiful and inspirational creature; a legendary bird with the ability to be reborn from a fiery death.

However, there's nothing inspiring about fraudulent phoenix activity – the deliberate and repeated liquidation of companies to avoid paying debts.

Phoenix activity is infamous in the building and construction industry, with employees and creditors burnt by the sudden death and rebirth of companies, orchestrated by dishonest company directors.

The minority of operators who engage in phoenix activity create an unfair advantage over others, and this is something we're committed to preventing.

We consider early intervention to be a key element in successfully disrupting and dismantling phoenix activity.

One large-scale project that has attracted our attention is the construction of the 2018 Gold Coast Commonwealth Games sites in Queensland.

Earlier this year, we reviewed the tax affairs of more than 40 sub-contractors working on the Gold Coast Aquatic Centre at Southport, the first of the sites to be completed. We contacted contractors who:

- > were failing to meet their employee obligations
- > showed signs of having not lodged tax returns
- > had outstanding tax debts, and/or
- > had a history of liquidated companies.

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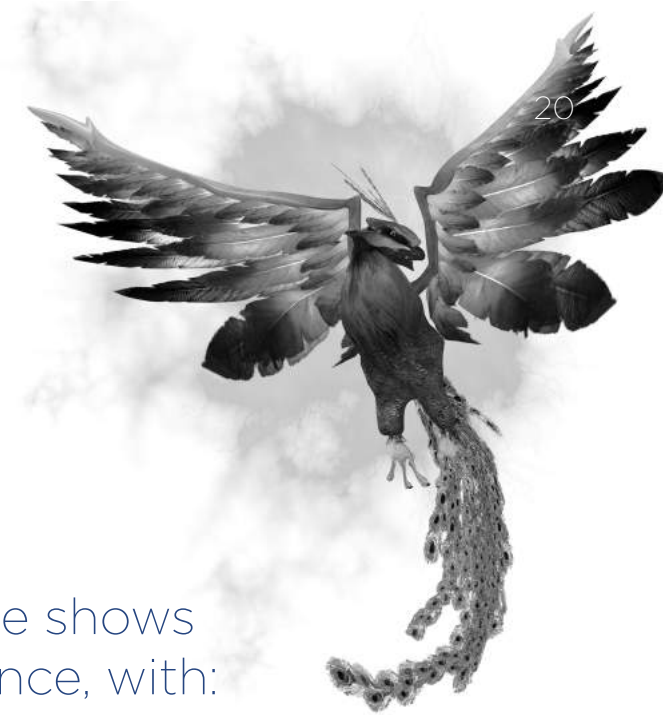
With the cooperation, intelligence and data provided by other government agencies and by members of the building and construction industry, a number of phoenix operators were identified and their harmful activities have been disrupted.

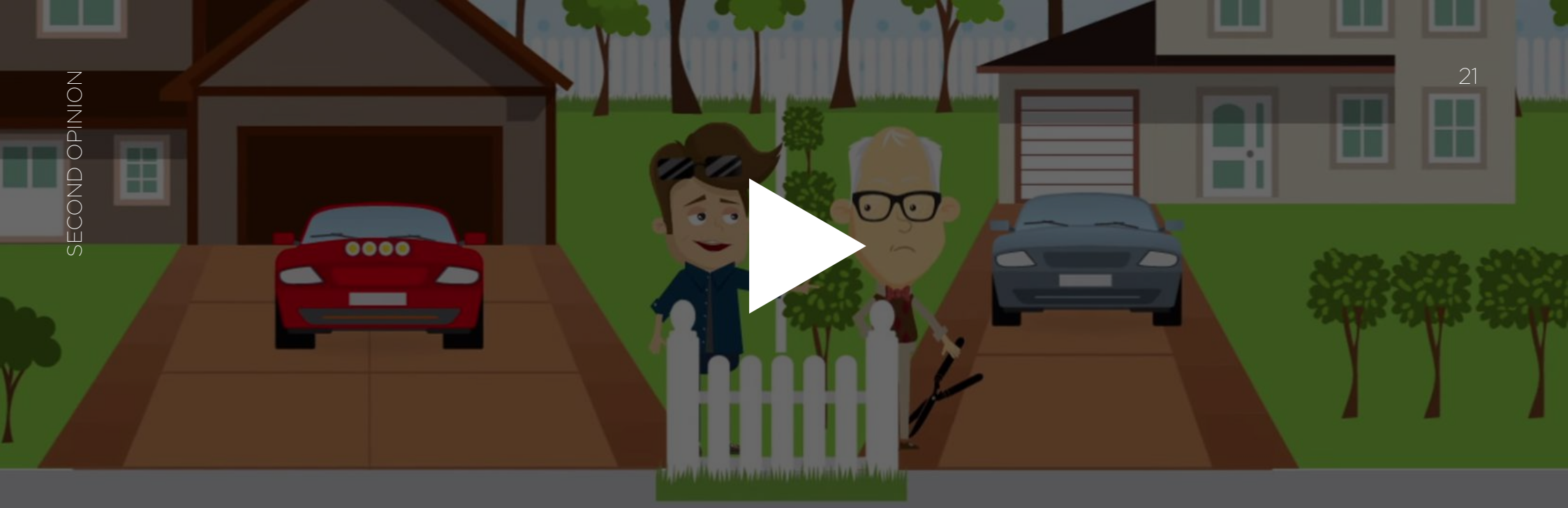
As construction commences on the other Commonwealth Games sites, we plan to continue working within the industry to stamp out unfair competition, to protect employees and their entitlements, and to secure tax revenue that belongs to the community.

Our work on a single site shows we are making a difference, with:

- > \$400,000 recovered from a contractor exhibiting phoenix behaviour, through lodgment enforcement and debt recovery
- > 24 other taxpayers with outstanding lodgments referred for actioning, through lodgment requests or demands
- > referrals for 13 audits, and
- > reporting and collating intelligence to build and retain our commercial knowledge for the whole Commonwealth Games project.

Find out more about
fraudulent phoenix activities.





TAX AVOIDANCE SCHEMES: GET A SECOND OPINION

Our animated video reminds investors to protect themselves against illegal tax schemes. It's a light-hearted video with a serious message.

Illegal tax schemes are usually designed to appear legitimate, even to experienced investors, and promoters of these schemes may go to great lengths to gain potential investors' trust.

We encourage investors to seek a second opinion from an unaffiliated and trusted tax professional.

Find out more about
tax effective investments.



POSTSCRIPT

HOW TO REPORT A TAX CRIME

Help us ensure everyone pays their fair share of tax. Report information on suspected tax crime to the Tax Evasion Reporting Centre on 1800 060 062 or if you are a tax practitioner use Fast Key Code 3 4.

You can also report online anytime at ato.gov.au/reportevasion.

MAKING A VOLUNTARY DISCLOSURE

We encourage taxpayers who have made a mistake in relation to their tax affairs to make a voluntary disclosure. This can lead to reductions in shortfall penalties and interest, particularly if the voluntary disclosure is made before the notification of an audit.

Voluntary disclosures can be made in writing, electronically, by phone, or other methods available in specific circumstances. Read full details about [how to make a voluntary disclosure](#), or find out more about [Project DO IT: Disclose Offshore Income Today](#).

WHAT OUR PARTNER AGENCIES ARE UP TO

Take a look at [Australian Crime Commission's infographic](#) on Money Laundering 101 and the money retrieved through Taskforce Eligo. AUSTRAC has released a fact sheet on the [2012-13 funds flow analysis for Project Wickenby](#).

SPEECHES AND MEDIA RELEASES

Commissioner Speeches

- 15 October 2014: [Commissioner's keynote address to the 2014 CPA Congress](#)
- 08 August 2014: [Commissioner's address to COSBOA National Small Business Summit 2014](#)
- 12 June 2014: [Commissioner's speech to ICAA Practice Forum 2014](#)
- 14 April 2014: [Reinventing the ATO - building trust in Australia's tax administration](#)

Other Speeches

- 29 August 2014: [Global tax avoidance and its effects on Australia's economic prosperity](#)
- 22 May 2014: [Administration of the Promoter Penalties Regime and recent Court decisions](#) by Tim Dyce, Deputy Commissioner Aggressive Tax Planning

Media Releases

- 29 June 2014: [ATO steps up data mining program to target offshore tax evaders](#)
- 27 March 2014: [Australians with undisclosed offshore income urged to come clean](#)
- 05 February 2014: [Sour grapes for vineyard scheme promoters](#)

For a full list of speeches and media releases, visit the [Media centre](#) on our website.

FEEDBACK

Feedback is always welcome. Email us at targetingtaxcrime@ato.gov.au with any comments or suggestions.

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