

The Auditor-General
Audit Report No.25 2011–12
Performance Audit

Administration of Project Wickenby

Australian Taxation Office
Australian Crime Commission
Australian Federal Police

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of Australia 2012

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Executive Director
Corporate Management Branch
Australian National Audit Office
19 National Circuit
BARTON ACT 2600

Or via email:
webmaster@anao.gov.au



Canberra ACT
9 February 2012

Dear Mr President
Dear Mr Speaker

The Australian National Audit Office has undertaken an independent performance audit in the Australian Taxation Office, the Australian Crime Commission and the Australian Federal Police with the authority contained in the *Auditor-General Act 1997*. I present the report of this audit and the accompanying brochure to the Parliament. The report is titled *Administration of Project Wickenby*.

Following its presentation and receipt, the report will be placed on the Australian National Audit Office's Homepage—<http://www.anao.gov.au>.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ian McPhee', is positioned above the printed name.

Ian McPhee
Auditor-General

The Honourable the President of the Senate
The Honourable the Speaker of the House of Representatives
Parliament House
Canberra ACT

AUDITING FOR AUSTRALIA

The Auditor-General is head of the Australian National Audit Office (ANAO). The ANAO assists the Auditor-General to carry out his duties under the *Auditor-General Act 1997* to undertake performance audits, financial statement audits and assurance reviews of Commonwealth public sector bodies and to provide independent reports and advice for the Parliament, the Australian Government and the community. The aim is to improve Commonwealth public sector administration and accountability.

For further information contact:
The Publications Manager
Australian National Audit Office
GPO Box 707
Canberra ACT 2601

Telephone: (02) 6203 7505
Fax: (02) 6203 7519
Email: webmaster@anao.gov.au

ANAO audit reports and information about the ANAO are available at our internet address:

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Audit Team

Andrew Morris
Damien Brown
David Lacy
Danielle Sheehan
Nathan Callaway
Dr Tom Clarke

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Abbreviations

ACC	Australian Crime Commission
ACC Act	<i>Australian Crime Commission Act 2002</i>
ADAMA	ACC Document Access Management Application
AFP	Australian Federal Police
AGD	Attorney-General's Department
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office
AUSTRAC	Australian Transaction Reports and Analysis Centre
BMC	Business Management Committee
CAAC	Cross Agency Advisory Committee
CDPP	Commonwealth Director of Public Prosecutions
CEO	Chief Executive Officer
DPO	Departure Prohibition Order
G20	Group of Twenty Finance Ministers
JITSIC	Joint International Tax Shelter Information Centre
JSIT	Joint Strategic Intelligence Team
HOCOLEA	Heads of Commonwealth Operational Law Enforcement Agencies
IPEC	Initiate, Plan, Execute, Close
IPS	International Promoter Strategy
IQF	Integrated Quality Framework

LPP	Legal professional privilege
MAR	Mutual assistance request
OECD	Organisation for Economic Cooperation and Development
POCA	<i>Proceeds of Crime Act 2002</i>
PROMIS	Police Realtime Online Management Information System
SNC	Serious Non Compliance
TAA	<i>Taxation Administration Act 1953</i>
TIEA	Tax Information Exchange Agreement

Glossary

Abusive secrecy haven scheme	A financial arrangement involving jurisdictions with secretive tax or financial systems that allows participants to enjoy the benefits of ownership and control of assets and entities without the responsibilities that come with ownership such as the payment of tax, disclosure to the market and compliance with Australian laws.
ATO audit	An examination of a taxpayer's financial affairs where there is a risk of material underpayment of taxation, to establish the correct liability and/or enforce adherence to obligations.
ATO risk review	Assesses whether tax risks arise from a taxpayer's self-assessment.
Compliance dividend	Increased tax revenue arising from taxpayers who have been subject to Project Wickenby compliance interventions voluntarily lodging more accurate tax returns.
Cycle time standard	The amount of time determined by the ATO as the standard duration required to complete an audit or risk review. The cycle time duration varies according to the type of audit or review.
Departure Authorisation Certificate	Permits a debtor that is subject to an ATO Departure Prohibition Order to depart Australia temporarily, often if some form of security is assigned to the debt.
Departure Prohibition Order	A Departure Prohibition Order is issued where a person with a tax liability or obligation is likely to depart Australia without discharging the outstanding debt or obligation or making arrangements to do so.
Intermediary	Usually located in Australia, intermediaries often facilitate participation in the abusive use of secrecy havens by introducing Australian taxpayers to foreign promoters. Intermediaries include, but are not limited to, accountants, tax agents and lawyers.

Investigation	Inquiries into whether there has been a breach of Commonwealth, state or territory law, with a primary purpose of gathering admissible evidence for any subsequent action, whether civil, criminal or administrative.
Legal professional privilege	A common law right which protects the right of individuals and other entities to obtain confidential legal advice about their legal circumstances. This right protects some legal advice from being used as evidence against an individual.
Mutual assistance request	The formal process countries use to request, provide and obtain formal government-to-government assistance in criminal investigations and prosecutions.
Project Wickenby taskforce	Cross-agency taskforce established in 2006 to protect the integrity of Australia's financial and regulatory systems by preventing people from promoting or participating in illegal offshore schemes, particularly those involving the abusive use of secrecy havens. The seven Australian Government agencies comprising the taskforce are the ATO, ACC, AFP, ASIC, CDPP, AGD and AUSTRAC.
Participant	Australian taxpayers who use illegal offshore schemes offered by a promoter.
Promoter	Usually located in secrecy havens, promoters formulate and deliver international tax evasion schemes to participants, usually through intermediaries.

Summary and Recommendations

Summary

Introduction

1. Australian resident taxpayers are required to pay tax on their worldwide income. Accordingly, Australia's taxation system of self assessment places a responsibility on taxpayers to declare all of their assessable income and claim only deductions and offsets to which they are entitled.
2. To evade taxation and other financial obligations, some Australians use offshore schemes to conceal assets and income, or to overstate business expenses. These schemes are often facilitated through secrecy havens, which are countries, regions or states with opaque tax or financial systems. Within these jurisdictions, there is little transparency about the ownership of assets and banking transactions and these countries do not have effective avenues for international cooperation, including exchange of information agreements. These jurisdictions also have minimal taxes for non-residents.
3. While many transactions between Australia and secrecy havens are lawful international dealings, the features that make havens attractive for legitimate purposes may also be used in arrangements designed to evade paying Australian tax, or for other criminal purposes. Abusive secrecy haven schemes allow participants to enjoy the benefits of ownership and control of assets and entities without the responsibilities that come with ownership, such as meeting their tax and other obligations as required by Australian laws.
4. Many nations are involved in a global effort to combat the abusive use of secrecy havens. The extent of tax evasion is difficult to measure, however the Organisation for Economic Cooperation and Development (OECD) has estimated that US\$5-7 trillion is hidden in secrecy havens.¹
5. The Project Wickenby² cross-agency taskforce was established in 2006 to protect the integrity of Australia's financial and regulatory systems by preventing people from promoting, facilitating or participating in illegal

¹ Angel Gurría, OECD Secretary-General, *Improving transparency and stepping up exchange of information in tax matters*, Conference on the Fight against International Tax Evasion and Avoidance: improving transparency and stepping up exchange of information in tax matters', 21 October 2008.

² The name 'Wickenby' does not refer to any individuals involved in, or related to, the project. Rather, it refers to an airfield in the north of England, and was simply the next on the list of airfields, which was the family of entities being used at the time by the Governance of Operations Committee of the Australian Crime Commission to generate names for investigations.

offshore schemes, particularly those involving the abusive use of secrecy havens.³ The taskforce includes the: Australian Taxation Office (ATO); Australian Crime Commission (ACC); Australian Federal Police (AFP); Australian Securities and Investments Commission (ASIC); Attorney-General's Department, Commonwealth Director of Public Prosecutions; and Australian Transaction Reports and Analysis Centre (AUSTRAC).⁴

6. Project Wickenby represents the first time such a broad range of Australian Government resources has been used to address the significant threat that illegal offshore schemes pose to the integrity of Australia's financial and regulatory systems. Activities carried out by the Project Wickenby taskforce include:

- civil audits and risk reviews conducted by the ATO and enforcement or regulatory action undertaken by ASIC under these agencies' respective legislation;
- criminal investigations conducted by the ACC, AFP and ASIC;
- prosecutions and other legal action undertaken by the Attorney-General's Department, the Commonwealth Director of Public Prosecutions, and the Australian Government Solicitor;
- administrative actions, including banning people from the financial services industry and using data from AUSTRAC to track money moving in and out of Australia; and
- proceeds of crime action, including action to restrain property and, subsequently, to seek its forfeiture.

7. The Commissioner of Taxation has responsibility for the administration of the Commonwealth of Australia's taxation laws, and consequently the ATO is the lead agency for the project.

8. The Australian Government provided additional funding of \$308.8 million over seven years for Phase 1 of Project Wickenby, commencing in February 2006. This funding was further increased in 2009 by an additional

³ Promoters are mainly located offshore and formulate and deliver international tax evasion schemes to participants, usually through intermediaries. Intermediaries are the key leverage point in facilitating tax evasion schemes and are usually located onshore, in this case, in Australia. Participants are Australian taxpayers who use illegal offshore schemes offered by a promoter.

⁴ The Australian Government Solicitor is a supporting agency.

\$122.1 million for Phase 2, reaching \$430.9 million in total, and ceasing on 30 June 2013.

Audit objective and scope

9. The objective of the audit was to assess the effectiveness of the Project Wickenby taskforce in making Australia unattractive for international tax fraud and evasion by detecting, deterring and dealing with the abusive use of secrecy havens by Australian taxpayers.

10. The focus of the audit was on the roles of the ATO, ACC and AFP in the Project Wickenby taskforce. In particular, the audit examined the:

- extent to which the project had met its objective, outcomes, and collection commitments to government;
- cross-agency coordination and governance arrangements;
- arrangements to harness intelligence and select cases for civil compliance interventions and criminal investigations;
- conduct of risk reviews and audits by the ATO; and
- conduct of criminal investigations by the ACC and AFP.

11. The appropriateness of professional judgments and decisions made by these three agencies in conducting civil compliance interventions and criminal investigations was outside the scope of the audit. The audit also did not examine the roles of the other four partner agencies, except to the extent that their activities supported broader project outputs or those of the ATO, ACC or AFP.

Overall conclusion

12. In February 2004, the ACC seized documents and a laptop computer as part of its investigation of a Swiss-based promoter of tax schemes. This information revealed the names of hundreds of Australians potentially linked to his Jersey-based accountancy firm. Subsequent investigation and audit activity by the ACC and ATO identified extensive Australian participation in individually tailored offshore taxation arrangements. This exposure provided the impetus for the establishment of the Project Wickenby taskforce in 2006. The aim of Project Wickenby is to make Australia unattractive for tax fraud and evasion by preventing the abusive use of secrecy havens.

13. At that time, the scale of the abusive use of secrecy havens by Australians was largely unknown, although the ATO had estimated that at

least \$300 million in taxation revenue was at risk. It was feared that participation in the schemes could quickly escalate and become an even more significant compliance risk.⁵ The rationale for the project was to protect the revenue base, and the Government provided \$430.9 million in additional funding to Project Wickenby agencies. The Government has required a conservative quantifiable return on this investment—mainly through setting a target for the project to collect \$654 million in additional tax revenue.

14. As a result of Project Wickenby's focus on preventing the abusive use of secrecy havens, Australia is presently less attractive for international tax fraud and evasion than it otherwise would have been. After a slow start, the project has achieved substantial results from its activities, which contribute to protecting Australia's revenue base. These results include the conviction of 20 people who were investigated for criminal offences (with custodial sentences imposed of up to eight-and-a-half years imprisonment), and more than \$1 billion in tax liabilities being raised from over 2300 ATO audits and risk reviews completed to 30 June 2011.

15. The impacts on improved voluntary compliance (and on reduced international tax fraud and evasion) are more difficult to measure. However, there are promising indicators. The ATO calculated that a 'compliance dividend' of some \$308 million in extra tax was declared by those 'touched' by the project. AUSTRAC analysis also shows that the financial flows between Australia and secrecy havens reduced by a significant extent between 2008 and 2010, including by 80 per cent and 50 per cent in two major secrecy haven jurisdictions dealt with by Project Wickenby. An indirect deterrence impact is indicated by qualitative factors such as: generally positive media reporting of the project; court sentencing judgements about the serious nature of tax fraud; and professional bodies advising that some tax agents and accountants have warned their clients not to participate in secrecy haven schemes because of the project.

16. The project has met the Government's combined ongoing collection targets since mid-2009. At 30 June 2011, the estimated compliance dividend of \$308 million combined with \$253 million in cash collected meant that Project

⁵ Boutique haven schemes for high-wealth individuals had existed for some time. However, with lower costs of travel and communications, increased global trade, and the use of the internet, the barriers to entry for haven schemes had reduced, giving new opportunities for participation, including to small businesses and moderately wealthy individuals.

Wickenby had exceeded its collection commitments to government.⁶ However, as previously noted, the targets for collections were a conservative multiple of funding provided.⁷

17. Australia is not, however, ‘unattractive’ for international tax fraud and evasion, and the risk posed by secrecy havens remains high. Through improved detection of secrecy haven risks, the ATO had identified over 11 000 Australian taxpayers with links to more than 200 identified promoters of secrecy haven schemes, as at June 2010. The ATO also estimated that the amount of revenue foregone from tax evasion associated with these promoters and secrecy havens would be almost \$400 million by June 2013, which exceeds that estimated at the commencement of Project Wickenby in 2006. In this light, there is some risk to revenue if the responsible agencies are unable to reprioritise existing demands on their resources, or obtain additional budget funding, to pursue criminal and civil compliance interventions after funding for the project is scheduled to cease on 30 June 2013.

18. While Project Wickenby has had notable achievements, including the 20 criminal convictions, over \$1 billion raised in tax liabilities and significant reduction in funds flowing to particular tax havens, community confidence in the integrity of Australian financial systems associated with the abusive use of secrecy havens is not high. Only 52 per cent of respondents to the ATO’s most recent Community Perceptions Survey in 2009 considered the ATO was effective in stopping people and businesses using international secrecy havens to avoid paying tax, which was a reduction of 11 percentage points in confidence compared to the previous year.

Effectiveness of administration

19. Project Wickenby has sound governance arrangements, underpinned by the effective operation of cross-agency governance committees, comprehensive risk management approaches, and adequate performance monitoring and reporting. The ATO has effectively led the taskforce and developed and

⁶ To 30 June 2011, \$561 million had been collected in cash and from the compliance dividend, which was 132 per cent of the pro rata target of \$426 million (as a proportion of the total project target of \$654 million). As discussed in paragraph 52, less than a quarter of all liabilities raised from Project Wickenby compliance interventions had been collected, as at 30 June 2011.

⁷ The collection ratio for Project Wickenby funding is 2.8, calculated by dividing \$654 million in collection commitments to government by \$235 million funding to the ATO only. The Project Wickenby cash collection target of 2.8 is lower than comparable targets in other countries. For example, the United Kingdom has set a target of bringing in £7 billion from £900 million invested in tax compliance and debt collection activities (a cash collection target of 7.8), including taking specific action to tackle offshore avoidance and evasion.

coordinated cross-agency strategies. Improvement opportunities involve the ATO: more systematically developing a program to release, update and integrate project plans; and streamlining high-level performance reporting.

20. Intelligence about the nature and impact of the abusive use of secrecy havens has improved markedly since the inception of Project Wickenby. The risk population is better defined, particularly by identifying many large clusters of potential compliance intervention cases. Exchange of information with foreign revenue authorities and law enforcement agencies has provided considerable intelligence and potential cases.

21. Selection of the initial cases for criminal investigation and/or civil action stemmed from analysis of the information seized from the Swiss-based promoter. While the specific rationale for selecting all cases was not readily available, the selection processes have been refined over the life of the project for both criminal investigations and civil actions. Changes to strategic priorities and reduced funding, however, have resulted in varying approaches to selecting criminal investigations of a similar nature over time, as the capacity to approve investigations that may have been accepted earlier in the project has diminished.

22. Project Wickenby audits are conducted within the ATO's existing audit and quality assurance framework. While not assessing the technical merits of decisions reached, the ANAO found that the available case decision reports clearly linked evidence to established ATO positions and tax law. However, Project Wickenby auditors could have better used the electronic case management system to record key decisions and manage evidence. Over 30 per cent of all the sampled cases did not have a record of approvals for planning and case decisions on this system. In addition, 19 per cent of cases did not have documentation to support the basis for audit decisions, either on this electronic system or the associated hard copy files. Incomplete or inaccurate records pose a risk to the effectiveness and cost of conducting Project Wickenby audits in the context of high levels of challenge by taxpayers, and subsequent objections, appeals and debt collection processes, as well as related criminal prosecutions.

23. The relatively few criticisms and complaints⁸ about the ATO's administration of Project Wickenby have focused on the timeliness of audit

⁸ There were 43 complaints about the ATO's administration of Project Wickenby to 30 August 2011.

and objection processes, a lack of transparency and excessive imposts on those being audited, and alleged improper handling of information. Timeliness of audits has been an ongoing problem, with the sampled audits taking an average 541 days to complete, and not achieving their expected duration in two-thirds of cases. The ATO has revised its processes for disseminating information to partner agencies, and progressively adopted approaches involving more transparent audit processes and readier acceptance of audit evidence. Risk reviews have been used more frequently since 2009 to streamline the ATO's compliance intervention program, and would benefit from further internal assessment to improve the choice of review type, their results⁹ and performance in achieving cycle time standards.

24. Undertaking serious criminal investigations is challenging when dealing with complex tax evasion schemes in foreign secrecy haven jurisdictions, where critical evidence to support prosecutions is difficult to obtain, and investigation processes are subject to extensive legal disputation. Within this environment, the ACC and AFP have worked effectively, together with other taskforce agencies, to investigate and prosecute the participants, facilitators and promoters of secrecy haven schemes. However, responding to these challenges and disputes has been resource intensive and costly to the administration of the project, resulting in investigations being completed much later than planned. ACC investigations were completed in an average 49 months (compared to the planned 18 months), and AFP investigations 36 months (compared to the planned 12 months).

25. Operationally, both agencies, but particularly the ACC, could improve elements of their investigation planning and case management, including recording the approval of, and rationale for, critical decisions.¹⁰ Major investigation plans generally lacked specific risk assessment and mitigation, and significantly underestimated the resource requirements. The incomplete recording on both agencies' electronic case management system of key investigation management documents, such as investigation and tactical plans, poses a risk to the effectiveness of investigations, given the complexity and extent of challenge experienced. The ACC's document management system

⁹ In particular, 72 per cent of the most common review type completed for Project Wickenby—a comprehensive review with a cycle time standard of 240 days—did not provide a positive result for the ATO (such as a financial outcome, voluntary disclosure or progression to audit).

¹⁰ As discussed in paragraph 57, only 12 critical decisions were recorded on the electronic case management system across the ACC's nine investigations, compared to 197 recorded across the AFP's 12 investigations.

had substantial functionality limitations for supporting major criminal investigations, and the AFP was in the process of upgrading its electronic case and document management systems. To improve the management of their investigations, the AFP could revise the practice of allocating serious tax and financial crime investigations among its state and territory offices based on the proximity to the main potential offenders rather than where operatives with relevant skills are located.

26. The ANAO has made six recommendations to strengthen the administration of Project Wickenby. Four recommendations were made to the ATO, and emphasised the importance of: effectively using risk reviews to support the program of compliance interventions; managing audits more effectively through the electronic case management system; expediting the completion of audits; and conducting a post-implementation review of the project shortly after funding ceases in June 2013. Two recommendations were aimed at improving the ACC's and AFP's use of case and document management systems for criminal investigations, and the AFP's case allocation practices.

Key findings

Achieving the Project's Objective, Outcomes and Commitments to Government

27. The ATO has developed a suite of measures to monitor and report the extent to which Project Wickenby has achieved its objectives and outcomes. These measures cover: improved voluntary compliance with tax laws; outcomes of the project's criminal investigations and civil audits; improved community confidence in the ATO's management of serious non-compliance with taxation laws; and enhanced administrative approaches to address the abusive use of secrecy havens.

28. The Government has emphasised the first two measures by setting targets relating to a compliance dividend from improved voluntary compliance, and a cash collection target resulting from civil audits. Improved community confidence can be measured by surveys assessing changes in attitudes over time against baseline survey results. No targets were set for enhanced administrative approaches or contributions to regulatory reform.

29. As previously noted, the project has met its collection commitments to government and is partly achieving its overall objective by making Australia less attractive for international tax fraud and evasion.¹¹

30. The ATO has a sound framework for measuring the impact of Project Wickenby on improved voluntary compliance with tax laws. There is scope, however, to update and improve the calculation of the compliance dividend and refine the indicators of compliance effectiveness for the project. More specifically:

- the calculated compliance dividend captured the main elements for estimating net future revenue attributable to Project Wickenby interventions. However, it was important to update its coverage of relevant taxpayers, test whether their declared liabilities were actually paid, and revise the base years and control group; and
- while the compliance effectiveness method applied to Project Wickenby reflects the main indicators of improved voluntary compliance discussed in this audit—the compliance dividend, AUSTAC transaction analysis and qualitative indicators—the specific measures and overall reporting could be improved to better analyse the effectiveness of Project Wickenby to meet its overall objective of making it unattractive for Australian taxpayers to participate in ‘Wickenby-type’ activity.¹²

31. In addition to the decline in community confidence indicated by the Community Perceptions Survey (discussed earlier), a *Tax Agents Survey* conducted in 2011 found that awareness of Project Wickenby outcomes was low. Just over one-third of respondents believed that the project had been at least slightly effective in detecting, deterring and dealing with the abusive use of secrecy havens, but almost half were neutral or did not know. It is important that the ATO includes the results of these surveys as part of its external and internal reporting on achieving project outcomes, and reviews the appropriateness of measures of community confidence as required. There

¹¹ Risk ratings for the project assessed by the ATO in late 2010 support these audit findings. The risk ratings included that the overall level of project risk was high, the risk of not meeting government commitments was low, and the risk of failing to meet stakeholder expectations was moderate.

¹² Specific improvements could include: an explicit conclusion about the effectiveness of the project in achieving its desired outcome; developing a proposed indicator of the impact of ACC, AFP and ASIC investigations on compliance behaviours; replacing the indicator relating to profiling Wickenby clients with a measure of community confidence; and combining the two indicators covering the compliance dividend.

would also be merit in the ATO further reviewing the *Project Wickenby Marketing Communications Strategy*, so that positive outcomes achieved in addressing abusive secrecy haven schemes are better understood in the community and by tax specialists.

Project Governance

32. Project Wickenby cross-agency governance and assurance processes were designed on a taskforce basis, to promote collaboration and joint decision-making by agencies to deliver commitments to Government. As well as contributing to cross-agency arrangements, each agency has specific processes governing the delivery of taskforce outputs. As the lead agency, the ATO has primary carriage for facilitating governance and assurance arrangements for the project.

33. Project Wickenby cross-agency coordination arrangements provide a template for future taskforce projects. Cross-agency committees were instrumental in developing and implementing strategies and building taskforce cohesion. The ATO performed well as the lead agency in coordinating these committees and managing other governance responsibilities.

34. Project Wickenby largely adopted the ATO's risk management, planning and performance monitoring frameworks. These frameworks were soundly implemented. There was scope, however, to improve the formal planning arrangements for Project Wickenby as there was no clear design or schedule for releasing or updating high-level plans. There is also an opportunity to rationalise and streamline some performance reports, which would enable more consistent reporting against the risks of implementing the 13 high-level strategies.

35. The Terms of Reference for Project Wickenby stated that a review was to occur in October 2010. This review was not undertaken as the project was extended for a further three years. To respond to the Government's initial requirement, the ATO should conduct a post-implementation review after the scheduled completion of Project Wickenby Phase 2 in June 2013. The review could inform any future activity under Project Wickenby and capture lessons learned for other cross-agency taskforces of this nature.

36. An underspend of 9.3 per cent of the overall Phase 1 budget allocation of \$308.8 million stemmed mainly from a large shortfall in spending by the Commonwealth Director of Public Prosecutions while awaiting delayed prosecution cases. This underspend offset the considerable overspend by the ACC, arising from the resources required to respond to legal challenges. The extent of these challenges had been underestimated.¹³ Moving funds between partner agencies to where they were most needed proved difficult for the taskforce due to the agency-based emphasis given to the management of funds inherent in the Commonwealth Financial Framework.

37. The funding allocation for Phase 1 was an additional \$308.8 million, with the funding proposal and methodology clearly separating the costs and benefits arising from this funding from those arising from pre-existing resourcing. However, once underway, project costing practices have been to exclude pre-existing costs. Future projects with funding provisions that clearly separate additional and pre-existing costs and outcomes need to have in place reporting systems to distinguish these two components.

38. The Project Wickenby taskforce has had considerable international engagement, including with foreign revenue agencies, foreign law enforcement agencies and multilateral forums. Feedback from foreign entities that have been involved in international cooperation with the Project Wickenby taskforce included positive comment about the knowledge and approaches of taskforce officers.

Intelligence and Case Selection

39. Intelligence about the nature and impact of the abusive use of secrecy havens has improved markedly since the inception of Project Wickenby. The risk population is better defined and strategic intelligence provides a better understanding of broad risks. Operational intelligence has identified many cases for potential compliance treatments, and tactical intelligence has facilitated the extensive transfer of information at the case level.

40. Selection of the initial cases for criminal and/or civil action under Project Wickenby was conducted according to a case categorisation model. Categories were based on assessment of risk, complexity, revenue at risk and economies of scope. A feature of the criminal investigation strategy was the

¹³ The ACC had spent \$47.8 million on conducting the investigations by the end of the sixth year (2010–11), which was 80 per cent more than the total funding allocation of \$26.5 million.

decision to task the ACC with those cases relating to the Swiss-based promoter, and the AFP with those of other promoters. While this allocation of investigations provided for a clear delineation of cases, it did not necessarily direct cases to the agencies with the most appropriate powers to obtain evidence.

41. Selection processes for investigations have subsequently been refined, and draw on extensive multi-agency input. Changes to strategic priorities and reduced funding have meant that investigations similar to those conducted earlier in the project were not pursued in later years. To act as a deterrent to those currently involved in, or considering, the abusive use of secrecy havens, the taskforce should review the merit of selecting new cases for investigation.

42. Refinements have also been made to processes for selecting cases for civil audit and review since the categorisation derived from information obtained from the Swiss-based promoter. Reforms introduced in early 2010 have enabled the ATO to consistently prioritise and manage the compliance caseload across work streams and geographically across Australia. The ATO has also clearly reported the reasons for selecting candidates for audits and risk reviews since that time.

Civil Compliance Interventions

43. Project Wickenby's extensive program of civil compliance interventions has contributed to the taskforce outcomes and collection commitments to government. The ATO had completed over 750 audits and 1500 risk reviews by 30 June 2011, raising nearly \$1.1 billion in liabilities and collecting over \$250 million in revenue.

44. Administrative arrangements to conduct Project Wickenby audits and reviews are based on the initial separation of criminal and civil cases, and provide for the distribution of compliance interventions geographically. These established arrangements would benefit from a review given that funding for the project is scheduled to expire in June 2013.¹⁴

45. The focus of compliance interventions in the early years of Project Wickenby was on major audits that collected significant information from and

¹⁴ This review could determine whether these structures remain the most efficient and effective means of administering civil compliance activities as the volume of work decreases. In doing so, the review could assess the ongoing need for a separate compliance stream nominally to support criminal investigations where the other major stream is also supporting criminal investigations.

about clients, with limited open engagement and communication, as the ATO considered many clients likely to be serious non-compliers. As the profile of Project Wickenby clients became apparent, and in response to funding pressures and experiences of long audit cycle times to complete, the ATO progressively adopted approaches involving more transparent audit processes and greater use of risk reviews.

46. Since 2009, the ATO has used reviews extensively to assess risks for clusters of taxpayers, often relating to particular haven jurisdictions or to promoters of potentially abusive schemes. Seventeen types of reviews were used to 30 June 2011, although there was little specific rationale provided for the selection of some of the review types. At that time, only 25 per cent of completed reviews had a positive result for the ATO, and 62 per cent of reviews had met their respective cycle time standard. Many of these cases were comprehensive reviews, with an expected completion time of 240 days. To improve the utilisation of resources, and minimise imposts on clients, there would be merit in the ATO assessing the choice of risk review type for Project Wickenby, their results, and the time taken to complete the reviews.

47. Project Wickenby auditors applied sound audit practices, generally following processes to address identified risks, gather sufficient relevant evidence, analyse this evidence according to agreed ATO positions and factor in client contentions. However, Project Wickenby auditors could improve their use of the electronic case management system to record key audit decisions and manage documents and evidence. Only 57 per cent of the applicable audits sampled had appropriately used the case management system throughout the audit process to record key decisions and attach relevant documentation. Notably, 21 per cent of the applicable sampled audits did not have a planning document that specified the risks to be addressed, and 23 per cent did not include a final case decision report either on the electronic case management system or hard copy file. A major reason for the lack of planning documents and case decisions reports was reliance on primary case documents held on related-entity files, such as the family trust, but with no specific reference to that primary document on the audit's paper or electronic files.

48. As discussed previously, the relatively few criticisms of Project Wickenby audits by stakeholders focused on the timeliness of audit and objection processes, a lack of transparency and excessive imposts on those being audited, and alleged improper handling of information. To learn from this feedback, the ATO could selectively survey taxpayers, and continue to examine approaches to expedite audits.

49. Other areas the ATO could learn from feedback include an instance of requests for substantial information it already held, and another where taxpayers had approached the ATO with details of a tax scheme and the ATO did not respond, as promised, to advise if there was a problem with the scheme's legitimacy. In the latter case, the ATO did not respond until almost four years later, when it identified serious non-compliance issues and instigated audit activity and criminal investigations through the Project Wickenby taskforce.

50. A number of issues and allegations surfaced in late 2007 and early 2008 regarding information handling practices within the ATO's Serious Non Compliance business line, including Project Wickenby. These allegations were independently investigated¹⁵, and while some problems were identified, they were found not to be major. The ATO subsequently adopted strategies to improve information handling processes and practices.

51. Many taxpayers have undertaken actions to challenge Project Wickenby compliance intervention activities and outcomes, including through objections, appeals and procedural challenges. Around one-third of completed objections were allowed in part, mainly because the taxpayer provided additional information. The ATO has taken steps to improve the processes for sharing intelligence with partner agencies that emerges from tax objection and appeal matters.

52. Less than a quarter of all liabilities raised from Project Wickenby compliance interventions had been collected as at 30 June 2011. These high debt levels have arisen mainly because most ATO assessments had been disputed by taxpayers, and nearly half of all these taxpayers' assets are located overseas. The ATO had issued 14 Departure Prohibition Orders in 2010–11 on the basis of approval of detailed submissions.¹⁶ Where the ATO has issued Departure Authorisation Certificates for individuals subject to Departure Prohibition Orders, more formal recording of the reasons for decisions would reflect better practice.

¹⁵ Boucher D., *Report of a Review of Information Handling Practices in the Serious Non Compliance Business Line of the Australian Taxation Office*, December 2008.

¹⁶ The ATO can issue a Departure Prohibition Order where a person with a tax liability or obligation is likely to depart Australia without discharging the outstanding debt or obligation or making arrangements to do so.

Criminal Investigations

53. Project Wickenby's program of criminal investigations has also contributed to the taskforce outcomes. To 30 August 2011, 62 people had been charged with serious criminal offences under Project Wickenby. Of these, 14 resulted from ACC investigations and 48 from AFP investigations. Of the 20 convictions to that date, 16 were participants, two were intermediaries and two were promoters. The ACC has been challenged extensively in the courts, with favourable outcomes for the ACC in 31 of the 43 instances to September 2011¹⁷, while all 12 legal challenges against the AFP to that date have resulted in a positive outcome for the AFP.

54. Successful criminal investigations rely on adherence to sound administrative processes and reasonable judgements being made, based on sufficient and appropriate evidence. The ANAO's review of the 21 investigations conducted under Project Wickenby¹⁸ focused on the adequacy of administrative processes and practices, including planning, management¹⁹, resourcing and timeliness. The ANAO, however, did not seek to second-guess the appropriateness of professional judgments and decisions made by the ACC and AFP in conducting criminal investigations.²⁰

55. Of the nine ACC investigation plans assessed: only one specifically addressed risks and identified mitigation strategies; none considered costs; three had been updated; and none were signed and dated or had a record of formal approval. Of the 12 AFP investigation plans assessed: none specifically addressed risks or considered costs; two were updated; and five were signed and dated or had a record of formal approval. The plans generally underestimated the resource requirements, duration and timing of key milestones. ACC and AFP planning practices for Project Wickenby investigations could have been improved by explicitly assessing and

¹⁷ Of the other 12 challenges, three did not favour the ACC, parts of another three did not favour the ACC and six were neutral outcomes.

¹⁸ A single investigation can encompass a number of people.

¹⁹ Elements of investigation management examined included: oversight, coordination and monitoring arrangements; making and approving critical decisions; the use of case and document management systems; and review, assurance and improvement mechanisms.

²⁰ Also outside the audit scope were investigative practices (such as obtaining witness statements, issuing search warrants, and interrogating potential offenders) and the development of briefs of evidence for prosecution provided to the Commonwealth Director of Public Prosecutions. Investigation practices are tested through legal and judicial processes and by other authorities, particularly the Commonwealth Ombudsman.

mitigating risks, considering investigation costs, updating major investigation plans to reflect critical decisions, and better estimating expected investigation timeframes. Ensuring that approved investigation plans are attached to the official case management system would improve project management.

56. Project Wickenby criminal investigations were subject to management arrangements that provided regular oversight, coordination and monitoring at the taskforce level through cross-agency forums and internally at the ACC and AFP through various operating committees. However, detailed evaluations or quality assurance reviews have not been undertaken systematically across all Project Wickenby criminal investigations. There would be merit in the ACC developing and implementing a quality assurance framework to provide assurance to senior executives on the management of investigations.

57. Critical investigation decisions are required to be approved by the investigation team leader, and recorded in the case management system by the case officer.²¹ Those critical decisions for Project Wickenby investigations that were recorded on the electronic case management systems were appropriately approved, but not always clearly explained. However, the ACC did not record all critical decisions on the case management system. Only 12 critical decisions were so recorded across the nine ACC investigations, compared to 197 recorded across the AFP's 12 investigations. The ACC recorded critical investigation decisions in other locations²², although this reporting was disparate and inconsistent.

58. The ACC and AFP did not use their electronic case management systems sufficiently to record all key investigation management documents²³, thus creating a risk to the effectiveness of investigations given the level of legal challenges associated with the cases. The ACC's document management system was prone to user errors and search limitations, which necessitated the implementation of additional measures to assist in the location of relevant documents when required. At the time of audit fieldwork, the AFP was in the process of procuring a commercial investigation, intelligence and incident

²¹ Examining the approval of critical decisions by appropriately authorised officers provides some assurance that investigators had made sound judgements.

²² The ACC also recorded critical investigation decisions in locations such as email systems, case officer personal logbooks or simply as case note entries in the case management system.

²³ For example, the *Australian Government Investigation Standards* requires a tactical plan to be developed where search warrants are issued. However only one of the ten AFP investigations and one of the six ACC investigations, where search warrants had been issued, had all standard tactical plans attached to the electronic case management system.

management system to replace the existing systems and better manage case documentation.

59. The ACC funding allocation has not covered the costs of conducting Project Wickenby investigations. The ACC had spent \$47.8 million on these investigations by the end of the sixth year (2010–11), which was 80 per cent more than the total funding allocation of \$26.5 million. The ACC overspend was due to additional time and staff required to manage litigation, and fewer ATO staff being seconded than originally anticipated, which added to ACC staffing costs. To adequately resource the remaining Project Wickenby criminal investigations, the ACC advised that it will be utilising a small but appropriate level of resources to support the prosecution process.

60. A lesson from the complex financial investigations conducted for Project Wickenby is that there would be merit in the AFP reviewing the practice of allocating investigations to offices primarily based on the location of potential offenders. Other factors can be more important, including having access to sufficient numbers of dedicated investigators and to specialist technical skills and expertise. Centralising investigations into particular criminal activity types in one or two larger offices would allow the AFP to better coordinate activities, such as obtaining offshore evidence and sharing investigation techniques.

61. Two main factors affecting the timeliness of Project Wickenby criminal investigations have been the need for foreign government assistance to obtain evidence of tax evasion, and the large number of legal challenges. To support future investigations that require evidence held offshore, it is important that the ACC and AFP build on the mutual assistance request strategies developed over the course of Project Wickenby.²⁴ Any reform to streamline processes to respond to claims of legal professional privilege²⁵ would also assist the timeliness of Wickenby-type investigations.

²⁴ A mutual assistance request is the formal process countries use to request, provide and obtain formal government-to-government assistance in criminal investigations and prosecutions.

²⁵ Legal professional privilege is a common law right which protects the right of individuals and other entities to obtain confidential legal advice about their legal circumstances. This right protects some legal advice from being used as evidence against an individual.

Summary of agencies' response

62. The agencies' responses to each recommendation are included in the body of the report, directly following each recommendation. Agencies' general comments on the audit report are below; the full responses are at Appendix 1.

Australian Taxation Office

63. The ATO welcomes this review and considers that the report is supportive of the approach the Project Wickenby taskforce has taken to detecting, deterring and dealing with the abusive use of secrecy havens by Australian taxpayers. This includes the cross-agency coordination and governance arrangements for the taskforce, which have been led by the ATO.

64. The report recognises that this is the first time such a broad range of Australian Government resources has been used to address the significant threat of this abusive use of secrecy havens and notes a number of instances where we have made improvements to our administration through the life of the project. The report also identifies a number of opportunities for further improvements. The ATO agrees with the four recommendations in the report pertaining to our agency.

Australian Crime Commission

65. The ANAO report outlines the success of Project Wickenby including the ACC's criminal investigations of promoters of tax evasion and the ACC developed intelligence picture of tax evasion and other financial crimes. The ACC notes the findings of the ANAO's performance audit of the *Administration of Project Wickenby*. As the ANAO report indicates, the nature of Project Wickenby offences makes criminal investigations complex. This is particularly given the use of offshore secrecy havens which attempt to hide the true nature of individual's finances. Project Wickenby demonstrates the success that can be achieved by a collaborative cross-agency task force in responding to offshore tax evasion schemes.

66. The ACC will address each of the ANAO findings and incorporate these into ACC investigations as well as policies and procedures moving forward. The ACC accepts recommendation five which comments on the central recording of critical investigation decisions in the ACC's case management system as well as improvements to the document management system. As acknowledged in the ACC's comments attached to the report, strategies for improvement have already been instigated to address ANAO findings.

Australian Federal Police

67. The AFP has welcomed the opportunity to contribute to the ANAO performance audit on the *Administration of Project Wickenby*. The AFP embraces the commentary provided within the report and agrees with the recommendations arising from the audit as they relate to the AFP.

68. Since commencing Project Wickenby investigations, the AFP and its task force partners have significantly increased their understanding of the operational complexities of Project Wickenby typology matters and their impact on investigational practices, including investigation timeframes, the recording of critical decisions, the management of investigational risk and the costing of investigations.

69. In relation to both Recommendations 5 and 6, the AFP has taken conscious and concrete actions to improve investigation management practices.

70. With regard to Recommendation 5, the AFP is in the process of acquiring a new investigation, intelligence and incident management system. Significant improvements will be made to current case management practices and procedures. The AFP has reviewed and implemented revised investigation management and planning tools for serious criminal investigations, which has included the adoption of protocols to better record critical decisions.

71. With regard to Recommendation 6, the AFP has revised its practice for allocating serious tax and financial crime investigations and now provides national support to Project Wickenby investigations in smaller offices.

72. The professionalism and effective outcomes of investigations are judged and scrutinised through the court processes. Notwithstanding the significant litigation activity occurring with Project Wickenby matters, the AFP has been highly successful in both criminal and civil court proceedings, as highlighted in Table 2.2. This has played a significant role in making Australia less attractive for international tax evasion and has contributed to changed tax payer behaviour.

Recommendations

Recommendation No. 1

Paragraph 3.36

To respond to the Government's requirement at the outset of Project Wickenby, the ANAO recommends that the ATO conducts a post-implementation review of the project after the scheduled completion of project funding in June 2013.

Tax Office response: *Agreed*

Recommendation No. 2

Paragraph 5.21

To improve the assessment of identified risks and selection of cases for audit, the ANAO recommends that the ATO: assesses the choice of risk review type; analyses risk review results; and improves project management to meet risk review cycle time standards.

Tax Office response: *Agreed*

Recommendation No. 3

Paragraph 5.76

To adequately record key decisions and manage evidence, the ANAO recommends that the ATO updates guidance about the use of the electronic case management system for Project Wickenby audits, and monitors performance.

Tax Office response: *Agreed*

**Recommendation
No. 4**

Paragraph 5.78

To support the efficient conduct of Project Wickenby compliance interventions, the ANAO recommends that the ATO improves project management practices to reduce Project Wickenby audit cycle times, including by reinforcing adherence to electronic time recording protocols.

Tax Office response: *Agreed*

**Recommendation
No. 5**

Paragraph 6.62

To better manage criminal investigations, the ANAO recommends that the ACC and AFP improve procedures and practices to:

- (a) approve and record critical investigation decisions, activities and outcomes in case management systems; and
- (b) store, locate and retrieve investigation documentation from investigation management systems.

ACC response: *Agreed* **AFP response:** *Agreed*

**Recommendation
No. 6**

Paragraph 6.76

To support timely and effective case management, the ANAO recommends that the AFP revise its practices for allocating serious tax and financial crime investigations among state and territory offices.

AFP response: *Agreed*

Audit Findings

1. Introduction

This chapter provides the context for the audit, including a background to Project Wickenby, and outlines the audit approach.

Secrecy havens

1.1 Australian resident taxpayers are required to pay tax on their worldwide income. Accordingly, Australia's taxation system of self-assessment places a responsibility on taxpayers to declare all of their assessable income and claim only deductions and/or offsets to which they are entitled.

1.2 Some countries, regions or states have opaque tax or financial systems. There is little transparency about the ownership of assets and banking transactions and these countries do not have effective avenues for international cooperation, including the exchange of information agreements. These jurisdictions also have minimal taxes for non-residents, and are known as secrecy havens.

1.3 While many transactions between Australia and secrecy havens are lawful international dealings, the features that make havens attractive for legitimate purposes may also be used in arrangements designed to evade paying Australian tax, or for other criminal purposes. Abusive secrecy haven schemes allow participants to enjoy the benefits of ownership and control of assets and entities without the responsibilities that come with ownership, such as meeting their tax and other obligations as required by Australian laws.

1.4 The Australian Taxation Office (ATO) is Australia's principal revenue agency, with responsibility for administering Australia's tax system under the law. The ATO's business model includes a compliance program that outlines its approach to encouraging high levels of voluntary compliance with the law. Ensuring taxpayer compliance in respect of secrecy havens is challenging for the ATO as the extent of the tax avoidance risk is difficult to determine because arrangements can be concealed and there is a lack of transparency in particular haven jurisdictions. The nature of the risk is also constantly changing as taxpayers and their advisers become more sophisticated and knowledgeable in their approach to tax evasion.

1.5 Some jurisdictions, such as Vanuatu and Guernsey, have recently entered into new treaties or Tax Information Exchange Agreements with Australia and other countries. In many instances, the effectiveness of these agreements is yet to be tested. The pressure for reform partly arises from the

need for enhanced economic integrity following the global financial crisis. This pressure also continues on banks, financial institutions and some high-risk havens following the release of details about their practices and the schemes used to hide income or assets. However, as some jurisdictions reform their secrecy provisions, ATO intelligence suggests that other havens are becoming more popular. This displacement effect may potentially drive the emergence of new secrecy havens.

1.6 Flows of funds between Australia and secrecy havens far exceed the value of trade between Australia and those countries, and have little relationship to the level of investment between the secrecy havens and Australia. The extent of tax evasion is difficult to measure as these schemes are based on secrecy and deception. Some indicators world wide include:

- an Organisation for Economic Cooperation and Development (OECD) estimate that \$US 5–7 trillion is hidden in secrecy havens²⁶; and
- a United States Senate Permanent Sub-Committee on Investigations estimate that abusive haven schemes cost the United States US\$100 billion annually.²⁷

1.7 Many nations are involved in a global effort to combat the abusive use of secrecy havens, including all Group of Twenty²⁸ (G20) and OECD countries. One of the key drivers to coordinate such approaches has been the OECD Forum on Tax Administration. The main focus of the forum has been on voluntary disclosure initiatives, and increased transparency and information exchange, particularly through Tax Information Exchange Agreements and tax treaties. Other multilateral forums, particularly the Joint International Tax Shelter Information Centre, facilitate sharing of information, intelligence and risk assessments about abusive tax arrangements by member countries, including Australia.²⁹

²⁶ Angel Gurría, OECD Secretary-General, *Improving transparency and stepping up exchange of information in tax matters*, Conference on the Fight against International Tax Evasion and Avoidance: improving transparency and stepping up exchange of information in tax matters', 21 October 2008.

²⁷ Carl Levin, US Senator, Michigan, *Levin Unveils Stop Tax Haven Abuse Act*, 12 July 2011.

²⁸ The Group of Twenty Finance Ministers and Central Bank Governors was established in 1999 to connect leading industrial and developing economies to discuss key issues affecting the global economy. The first Leaders Summit was held in Washington in November 2008.

²⁹ Issues examined by the Joint International Tax Shelter Information Centre involve complex financing arrangements that cross a number of borders.

Project Wickenby

1.8 The Project Wickenby³⁰ cross-agency taskforce was established in 2006. Its purpose was to protect the integrity of Australia's financial and regulatory systems by preventing people from promoting or participating in illegal offshore schemes, particularly those involving the abusive use of secrecy havens.

1.9 The taskforce plays a role in the Australian Government's fight against tax avoidance, evasion and crime.³¹ It works with Australian and international organisations to detect, deter and deal with abusive arrangements involving: secrecy havens; international tax evasion; breaches of Australian financial laws and regulations; attempts to defraud the community; money laundering; and concealment of income or assets. The seven Australian Government agencies comprising the taskforce are the: ATO; Australian Crime Commission (ACC); Australian Federal Police (AFP); Australian Securities and Investments Commission (ASIC); Attorney-General's Department, Commonwealth Director of Public Prosecutions; and Australian Transaction Reports and Analysis Centre (AUSTRAC). The Australian Government Solicitor is a supporting agency.

1.10 Project Wickenby represents the first time such a broad range of Australian Government resources has been used to address the significant threat that illegal offshore schemes pose to the integrity of Australia's financial and regulatory systems. The cross-agency approach was considered necessary because: the actions of promoters crossed agencies and jurisdictional boundaries; specific skills of each agency were required; significant information had to be gathered from offshore; and there was a perceived risk that traditional standalone approaches would have little effect.

1.11 Project Wickenby had its origins in 2003 in a matter the ATO referred to the ACC for investigation. Subsequent investigation and audit activity by these

³⁰ The name 'Wickenby' does not refer to any individuals involved in, or related to, the project. Rather, it refers to an airfield in the north of England, and was simply the next on the list of airfields, which was the family of entities being used at the time by the Governance of Operations Committee of the Australian Crime Commission to generate names for investigations.

³¹ Tax avoidance refers to schemes or arrangements that are designed to obtain benefits under the tax laws that were not intended. Tax evasion is when taxpayers deliberately lie to the ATO about their activities to reduce their tax liability, or have not paid tax that is due. Fraud is the intentional dishonest act or omission done with the intention of deceiving. Tax crime is when taxpayers deliberately engage in criminal behaviour to evade their tax obligations or fraudulently use the system to obtain an improper financial benefit.

two agencies identified extensive Australian participation in individually tailored offshore arrangements. Figure 1.1 summarises the key events leading to the establishment of the Project Wickenby taskforce in February 2006.

Figure 1.1

Events leading to the establishment of Project Wickenby

In 2003, the ATO asked the ACC to investigate a potential criminal matter arising from information seized in a tax fraud case involving a corporate lawyer. The investigation led to the examination of a Swiss-based promoter of tax schemes when he was visiting Australia in 2004.

The promoter had been staying in a Melbourne hotel in February 2004 when the ACC exercised search warrants. The ACC obtained paper files in the promoter's possession and a laptop containing details of his financial dealings, revealing the names of hundreds of Australians allegedly linked to his Jersey-based accountancy firm. Those identified included Australian entertainers, sporting identities and business people. Information seized from the laptop was disseminated to the ATO throughout 2004.

In June 2005, in the largest ever joint exercise between the ACC, the AFP and the ATO, search warrants were executed at 48 sites across four states, and a further 37 sites were visited using ATO access powers. This joint exercise involved approximately 285 personnel from the three organisations.

Analysis of documents seized helped to unravel a complex financial web, including arrangements tailored to individual circumstances and allegedly relying on deception, international complexity and confidentiality to create false deductions or to conceal income. The schemes were allegedly designed to: hide assets and/or income for tax purposes; facilitate share market manipulation; defeat creditors; or launder funds.

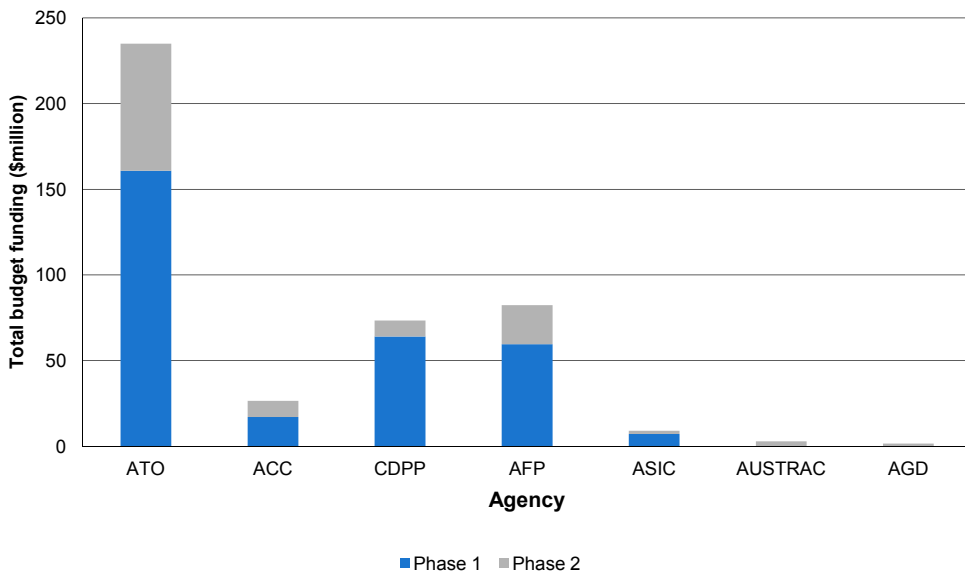
There was evidence to support a suspicion that: documents were deliberately being kept outside Australia, beyond the reach of the ATO, or being destroyed; and credit cards, non-existent loans and questionable bequests were being used to repatriate money to Australian taxpayers in a non-assessable form. There was also evidence that the promoter's company was marketing its structures to selected partners within mid-tier legal and accounting firms and that some of these advisors and their clients may have been aware that the use of these structures constituted fraud or serious evasion.

The ACC led the criminal investigations arising from this information, under Operation Wickenby. This operation was part of the Money Laundering and Tax Evasion Special Determination into suspected tax fraud offences believed to have been committed by the corporate lawyer meeting with the promoter in February 2004. The ATO conducted civil tax audits and, over time, the project grew to include the Commonwealth Director of Public Prosecutions and ASIC as joint partners, with significant support from AUSTRAC and the Australian Government Solicitor. These agencies revealed that at least \$300 million in revenue was at risk through the use of offshore structures designed to avoid or evade tax.

In February 2006, the Australian Government allocated additional funding to enforcement and prosecution agencies to resource a multi-agency taskforce directed at promoters of and participants in off shore tax schemes and fraud—known as Project Wickenby.

Source: ANAO analysis of ATO and ACC information.

1.12 The Australian Government provided additional funding of \$308.8 million over seven years for Phase 1 of Project Wickenby, commencing in February 2006. This funding was further increased in 2009 by an additional \$122.1 million for Phase 2, reaching \$430.9 million in total, and ceasing on 30 June 2013. Project Wickenby agencies received separate Budget funding, as outlined in Figure 1.2.

Figure 1.2**Budget funding of Project Wickenby by agency**

Source: Information provided by the ATO.

1.13 Funding for Phase 1 was provided in response to a bid from the key partner agencies. The then Government agreed to all funding proposals put forward, and in a letter from the Treasurer to the Prime Minister on 4 November 2005, noted that:

support for the continuation of Operation Wickenby³² is very important. Failure to address these tailored schemes could severely impact on public perceptions of fairness of the tax system and inevitably lead to increased promotion of and participation in these schemes, impacting on the revenue base.

1.14 At the time of the funding bid, the scale of the abusive use of secrecy havens was unknown but considered likely to involve substantial revenue at risk. It was feared that participation in the schemes could quickly escalate and become an even more significant compliance risk. Boutique haven schemes for

³² As indicated in Figure 1.1, there is a distinction between Project Wickenby and Operation Wickenby. Project Wickenby refers to the broad cross-agency taskforce funded in 2006, and Operation Wickenby refers to the criminal investigations led the by the Australian Crime Commission since 2004. Operation Wickenby activities are included in published reporting of Project Wickenby results, and for the purpose of the audit, Operation Wickenby activities conducted since the inception of Project Wickenby in February 2006 are considered to be part of Project Wickenby.

high-wealth individuals had existed for some time. However, with lower costs of travel and communications, increased global trade, and the use of the internet, the barriers to entry for haven schemes had reduced, giving new opportunities for participation, including to small businesses and moderately wealthy individuals.

Objectives, outputs and commitments to government

1.15 The *Project Wickenby Terms of Reference* state that its overall objective is to make Australia unattractive for tax fraud and evasion, as both promoters and potential participants perceive the risk/benefit ratio as weighing heavily against them.³³ Four primary outcomes are specified:

- reduce international tax avoidance and evasion on the Australian taxation system;
- enhance strategies and capabilities of Australian and international agencies to collectively detect, deter and deal with international tax evasion;
- improve community confidence in Australian regulatory systems, particularly confidence that the Australian Government addresses serious non-compliance with taxation laws; and
- reform administrative practice, policy and, where applicable, to recommend changes to legislation.

1.16 The scope of Project Wickenby extends to addressing abusive tax arrangements associated with the initially identified Swiss-based promoter and other identified promoters of similar arrangements. The initial strategy was to maximise the incentive for voluntary disclosure and establish a strong deterrent to future promotion and participation.

1.17 The Project Wickenby taskforce was set up to develop a new approach to tackling international tax evasion, including prosecuting those considered to have been involved in criminal matters associated with the arrangements. As well as seeking to achieve its objective and stated outcomes, the main quantifiable commitment to government was to collect \$654 million in total additional tax revenue.

³³ ATO, *Project Wickenby Terms of Reference*, p. 1.

Activities addressed by Project Wickenby

1.18 The Project Wickenby taskforce investigates people who promote, facilitate or participate in illegal offshore schemes. In this regard:

- promoters are mainly located offshore and formulate and deliver international tax evasion schemes to participants, usually through intermediaries;
- intermediaries are the key leverage point in tax evasion schemes and are usually located onshore, in this case in Australia. They play a significant role in recruiting participants for promoters and will often facilitate the arrangement. Intermediaries include, but are not limited to, accountants, tax agents and lawyers; and
- participants are Australian taxpayers who use the illegal offshore schemes offered by a promoter. Participants can come from all walks of life and are usually introduced to a scheme by an intermediary. Although most participants enter these schemes to avoid or evade their taxation obligations, some may participate not realising their actions are illegal.

1.19 Common offshore scheme arrangements, therefore, involve a third party introductory agent (predominately a tax professional or lawyer) who acts as the intermediary by introducing the would-be tax evader to an offshore financial service provider, whose intention is to sell them a methodology to assist them to evade tax obligations in Australia. The evaders rely on the secrecy provisions of the jurisdiction. More importantly, they rely on their financial provider to keep them at arms-length from their assets using a complex web of structures designed to conceal their beneficial ownership.

1.20 Project Wickenby cases feature shared characteristics to evade tax obligations in Australia despite operational variances. Common features of cases are: concealing assets offshore; over-claiming tax deductions; understating income; and repatriating funds in a deceitful manner. Upon examination, the majority of these schemes involve fraud or shams. Figure 1.3 outlines the common illegal offshore arrangements that are conducted through secrecy havens.

Figure 1.3

Common illegal offshore arrangements

Arrangements illegally concealing income or creating deductions most commonly include:

- false or inflated invoices—international promoters providing Australian businesses with false or inflated invoices to claim tax deductions;
- sham loans—locally-designed and promoted arrangements where investors use 'loans' that are records only and no money is exchanged. Sham loans are provided by an international tax promoter to invest and claim a tax deduction;
- asset ownership and management—Australian assets are 'transferred' to an international entity legally owned by a promoter who acts on the wishes or directions of the owner. This transfer is a sham and is used to evade tax or deprive other family members or creditors of the assets. These may also be used to manipulate securities markets; and
- share acquisitions—options or shares in public companies are sold to a foreign entity legally owned by a promoter, with 'beneficial ownership' remaining with the taxpayer. The Australian taxpayer's beneficial ownership is concealed to prevent authorities from linking the taxpayer to the transactions and to shelter the taxpayer's profits from tax in Australia.

Arrangements returning funds to Australian taxpayers in a deceitful manner as untaxed funds most commonly include:

- debit and credit cards—these provide easy access to money. Accounts are generally held offshore in the Australian taxpayer's name, the names of family members or friends, or in false names. Funds are withdrawn in cash from Australian automatic teller machines;
- gift or inheritance—funds are returned to Australia as an alleged 'gift' from an alleged overseas relative or as an alleged inheritance from a relative who died with no children of their own. Promoters check the family genealogy before using the 'dead relative' option;
- payment of expenses—the international promoter pays alleged 'expenses' incurred by the Australian taxpayer in Australia;
- rental schemes—Australian taxpayers 'lease' their holiday homes to an international promoter. These sham leases may return the taxpayer's funds from offshore or allow tax deductions for the costs of these holiday homes such as interest or rate payments; and
- back-to-back loans—an Australian taxpayer with funds offshore accesses the money by 'borrowing' it through an international promoter. The taxpayer uses the funds for working capital. The taxpayer claims the 'interest' on the sham loan as a tax deduction. Interest is returned offshore to top up the funds there.

Source: Project Wickenby, *What is being investigated*, available from <http://www.ato.gov.au> [accessed 7 September 2011].

Project Wickenby agencies

1.21 The taskforce uses its combined powers and capabilities to deter, detect and deal with promoters of, and participants in, illegal schemes both within Australia and overseas. A differentiated strategy is being used, with tougher actions and penalties applying to more flagrant cases.

1.22 Activities carried out in Australia under Project Wickenby include:

- civil audits and risk reviews conducted by the ATO and enforcement or regulatory action undertaken by ASIC under these agencies' respective legislation;
- criminal investigations conducted by the ACC, AFP and ASIC;
- prosecutions and other legal action undertaken by the Attorney-General's Department, the Commonwealth Director of Public Prosecutions (CDPP), and the Australian Government Solicitor (AGS);
- administrative actions, including banning people from the financial services industry and using data from AUSTRAC to track money moving in and out of Australia; and
- proceeds of crime action, including action to restrain property and subsequently, to seek its forfeiture.

1.23 Choice of approaches, including whether to apply civil or criminal remedies, take into account relevant factors, including: evidence availability; severity and type of mischief encountered; public interest, including currency, impact on community confidence and deterrent factor; impact on revenue; links to strategic initiatives; resource requirements; and cost-effectiveness.³⁴

1.24 The Commissioner of Taxation has responsibility for the administration of the Commonwealth of Australia's taxation laws, and consequently the ATO is the lead agency for the project. The ability of the Australian Government to address this threat to the revenue system is dependent on all the agencies having the collective capability to respond and collaborate. In order to achieve a whole-of-government approach, a governance framework has been established involving a number of committees, including the Project Wickenby Cross Agency Advisory Committee.

³⁴ ATO, *Project Wickenby Conduct Criminal Investigations Strategy*, pp. 3-4.

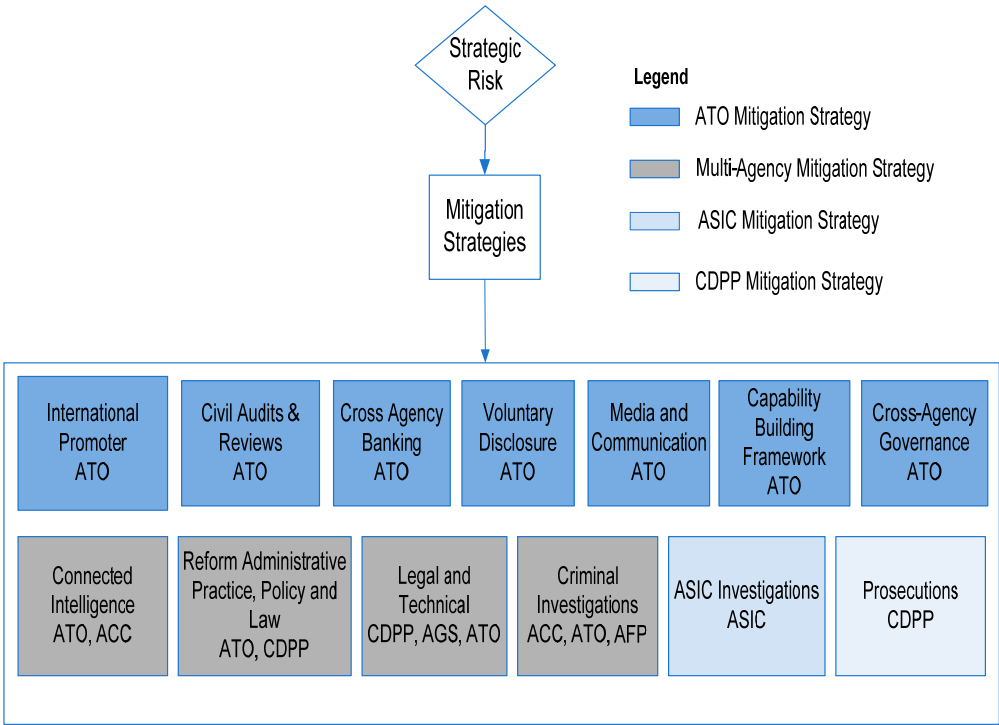
Administration of Project Wickenby by key agencies

1.25 Taskforce agencies use a wide range of approaches to mitigate the abusive use of secrecy havens. Key activities include intelligence sharing, tax audits, criminal investigations, prosecutions and education programs.

1.26 From mid-2010, the taskforce implemented a program of 13 high-level strategies to address project risks, which are shown in Figure 1.4.

Figure 1.4

Strategies to mitigate the abusive use of secrecy havens as part of the Project Wickenby taskforce



Source: ATO.

1.27 This report discusses most of these strategies to some extent, with emphasis placed on strategies to conduct civil audits and reviews, undertake criminal investigations, and govern cross-agency administration. The ATO is responsible for leading most strategies, either in its own right or together with other nominated agencies.

Administration by the ATO

1.28 The ATO, as lead agency, has many roles in Project Wickenby, as highlighted in Figure 1.4. Its main activities include: obtaining information;

conducting analysis, audits and reviews; supporting prosecutions of criminal and civil matters arising from the initially-identified promoter and other promoters; and leading coordination, reporting and assurance arrangements. A major element of the ATO's administration of Project Wickenby is the conduct of audits under Australia's tax laws with the intention of raising a tax liability where there is non-compliance with those laws. As part of Project Wickenby, the ATO commenced one criminal investigation, and that case did not proceed to prosecution.

1.29 Within the ATO, Project Wickenby is managed as part of the Serious Non Compliance (SNC) business line, which is in the Compliance Sub-plan.³⁵ SNC's role is to enhance the ATO's capability to deter, detect and deal more effectively with the extreme evasion of tax, superannuation and excise duty. While Project Wickenby staff are located within SNC, the specific funding arrangements and cross-agency focus has lead to separate case selection, case management and intelligence functions.

Administration by the Australian Crime Commission

1.30 The ACC is governed by the *Australian Crime Commission Act 2002* (the ACC Act). The ACC is Australia's national criminal intelligence agency with unique investigative capabilities. The ACC conducts operations and investigations into Australia's serious and organised criminals. The ACC works with partners to prevent, disrupt and dismantle serious and organised criminal syndicates.

1.31 Within the ACC, Project Wickenby was managed as part of the Wickenby Matters Determination until 30 June 2011.³⁶ This determination was approved by the Board of the ACC on 16 September 2006 under section 7C of the ACC Act.³⁷ With the creation of the Wickenby Matters Determination, the investigations under Operation Wickenby were split into nine separate

³⁵ Secrecy haven risks are addressed through various approaches in the ATO, of which Project Wickenby is an important element. The Large Business and International Business Line manages the offshore compliance program, which identifies promoters in civil cases. That business line also includes the International Steering Committee, which coordinates all secrecy haven activities, including compliance interventions conducted by the Aggressive Tax Planning and High Wealth Individuals taskforces.

³⁶ A Determination in the ACC is an investigation or operation authorised by the Board of the ACC under paragraph 7C(1)(c) and subsection 7A(c) of the ACC Act. Project Wickenby is a 'special' investigation which authorises the use of the ACC's coercive powers.

³⁷ ACC, *National Determination Plan: Wickenby Matters Special Investigation*, p. 6.

operations, each with their own name.³⁸ From 1 July 2011, Project Wickenby is managed under the Targeting Criminal Wealth Determination.

1.32 The ACC has two primary responsibilities relating to Project Wickenby.³⁹ Firstly, it is responsible for the initial nine criminal investigations that were identified in 2004. Significant time and resources have been devoted to these investigations and managing the subsequent court cases across several locations, including Sydney, Melbourne, Brisbane and Perth. Secondly, it aims to improve the understanding of behaviours associated with the abusive use of offshore tax and secrecy havens.⁴⁰

Administration by the Australian Federal Police

1.33 The AFP is the main law enforcement agency through which the Australian Government enforces Commonwealth law. It is governed by the *Australian Federal Police Act 1979* and provides a wide range of services, including investigation and operational support, security risk management and information services to assist the public.

1.34 Within the AFP, Project Wickenby is managed as part of the Serious and Organised Crime Division. Serious and Organised Crime teams conduct Project Wickenby investigations in Sydney, Melbourne, Brisbane, Adelaide and Perth. The National Coordinator Project Wickenby is responsible for managing the project within the AFP.

1.35 Similar to the ACC, the AFP conducts criminal investigations into serious offences identified by the Project Wickenby taskforce. Under Project Wickenby, the AFP can investigate criminal behaviour such as serious fraud, money laundering and defrauding the Commonwealth. The AFP investigates matters that have been referred to it by other agencies and also works in partnership with other agencies on investigations, where appropriate.

³⁸ Operation Wickenby ceased in September 2006 when the Wickenby Matters Special Investigation began.

³⁹ ACC, *National Determination Plan: Wickenby Matters Special Investigation*, p. 6.

⁴⁰ The ACC's coercive powers allow it to obtain information that cannot be obtained through other policing powers. This allows the ACC to summons any witness to appear before an Examiner, require the witness to provide evidence regarding criminal activities and to provide documentary evidence if necessary. The ACC has established an examination team to provide intelligence to the ATO and the AFP about those potentially participating in the abusive use of secrecy havens.

1.36 The AFP's primary focus throughout Project Wickenby has been on the 12 criminal investigations that it leads.⁴¹ In conducting these investigations, the AFP aims to investigate and prosecute relevant matters referred by the ATO, enhance the AFP's offshore capability to investigate tax evasion schemes in targeted countries and enhance its technical capability to investigate tax evasion schemes. Investigation teams have drawn on a number of specialised AFP units, including: the Telecommunications Intercept Department; the Computer Forensics Team; the AFP International Network; and Criminal Assets Teams.

Audit approach

Audit objective, criteria and methodology

1.37 The objective of the audit was to assess the effectiveness of the Project Wickenby taskforce in making Australia unattractive for international tax fraud and evasion by detecting, deterring and dealing with the abusive use of secrecy havens by Australian taxpayers.

1.38 The focus of the audit was on the roles of the ATO, ACC and AFP in the Project Wickenby taskforce. In particular, the audit examined the:

- extent to which the project had met its objective, outcomes, and collection commitments to government;
- cross-agency coordination and governance arrangements;
- arrangements to harness intelligence and select cases for civil compliance interventions and criminal investigations;
- conduct of risk reviews and audits by the ATO; and
- conduct of criminal investigations by the ACC and AFP.

1.39 The appropriateness of professional judgments and decisions made by these three agencies in conducting civil compliance interventions and criminal investigations was outside the scope of the audit. The audit also did not examine the roles of the other four partner agencies, except to the extent that their activities supported broader project outputs or those of the ATO, ACC or AFP.

⁴¹ The AFP can still accept Project Wickenby referrals and is currently in the process of evaluating some for approval.

Audit methodology

1.40 The ANAO conducted fieldwork in the national offices and mainland state capital offices of the ATO, ACC and AFP between March and August 2011. Major tasks included the review of relevant documentation, systems and processes, and interviews with key agency staff. Other Project Wickenby agencies were consulted during the audit, as were accounting and taxation professional groups and other stakeholders.

1.41 The audit also examined all criminal investigations managed by the ACC and AFP, and a sample of 340 risk reviews and audits completed by the ATO.⁴²

Structure of the report

1.42 The audit was conducted in accordance with ANAO audit standards at a cost of \$875 000.

1.43 The structure of the report reflects the audit criteria outlined in paragraph 1.38. Accordingly, there are a further five chapters, as outlined in Figure 1.5.

⁴² The sample was drawn from the population of 2259 civil compliance interventions completed by the ATO by mid-May 2011.

Figure 1.5
Structure of the report

Chapter 2 Achieving the Project's Objective, Outcomes and Commitments to Government	Examines the extent to which Project Wickenby has met its objective, outcomes and collection commitments to government.
Chapter 3 Project Governance	Examines the governance arrangements underpinning the administration of Project Wickenby, focusing on cross-agency coordination of the taskforce and assurance and reporting arrangements.
Chapter 4 Intelligence and Case Selection	Examines how Project Wickenby agencies, particularly the ATO, obtain intelligence and determine cases to be subject to criminal investigations and civil compliance interventions.
Chapter 5 Civil Compliance Interventions	Examines how the ATO conducts the program of civil compliance interventions for Project Wickenby.
Chapter 6 Criminal Investigations	Examines the planning, management, resourcing and timeliness of the criminal investigations conducted by the ACC and AFP for Project Wickenby.

Source: ANAO.

2. Achieving the Project's Objective, Outcomes and Commitments to Government

This chapter examines the extent to which Project Wickenby has met its objective, outcomes and collection commitments to government.

Introduction

2.1 As previously mentioned, Project Wickenby's overall objective is to make Australia unattractive for tax fraud and evasion, primarily by preventing people from promoting or participating in the abusive use of secrecy havens.

2.2 The rationale for the project was to protect Australia's taxation revenue base rather than pursue significant additional revenue, as participation in abusive secrecy haven schemes was considered likely to spread rapidly if the Government was not seen to act decisively. The Government, therefore, has required conservative quantifiable returns, mainly through setting a target for the project to collect \$654 million in additional tax revenue.

Measuring Project Wickenby's success

2.3 The ATO has developed a suite of measures to monitor and report performance against four broad categories, which link to the project's objective and four outcomes (as outlined in paragraph 1.15). These categories are:

- improved voluntary compliance with tax laws by reducing international tax evasion;
- positive outcomes of relevant activities in terms of liabilities collected and prosecutions;
- improved community confidence in the ATO's management of abusive secrecy havens; and
- enhanced strategies and administrative approaches by Australian and international agencies to address international tax fraud and evasion.

2.4 The ATO's measures generally reflect practical, cost-effective approaches in an environment where it is often difficult to confidently assess whether all outcomes have been achieved. There is scope to improve some of these measures, however, as discussed in this chapter.

ATO view of Project Wickenby's success

2.5 According to the ATO, Project Wickenby's success is demonstrated by: the noticeable effect of Wickenby activity on voluntary compliance; community confidence levels; the amount of revenue collected; the number of prosecutions; and other results, including from completed and ongoing audits and investigations and judgements made, as outlined in Table 2.1.⁴³

Table 2.1

Reported outcomes from Project Wickenby activities, as at 30 June 2011

Activity	Result
Audits and risk reviews	
Audits and reviews in progress	719
Audits and reviews completed	2 327
Tax liability raised	\$1 092m
Monies recouped	
Tax collections	\$251m
Tax collections in subsequent years from people subject to Wickenby action (compliance dividend)	\$308m
Other moneys recouped	\$2m
TOTAL	\$561m
Criminal Investigations	
In total	22
Prosecutions	
People charged	62
Convictions	20

Source: ATO, *Project Wickenby Snapshot of Activities and Results (to 30 June 2011)*.

2.6 Interpreting these outcomes, the ATO considers 'the net is closing on promoters and participants in tax schemes involving the abusive use of secrecy havens'.⁴⁴

⁴³ ATO website, <<http://www.ato.gov.au/print.asp?doc=/content/00220075.htm>>, [accessed 11 October 2010]. The ATO also assesses Project Wickenby's success through qualitative indicators such as positive support in the media and through judicial commentary.

⁴⁴ ATO, Project Wickenby website, <<http://www.ato.gov.au/content/00220075.htm>>, [accessed 7 September 2011].

Improved voluntary compliance

2.7 The extent to which Project Wickenby activities have improved voluntary compliance with Australian taxation laws can be considered by monitoring the compliance behaviours of those taxpayers who have been subject to Project Wickenby compliance interventions and Australian taxpayers as a whole.

Compliance dividend

2.8 The most readily measureable compliance impact involves taxpayers who have been subject to Project Wickenby compliance interventions voluntarily lodging more accurate tax returns. The ATO refers to the calculation of a 'compliance dividend' for this group as 'the increased tax revenue arising from improved compliance behaviour of participating taxpayers'.⁴⁵ As shown in Table 2.1, the ATO calculated that as at 30 June 2011, Project Wickenby had raised \$308 million in voluntary payments as a result of the sustained improved compliance behaviour of participating taxpayers, following intervention by the Wickenby taskforce.

Method for calculating the compliance dividend

2.9 The compliance dividend calculation compares the net tax payable by taxpayers and their spouses, partners, and associates in income years after involvement in Project Wickenby audits to the average payable in the two years prior to the commencement of Project Wickenby (the 2002–03 and 2003–04 income years). An adjustment is then made so only increases in excess of the control group (the top four per cent of income earning taxpayers) are attributable to the project.⁴⁶

2.10 The ANAO examined the compliance dividend calculation by reviewing: key elements of the method applied; reports prepared in 2010 and 2011 by the ATO summarising results of the compliance dividend calculation for those years; and the spreadsheets summarising these calculations and

⁴⁵ ATO, *Project Wickenby Compliance Dividend Report—June 2011 Update*, p. 3. The compliance dividend is based on the premise that, following direct or indirect intervention by the Wickenby taskforce, participating taxpayers and their immediate associates will voluntarily lodge tax returns that more accurately declare their taxable income or will lodge where they have previously not done so.

⁴⁶ The Serious Non Compliance business line developed and applied the method used to calculate the compliance dividend. This method has been reviewed by the ATO's Revenue Analysis Branch, which fully supports the approach used.

outlining the taxpayers involved. The ANAO also undertook a high-level review of the detailed coding and algorithms underpinning the calculations.

2.11 This analysis shows that the method used to calculate the compliance dividend: captured the main elements for estimating net future revenue attributable to Project Wickenby interventions with taxpayers; had a reasonable definition of associates; balanced complexity and cost of implementation; and was constructed not to overstate benefits.

2.12 An important influence on the calculation of the compliance dividend is the selection of taxpayers. Most taxpayers were identified by 2006, at an early stage in the development of intelligence about potentially non-compliant taxpayers, and in the program of compliance interventions. Consequently, many of these taxpayers were likely to have had little contact with the taskforce, for example only receiving a letter advising them to disclose relevant financial matters involving secrecy havens. Further, many taxpayers that have had considerable contact with the taskforce have not been added to the calculations, as the population has not been updated since June 2009.

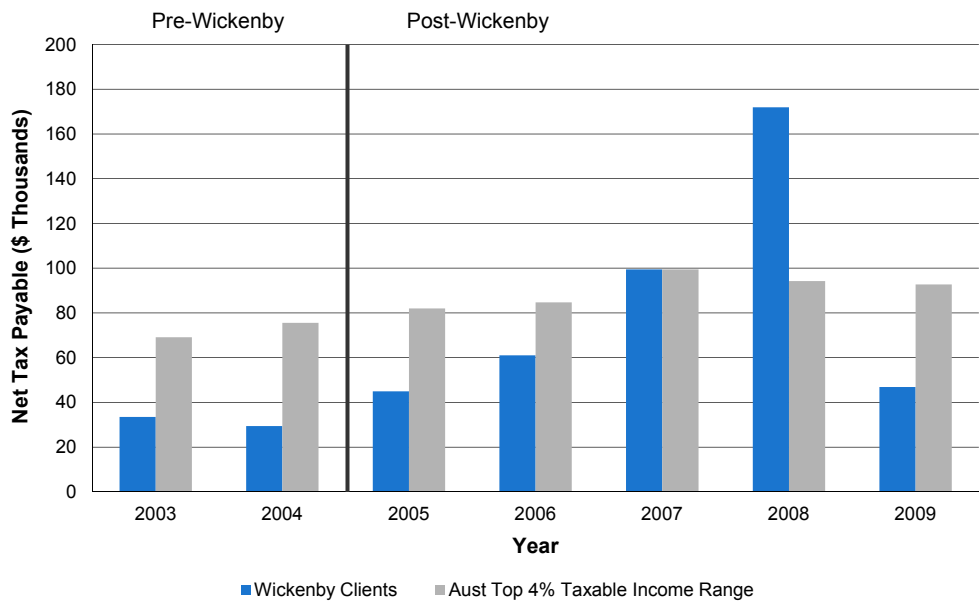
2.13 It is also important to note that the compliance dividend calculates liabilities rather than amounts of tax actually paid, and the ATO has not analysed relevant cash collection rates. Other issues being considered by the ATO for possible refinement of the method for calculating the compliance dividend include: changing the base years (presently 2002–03 and 2003–04 income years) as they become less appropriate over time; and changing the control group to better reflect the profile of Project Wickenby clients.

2.14 The calculated compliance dividend was strongly influenced by a small number of large tax payments since 2008.⁴⁷ These payments have affected the annual trends, such as the average tax paid by the Wickenby client group compared to the control group of individual taxpayers in the top four per cent income range (as shown in Figure 2.1).

⁴⁷ Two taxpayers providing these large payments had previously been audited by another area within the ATO. The ATO advised that senior executives within that other area agreed that improved tax compliance of these taxpayers would appropriately be attributed to Project Wickenby.

Figure 2.1

Comparative average net tax payable: Project Wickenby clients and top four per cent taxable income



Source: ATO internal document, *Project Wickenby Compliance Dividend report June 2010 Update*, p. 8.

2.15 Notwithstanding these limitations, the method applied to calculate the Project Wickenby compliance dividend is suitable to at least demonstrate that the project has met the commitment to government. Importantly, the ANAO confirmed that the 20 taxpayers contributing most to the value of the compliance dividend were legitimately linked to Project Wickenby.

Improved compliance across all taxpayers

2.16 It is difficult to measure the impact on voluntary compliance of taxpayers not directly exposed to Project Wickenby interventions. These taxpayers are potentially influenced indirectly by the information they receive about Project Wickenby. Publicising incarcerations and other penalties arising from Project Wickenby interventions may deter some taxpayers from participating in abusive secrecy haven schemes, given the risk. Deterrence is likely to affect those taxpayers with a mild or moderate disposition towards evading tax, rather than the more serious non-compliers who may simply adjust their activities.

2.17 Four mechanisms have been used by the Wickenby taskforce to capture the extent of improved voluntary compliance across all Australian taxpayers,

including those not directly affected by compliance interventions. These mechanisms are:

- AUSTRAC analysis of international fund flows to and from Australia and secrecy havens where Wickenby has had a major focus;
- qualitative indicators;
- compliance effectiveness measures; and
- estimates of revenue at risk.

AUSTRAC analysis of financial fund flows

2.18 A key role for AUSTRAC is to support Wickenby agencies by providing real time fund flow analysis between Australia and other countries, including secrecy havens.

2.19 One reason for the concern about the risk of abusive use of secrecy havens in the early years of Project Wickenby was the extent of increases in financial flows between Australia and secrecy haven countries, as measured by AUSTRAC. For example:

- direct flows into Australia from havens increased from \$10.3 billion in 2006 to \$27.7 billion in 2008 (an increase of 269 per cent over two years); and
- flows out of Australia directly to havens increased from \$6.3 billion in 2006 to \$16.2 billion in 2008 (an increase of 257 per cent over two years).⁴⁸

2.20 These large increases in financial flows between Australia and selected haven countries were substantially reversed from 2008 onwards. The nature of these trends was broadly similar to that of global fund flows into and out of Australia. This correlation indicates that changes in financial flows to secrecy havens were part of broader influences and were largely not associated with the abusive use of secrecy havens. However, further examination of fund flows between 2003 and 2011 by AUSTRAC found⁴⁹:

⁴⁸ ATO, *Expenditure Review Committee Wickenby Briefing*, March 2009, p. 2.

⁴⁹ This measure compared data for the 2008–09, 2009–10 and 2010–11 years with the base 2007–08 financial year.

- the average reduction of inward and outward funds transfers for 13 haven countries was 11 per cent greater than the global reduction; and
- a significant reduction of funds flow to jurisdictions subject to particular Project Wickenby focus, including Liechtenstein (80 per cent), Vanuatu (50 per cent), Monaco (34 per cent), Jersey (31 per cent,) and Switzerland (22 per cent).

2.21 AUSTRAC concluded that ‘long term trend analytic results indicate considerable impacts from Project Wickenby on tax abuse associated with secrecy havens’.⁵⁰ Caution should be exercised in interpreting these results, however, as: the broad dollar flows are very large and include an unknown proportion of transactions made for legitimate reasons; the analysis covers only a short period (which included abnormal events such as the global financial crisis in 2008 that may have distorted the trend); and many transactions would not have been included because they are outside AUSTRAC’s capacity to record.⁵¹

2.22 Acknowledging the limitations of the broad analysis undertaken to date, AUSTRAC is conducting more detailed analysis of financial flows to secrecy havens by focusing on specific Australian taxpayers and other reporting entities that interact with selected offshore jurisdictions. The aim of this analysis is to better gauge the likely scale and impact of the abusive use of secrecy havens on Australia’s tax and other financial systems.

⁵⁰ AUSTRAC, *Project Wickenby AUSTRAC Funds Flows Analysis Report*, p. 4.

⁵¹ For example, AUSTRAC data would not identify financial flows from Australia to non-haven countries such as New Zealand prior to transfer to a haven jurisdiction, and vice versa.

Qualitative indicators

2.23 The ATO has included qualitative perspectives when reporting on the impact of Project Wickenby on improved voluntary compliance with Australian taxation laws. As at June 2011, the main findings were:

- strong positive statements from courts in sentencing judgements, which emphasised the seriousness of evading tax;
- media reporting becoming increasingly positive; and
- growing support from financial advisers and intermediaries.⁵²

2.24 Positive coverage by media and finance industry intermediaries reflected a turnaround from the considerable criticism directed at Project Wickenby in earlier years. There were few criminal prosecutions in the project's early years, and media articles had been highly critical of progress and questioned the effectiveness of the project and value for money, particularly in light of perceived operational problems with criminal investigations and prosecutions. While mixed commentary of the project persists, negative coverage mainly relates to a small number of cases involving high-profile media personalities.

Compliance effectiveness measures

2.25 The ATO has developed a method for measuring compliance effectiveness, in order to understand compliance risks as they impact on voluntary compliance and community confidence. The compliance effectiveness method has four phases: articulate risk; develop outcomes and strategies; design indicators; and determine the extent of effectiveness. The compliance effectiveness measurement project forms part of a program to inform the Compliance Sub-plan's executives of the results and outcomes of applying effectiveness measures to risk treatment strategies.

2.26 The compliance effectiveness method has been applied to Project Wickenby and aims to provide a consolidated analysis of the effectiveness of Project Wickenby to meet its overall objective of making it unattractive for Australian taxpayers to participate in 'Wickenby-type' activity.⁵³ Indicators

⁵² A major tax/accounting industry group advised the ANAO that some of its members were warning their clients not to be involved in secrecy haven schemes because of Project Wickenby. In other instances, people have approached advisers admitting past involvement in secrecy haven schemes.

⁵³ ATO, *Project Wickenby Taskforce Effectiveness Measures*, Project Wickenby CEOs meeting, 24 June 2010, Reference 2B.

used in this measure reflect the main indicators of improved voluntary compliance discussed in this chapter—the compliance dividend⁵⁴, AUSTRAC transaction analysis and qualitative indicators.⁵⁵

2.27 Outcomes of the measurement were provided to the Project Wickenby CEO meeting in June 2010. The discussion of overall effectiveness highlighted positive indications from the compliance dividend calculation, AUSTRAC analysis and qualitative indicators. However, it did not provide an overall conclusion about how effective the project was in achieving its desired outcome.

2.28 The measurement of compliance effectiveness for Project Wickenby could be further improved by: providing an explicit conclusion about the effectiveness of the project in achieving its desired outcome; developing the proposed indicator of the impact of ACC, AFP and ASIC conduct on compliance behaviours; replacing the indicator relating to profiling Wickenby clients with a measure of community confidence (as discussed in paragraph 2.65); and combining the two indicators covering the compliance dividend (as they cannot be readily distinguished and were not separately reported).

ATO estimates of revenue at risk

2.29 Another indicator of the extent to which the project has achieved its overall objective is the likely amount of revenue at risk from the ongoing abusive use of secrecy havens. The risk was conservatively measured by the ATO at \$300 million at the outset of the project in 2006. Based on improved knowledge of international promoters and the associated risk population, the ATO estimated that the amount of revenue foregone from tax evasion facilitated by the main secrecy havens would increase to nearly \$400 million by June 2013 (as further discussed in Chapter 4).

2.30 This analysis suggests that despite the significant impact of Project Wickenby to deter, detect and deal with particular international secrecy

⁵⁴ The *2010 Project Wickenby Taskforce Effectiveness Measures* specified two indicators relating to the compliance dividend—the ‘compliance behaviour of those touched by the taskforce’, and the ‘behaviour of their associated entities’.

⁵⁵ The *2010 Project Wickenby Taskforce Effectiveness Measures* included two indicators in addition to those relating to the compliance dividend, AUSTRAC transaction analysis and qualitative indicators. The indicator ‘Profiling of Wickenby clients’ was based on a questionnaire developed by the AFP, and provided demographic and personal information about taxpayers subject to Project Wickenby activity. An indicator of ‘broader impacts on other agency compliance behaviours’ was not reported against as it had not been developed by the AFP and ACC at that time (or subsequently to October 2011).

havens, associated risks remain high. Risk ratings for the project assessed by the ATO in late 2010 support these findings, particularly that the overall level of project risk was 'high'.⁵⁶

Implications for future funding

2.31 As the taskforce continues to assess the overall risk rating for reducing the abusive use of secrecy havens, it should consider whether it is similar to comparable risks, such as from aggressive tax planning, highly wealthy individuals, organised crime and the cash economy. Results of such comparison would inform discussions with government about the future of Project Wickenby when explicit funding for Phase 2 is scheduled to expire in June 2013.

2.32 In this regard, it is important that the project continues in some form, as risks could increase rapidly in the absence of continued meaningful criminal and civil compliance interventions. Whether it continues to be separately funded, administered separately or through business-as-usual processes, and marketed in a similar discrete way, are also matters for consideration by the government and the partner agencies.

Conclusion

2.33 It is difficult to measure the impact of Project Wickenby on improving voluntary compliance with Australian taxation laws. However, there are promising indicators, including: some \$308 million in compliance dividend; significant reductions in financial flows between Australia and secrecy havens; and qualitative indicators such as generally positive media reporting of the project and court sentencing judgements about the serious nature of tax fraud. There is scope to improve the measures of voluntary compliance, particularly by refining the calculation of the compliance dividend and revising indicators to measure compliance effectiveness for Project Wickenby.

Revenue raised and prosecutions

2.34 Readily quantifiable outcomes from Project Wickenby are the results of its audits and investigations—in raising tax liabilities, collecting revenue and contributing to the prosecution of those evading tax obligations through the abusive use of secrecy havens.

⁵⁶ The ATO also assessed the 'risk of not meeting government commitments' as low, and the risk of 'failing to meet stakeholder expectations' as moderate.

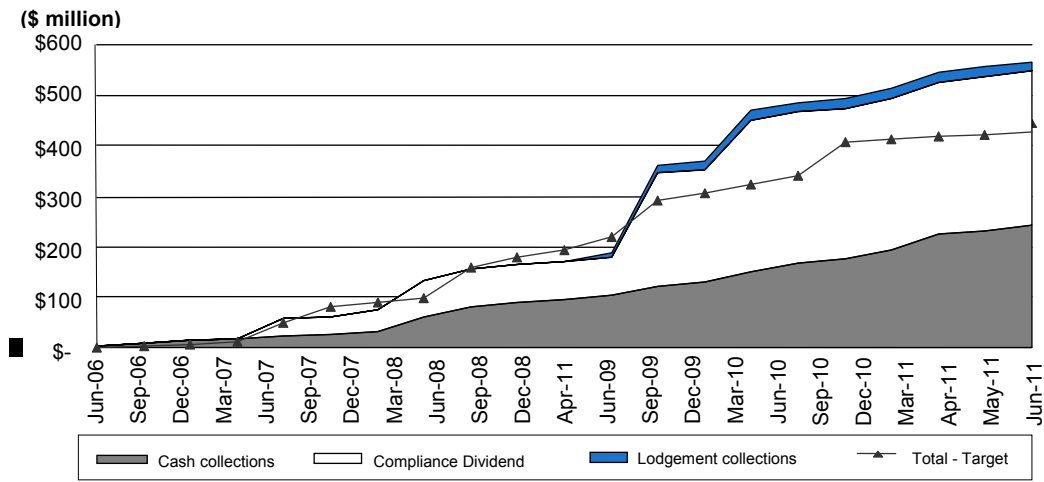
2.35 Project Wickenby had raised \$1.092 billion in tax liabilities by 30 June 2011, from tax assessments amended as a result of audits and risk reviews (as shown in Table 2.1). More than half of these liabilities were from the imposition of penalties and interest, with \$525 million in tax liabilities and \$567 million in penalties and interest.

2.36 Due to the likelihood of significant debts from the liabilities raised, one of the key targets for Project Wickenby related to cash collections. Over the life of the project, commitments to government are to provide \$654 million in additional tax revenue, comprised of \$400 million in cash collections and \$254 million in compliance dividend collections.

2.37 As shown in Figure 2.2, the ATO has met the Government’s combined ongoing collection targets since mid-2009.

Figure 2.2

Project Wickenby collection commitment to government, June 2006 to June 2011



Note: Lodgement collections are those stemming from taxpayers voluntarily lodging a tax return and paying tax as a result of Project Wickenby activities.

Source: ATO, *Project Wickenby Performance Report*, June 2011.

2.38 The ATO reported having collected \$260 million in June 2011, which resulted in Project Wickenby achieving the monthly cash collection target for the first time. The \$260 million in cash collections included \$18.9 million in lodgement collections, as presented in Figure 2.2. However, \$8.8 million had been incorrectly allocated as lodgement collections, due to inclusion of non-Wickenby cases, and duplication with revenue collected from audit activity and/or compliance dividend cases. These factors indicate that Project

Wickenby had collected cash of \$251 million in June 2011, against the target of \$252 million.⁵⁷

2.39 At 30 June 2011, the high compliance dividend combined with the cash collections meant that Project Wickenby had exceeded its collection commitments to that date. In total, \$561 million had been collected, which was 132 per cent of the pro rata target of \$426 million (as a proportion of the total project target of \$654 million).⁵⁸

2.40 While liabilities raised have greatly exceeded targets in recent years, the collection rate has been much lower than was modelled in the revenue analysis estimating project funding returns. This financial modelling assumed a cash collection rate of over 60 per cent, while the actual rate was only 23 per cent at 30 June 2011.⁵⁹ Chapter 5 discusses causes of the low collection and high debt rates for Project Wickenby (in paragraphs 5.100 to 5.104).

2.41 As the rationale for the project was to protect the revenue base rather than raise and collect significant additional money, the target for collections (cash collected plus the compliance dividend)⁶⁰ was a conservative multiple of the funding provided. The cash collection ratio for Project Wickenby funding is 2.8, calculated by dividing \$654 million in collection commitments by \$235 million in funding to the ATO.

2.42 The cash collection target contrasts with the more demanding targets in other countries. For example, the United Kingdom has set a target of bringing in £7 billion from the additional £900 million allocated to tax compliance and debt collection activities (a cash collection target of 7.8), including taking specific action to address offshore avoidance and evasion. Further, the ATO was recently set a target of collecting \$491.8 million in revenue from funding of \$107.9 million to address cash economy income tax and GST compliance issues⁶¹—a cash collection ratio of 4.6.

⁵⁷ About \$2 million in other monies was recovered by the Commonwealth Director of Public Prosecutions from final orders under Commonwealth *Proceeds of Crime Act 2002* (POCA) provisions.

⁵⁸ This calculation is based on revised lodgement collections of \$8 million to 30 June 2011.

⁵⁹ The collection rate of 23 per cent as at 30 June 2011 is calculated by taking the sum of \$241.4 million from audits and reviews plus \$10.1 million from return lodgements demanded, as a percentage of \$1091.9 million in tax liabilities raised.

⁶⁰ This excludes the value of restrained criminal assets, which would largely be attributed to activities of taskforce agencies other than the ATO.

⁶¹ Michael D'Ascenzo, Commissioner of Taxation, *Council of Small Business Summit*, Convention Centre, Brisbane, 8 July 2010.

2.43 The ANAO's analysis confirmed that \$1.092 billion in liabilities was raised. The ANAO noted that two cases in particular could have had some allocation of liabilities to the High Wealth Individuals taskforce in the ATO. Conversely, other areas in the ATO could allocate some audit outcomes to Project Wickenby, and it is not practicable to fully apportion outcomes to specific project activities.

Criminal investigations

2.44 The ACC and AFP conduct criminal investigations for Project Wickenby. These investigations are generally complex and involve considerable time and resources by agencies. A single AFP or ACC investigation usually involves action against a number of promoters and potential participants.

2.45 As shown in Table 2.2, 23 investigations were underway or complete on 30 August 2011, of which the ACC was responsible for 11 and the AFP 12. Sixty-two people have been charged with serious criminal offences under Project Wickenby, of which 14 resulted from ACC investigations and 48 from AFP investigations.⁶² As at 30 August 2011, 19 people had been convicted for serious tax offences and one person had been convicted for an offence under the *Australian Crime Commission Act 2002*, with 18 receiving custodial sentences (including two entirely on home detention) and two awaiting sentencing. Criminal tax offence charges were in most cases either for defrauding the Commonwealth under the *Crimes Act 1914* or dishonestly intending to cause a loss to a Commonwealth entity under the *Criminal Code Act 1995*.⁶³

⁶² In addition, 65 people had been prosecuted for summary tax offences.

⁶³ The charges also included: conspiracy, where individuals have agreements with other persons to deceive, mislead, or defraud, or to gain an unfair advantage; and dealing in the proceeds of crime (money laundering).

Table 2.2

Results from Project Wickenby investigations, as at 30 August 2011

Investigations	ACC	AFP	Total
Investigations underway or complete	11	12	23
People charged with indictable offences	14	48	62
People with charges withdrawn	1	6	7
People committed for trial	9	29	38
People discharged or found not guilty	2	0	2
People convicted	6	14	20
- by pleading guilty	3	13	16
- when contesting	3	1	4
Conviction rate ^A	75%	100%	91%

Note: (A) The conviction rate is calculated as the percentage of convictions from those people committed to trial and where a verdict has been reached or the case discharged (that is, based on six convictions from eight such ACC cases and 14 convictions from 14 AFP cases).

Source: ATO.

2.46 Sentences handed down have ranged from 16 months imprisonment (to be served by way of ten months home detention) to eight-and-a-half years, with appeals to both this latter conviction and sentence yet to be heard. Sentences for the imprisonment of people convicted as part of Project Wickenby investigations have typically been around three years. In sentencing offenders, courts have highlighted the seriousness of this type of tax fraud, including that 'the effect of dishonesty and non-disclosure of income increases the burden on all taxpayers and particularly those who have truly disclosed their gross income.'⁶⁴ Other key messages arising from these convictions are that:

- higher sentences will be imposed to deter others from similar conduct;
- taxpayers who have realised they have done the wrong thing and come forward at an early stage are generally better off than those that do not;
- significant delays in bringing prosecutions to court are likely to result in suspended sentences; and

⁶⁴ Commentary from the New South Wales Court of Criminal Appeal regarding *R V Hargraves and Stoten* [2010] QSC 188, contained in ATO document *Project Wickenby convictions, 20 December 2010*.

- the nature of involvement in schemes, and extent of decreased culpability may result in a heavy penalty discount.

2.47 Sentencing remarks by judges have generally not been critical of the administration of the project. While there has been some mention of delays, judges expect that these types of cases will take time. Chapter 6 discusses the reasons for delays in criminal investigations.

2.48 Of the 19 people convicted of indictable tax offences at 30 August 2011, 16 had been participants, one was an intermediary and two were promoters. While one of the two promoters received the longest prison sentence, a number of factors have impacted on why the other promoter and the intermediary had lesser sentences than other participants. Notwithstanding that most of those still to face court on indictable criminal charges are also participants, the ATO advised that the project continues to target intermediaries and promoters, including protracted cases involving the initial promoting entity. In this regard, another promoter has been extradited from a secrecy haven jurisdiction to face fraud charges in Australia.

2.49 Progression to court and completion of criminal proceedings was slow in the early years, with only three convictions for indictable offences in almost the first four years of the project, through to March 2010. Court activity increased in early 2010, mainly stemming from AFP investigations involving Vanuatu transactions. Thirty-nine of the 62 people charged with indictable offences at 30 June 2011 were part of the four AFP investigations involving Vanuatu transactions, with 25 charged from a single investigation.

Conviction rates and impact of criminal investigations

2.50 While resulting in 20 criminal convictions to 30 August 2011, most Project Wickenby investigations have proven more time consuming and difficult to complete than was initially anticipated. As shown in Table 2.2, the conviction rate has been high (at 91 per cent) when considering the percentage of people convicted of those going to trial and where a verdict has been reached or the case discharged. This high conviction rate largely stemmed from the high rate of guilty pleas.⁶⁵

⁶⁵ An analysis of cases where a conviction was not obtained is as follows: one person was found not guilty; another was discharged after a challenge to the ACC Act; six people had all charges withdrawn after subsequent review by the Commonwealth Director of Public Prosecutions where it was considered that there was insufficient evidence to support a conviction before the courts, or on public interest grounds; and another person had charges dropped on medical grounds.

2.51 The conviction rate is not an unequivocal measure of success of investigations, as the objective is to put a credible case before the courts. Many factors can then influence eventual court decisions and sentences. Nevertheless, the conviction rate has been cited as a key performance indicator in Project Wickenby planning and performance-monitoring documents.⁶⁶

2.52 The program of criminal investigations under Project Wickenby has sought to address community expectations identified in early project research that a significant number of convictions would be achieved, with less deal-making and the application of substantial penalties. The project has also dealt with more sophisticated perpetrators of financial crime. However, the investigation program has not resulted in prosecution cases being brought to court more quickly than in the past, which was a success factor identified in early project research.

Procedural challenges to Project Wickenby investigations

2.53 In defending charges brought under Project Wickenby criminal investigations, many individuals have challenged both the legality of processes to collect evidence, and of the actual charges. Applicability of legal professional privilege⁶⁷ over evidence obtained by the taskforce has been raised extensively over the course of the project, as have other challenges to evidence-collection processes such as search warrants, mutual assistance requests⁶⁸ and ACC examinations, as shown in Table 2.3.

⁶⁶ An example of a document including the conviction rate as a key performance indicator is the ATO *Serious Non-compliance Line Plan 2011–12*, p. 17.

⁶⁷ Legal professional privilege is a common law right which protects the right of individuals and other entities to obtain confidential legal advice about their legal circumstances. This right protects some legal advice from being used as evidence against an individual.

⁶⁸ A mutual assistance request is the formal process countries use to request, provide and obtain formal government-to-government assistance in criminal investigations and prosecutions.

Table 2.3**Procedural challenges to Project Wickenby investigations, to 30 August 2011**

Challenge	ACC	AFP	Total
Appeals	11	2	13
Use of powers	7		7
Confidentiality order	6		6
Legal professional privilege	2	4	6
Mutual assistance requests	4	1	5
Search warrants	3	2	5
Stay of proceedings/examinations	2	2	4
Spousal privilege against incrimination	2		2
Costs	2		2
Other ^A	4	1	5
Total	43	12	55

Note: (A) Other challenges were in relation to: suppression of identity; Freedom of Information decisions; discovery arrangements; admissibility of evidence; and the production of documents.

Source: ANAO analysis of ACC and AFP data.

2.54 As can be seen from Table 2.3, the ACC has been challenged extensively in the courts. Outcomes favoured the ACC in 31 of the 43 challenges. Of the other 12 challenges, three did not favour the ACC, parts of another three did not favour the ACC and six were neutral outcomes.⁶⁹ All challenges against the AFP to September 2011 have resulted in a positive outcome for the AFP.⁷⁰

2.55 The level of resources involved in defending these challenges has been considerable for both agencies. In particular, the cost of legal challenges has affected the capacity of the ACC to resource investigations into the initial individuals identified from the Swiss-based promoter's information. Most notably, the ACC spent around \$10 million investigating the international tax affairs of a particular promoter and his two well-known Australian clients,

⁶⁹ The three challenges that did not favour the ACC related to: the use of examination powers; application of legal professional privilege; and the production of material. Neutral outcomes refer to challenges such as those seeking to protect the identity of individuals being investigated, where the ACC did not seek or oppose the orders.

⁷⁰ The AFP challenges relate to: the validity of warrants; legal professional privilege claims; and a challenge due to the change from the *Crimes Act 1914* to the *Criminal Code Act 1995*. All the resolved challenges against the AFP to September 2011 were either dismissed by the courts or withdrawn, with four matters still ongoing as at September 2011.

before dropping the investigation into the clients in November 2010 as it 'was not justified in the public interest'.⁷¹

Conclusion

2.56 After a slow start, the project has achieved substantial outcomes from its activities, particularly the conviction of 20 people that were investigated for criminal offences, and more than \$1 billion in tax liabilities being raised from over 2300 ATO audits and risk reviews completed to 30 June 2011. The ATO had met the Government's ongoing cash collection targets since mid-2009. While these commitments were conservative, the operating environment has been more difficult than anticipated. There have been many legal challenges to investigation processes, which have generally favoured the taskforce position but been resource intensive and costly to the administration of the project.

Improved community confidence

2.57 One outcome sought of Project Wickenby is to improve community confidence in the integrity of Australian regulatory systems. One measure of this outcome is improved community perceptions that changes in behaviours of promoters, intermediaries and participants in abusive secrecy haven arrangements are being achieved and sustained. A key task for the ATO is to educate the community about the project's objectives and how effective it is in bringing people to account.

Community expectations of Project Wickenby

2.58 The ATO commissioned research in 2006 to increase its understanding of community attitudes to arrangements that involve abuse of secrecy havens, and to measure perceptions of related aspects—including of its own role in Project Wickenby.⁷² This research found that, at that time, there was limited knowledge of the ATO's role in prosecuting cases of serious non-compliance, including Project Wickenby, and the penalties that can apply to these types of situations. Nevertheless, once described, reactions were generally positive as

⁷¹ Australian Crime Commission, Frequently asked media questions, available from <<http://www.crimecommission.gov.au/media/faq/wickenby.htm>>, [accessed 30 August 2011]. The \$10 million cost of these investigations represented around half of the ACC's Project Wickenby funding to that date.

⁷² The initial exploratory qualitative phase research involved six focus groups and 16 phone interviews with highly wealthy individuals and intermediaries conducted in March and April 2007.

the project was seen as ‘the right thing to do’ and demonstrated that the ATO was serious about addressing tax avoidance ‘at the big end of town’.⁷³

2.59 The research also found that it was important for the ATO to be transparent about the achievements of Project Wickenby as such a large investment of public resources required the community to be kept informed of outcomes and the manner in which they were achieved. Ultimately, Project Wickenby’s success would be assessed by the community in terms of the tangible number of convictions and revenue retrieved. The community also identified key success factors for the project, including bringing prosecution cases to fruition more quickly than in the past, penalties being commensurate with the crime, and less deal making.⁷⁴

2.60 Quantitative research undertaken as part of that research project established that the community has a high level of confidence in the ATO—with 81 per cent of respondents feeling confident or extremely confident in its management of the tax system.⁷⁵ The community was less confident about the effectiveness of the ATO’s handling of tax evaders. For example, only around one-third of all respondents considered that the ATO made enough effort to chase evaders, and was effective and successful in dealing with them.⁷⁶

Ongoing monitoring of community confidence

2.61 To monitor community confidence over the life of the project, the *Project Wickenby Project Plan* in 2007 noted an intent to ‘establish a benchmark measure of community confidence in the Commonwealth’s ability and willingness to address serious non-compliance with taxation laws’ and ‘conduct surveys to track the trend over time of community confidence’.⁷⁷ The idea was to establish both a baseline against which to assess any shifts over the

⁷³ DBM Consultants, *Project Wickenby: Initial Qualitative Exploratory Research, Final Report*, May 2007, p. 4.

⁷⁴ *ibid.*, p. 15.

⁷⁵ DBM Consultants, *Project Wickenby: General Community Survey, Final Report*, January 2008, p. 6. Quantitative research was conducted via a random nation-wide sample of 800 members of the Australian general public, aged 18 and over, between 26 November and 10 December 2007.

⁷⁶ *ibid.*, p. 6.

⁷⁷ ATO internal document, *Project Wickenby Project Plan*, October 2007, p. 24.

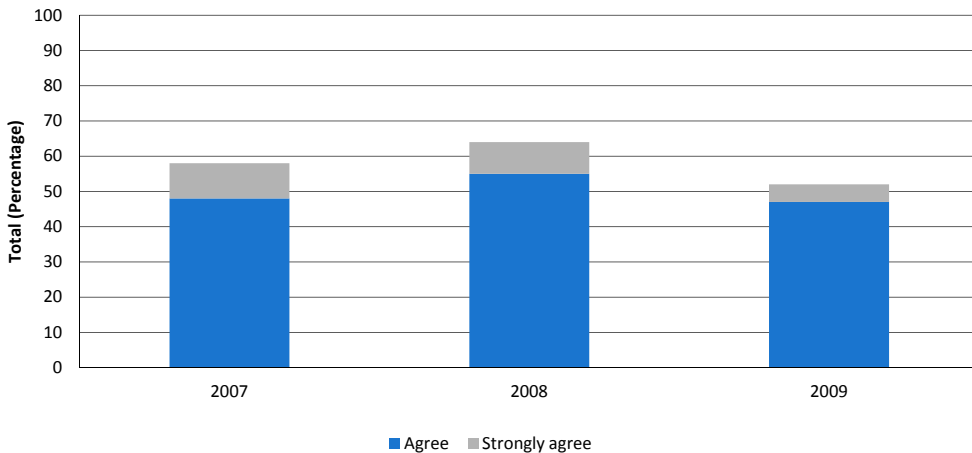
life of the project as well as identifying opportunities to influence attitudes in the future.⁷⁸ However, subsequent specific surveys have not been conducted.

2.62 While not as extensive as initially intended, the most relevant research that has been undertaken is through the broader Community Perceptions Survey the ATO commissions each year and a *Tax Agents Survey* conducted in mid-2011. The latest Community Perceptions Survey, conducted in 2009, found:

- almost unanimous support from the community that everyone should pay their fair share of tax (97 per cent); however
- only around half of all respondents (52 per cent) considered the ATO is effective in stopping people and businesses using international secrecy havens to avoid paying tax. This was a reduction in confidence compared to previous years (see Figure 2.3).⁷⁹

Figure 2.3

Community perceptions about the effectiveness of the ATO to prevent the use of secrecy havens to avoid tax



Source: ATO Community Perception Survey 2009.

⁷⁸ Inter-American Center of Tax Administrations Conference: Building, developing and applying risk management, *Case Study 3.3, Organisation and development of tax intelligence actions and alliances with other government agencies*, 29 September 2008. p. 23.

⁷⁹ DBM Consultants, *Community Perceptions Survey 2009, Prepared for the Australian Taxation Office*, October 2009, p. 4. In July 2009, the consultant surveyed 2000 adults, representative of the Australian population in terms of age, gender, and geographical location.

2.63 A *Tax Agents Survey* conducted in mid-2011 asked participating tax agents about their awareness of Project Wickenby and the extent to which they thought the project had detected, deterred and dealt with the abusive use of secrecy havens.⁸⁰ The survey found that there was a high level of awareness of Project Wickenby among the tax agents surveyed, with 75 per cent having heard of the term in the last six months. The survey report also found that:

Of those that were aware of Project Wickenby, just over one-third believed that it was at least slightly effective in all of the aspects presented, but almost half were neutral or did not know. This suggests that while awareness of Project Wickenby is relatively high, the awareness of Wickenby's outcomes is less so.

2.64 These two survey results suggest that Project Wickenby has not yet been successful in improving community confidence in the integrity of Australian financial systems through its efforts to combat the abusive use of secrecy havens.

Repeating community confidence research

2.65 As at mid-2011, the taskforce had not widely reported the impact of Project Wickenby on improved community confidence in the Australian Government's capacity to deal with abusive secrecy haven arrangements. For example, the ATO website, in the Project Wickenby section discussing community confidence, only provided a link to the dated market research, and the compliance effectiveness measures (discussed in paragraphs 2.25 to 2.28) did not include the relevant Community Perceptions Survey results. It is important that the ATO includes the results of the Community Perceptions and Tax Agents surveys as part of internal and external reporting on achieving project outcomes, and reviews the appropriateness of measures of community confidence as required.

Communication and marketing

2.66 A *Project Wickenby Communication Strategy* was endorsed by the Cross Agency Advisory Committee in 2007 with the aim of reducing the incidence of tax-related crime, and increasing community confidence in the tax system. The primary target audiences were active and potential promoters and intermediaries involved in marketing abusive secrecy haven schemes to individual taxpayers.

⁸⁰ Chant, Link & Associates, *Tax Agent Perceptions Survey 2011*, May 2011, p. 78. The report was based on responses to an online questionnaire provided by 103 registered tax agents.

2.67 The *Project Wickenby Mid Project Review* in 2008 noted that, while the project had a communication strategy and there had been positive media reporting of the projects successes and challenges, the taskforce had not been as proactive as it could be in obtaining media attention.⁸¹ A series of reviews and strategies followed, aiming to improve community awareness of the project's achievements to deter the abusive use of secrecy havens.⁸²

2.68 The *Project Wickenby Marketing Communications Strategy* outlined a comprehensive program for marketing the project, initially based around the slogan *Is it worth the risk?* The program included an advertising campaign undertaken in May and June 2010, resulting in a substantial increase in web visits—from 1287 in April prior to the campaign to 35 874 in June 2010.

Conclusion

2.69 By mid-2011, extensive reporting of Project Wickenby was occurring in major Australian newspapers and magazines, as well as in specialist finance and tax literature, with articles relating to the project often headlining editions. Substantial media and finance industry coverage is likely to be maintained as accumulated prosecution cases come before the courts. Nevertheless, the lack of success of Project Wickenby in improving community confidence in the integrity of Australian financial systems suggests that the ATO should further review the *Project Wickenby Marketing Communications Strategy*, so that the outcomes achieved in addressing abusive secrecy haven schemes are better understood in the community and by tax specialists.

⁸¹ *Project Wickenby Mid Project Review*, June 2008, p. 40.

⁸² Major communication and marketing reviews and strategies included: a *PW Communications Implementation Plan* completed in October 2008; a review of communications completed in October 2009; the development of the *Project Wickenby Media and Communication High Level Mitigation Strategy* in November 2010; the development of the more detailed *Project Wickenby Marketing Communications Strategy* also in November 2010; an evaluation of the *2010 Wickenby campaign* and an outline of the *2011 Wickenby campaign*.

Enhanced administration and legislative reform

2.70 As discussed previously, two of Project Wickenby's four primary outcomes are to:

- enhance strategies and capabilities of Australian and international agencies to collectively detect, deter and deal with international tax evasion in the Australian tax system; and
- support reform of administrative practice, policy and, where applicable, to recommend changes to legislation.

2.71 From the outset, the Project Wickenby taskforce recognised there would be significant complexities, challenges and effort required to address abusive secrecy haven schemes. This was because of the level and nature of concealment and likelihood of strong and prolonged legal challenges by those involved. It was therefore seen as important to enhance the administrative strategies and capabilities and reform legislation to effectively address these risks.

Enhanced administration

2.72 Strategies to enhance agency administration have focused on improving the collective understanding of relevant risks through shared contributions from partner agencies, who together agree approaches to address future threats. In line with this principle, many administrative enhancements identified by the taskforce have involved collaborative arrangements, as shown in Table 2.4 and further discussed in Chapter 3. There have also been important innovations within partner agencies, including the ATO's bank transparency initiative (see Chapter 4) and improved debt collection techniques (see Chapter 5).

Table 2.4

Key administrative enhancements from Project Wickenby

Type of enhancement:
<ul style="list-style-type: none"> • arrangements for collaboration and cooperation across partner agencies to jointly determine continued use of provisions for enforcement action by multiple agencies simultaneously; • cross-agency powers enable intelligence to be gained (such as the ACC examinations program); • strong international relationships; • international promoter strategy and bank transparency initiative; • improved debt collection, including through garnishee orders and international initiatives; and • conduct of call overs^A across cases, debt, litigation and objections to enhance effectiveness.

Note: (A) Call overs involves the regular periodic review of open active compliance and other cases by senior ATO staff, to support the cases to progress according to plan (as discussed in paragraph 5.120).

Source: ANAO analysis of ATO information.

2.73 A major administrative problem for the project has been a lack of interoperability of the information technology systems, which would enable the seamless transfer of information while satisfying legislative requirements. The different IT systems being used by taskforce agencies has made it difficult for them to develop and implement effective business processes to exchange information. The major response to date has been the implementation of a common data Standard Intelligence Exchange Format and a common scanning standard, managed through an Interoperability Working Group.⁸³ These protocols have been adopted by all Wickenby agencies and allow for the appropriate exchange of intelligence information and briefs of evidence.

2.74 A project to more effectively work and share information in one safe and secure IT system has also been proceeding. This project has experienced delays due to differing agency system capabilities and difficulties in gaining the full involvement of key agencies. It is unclear whether the project will be implemented prior to the completion of Project Wickenby Phase 2.

2.75 While achieving enhanced administration arrangements was a key outcome for Project Wickenby, no explicit targets were set or indicators developed to measure success in achieving this outcome. Accordingly, there were no reference points to assess whether or not the administrative enhancements have been sufficient to achieve the stated outcome.

⁸³ The Interoperability Working Group has members from all Project Wickenby agencies, and aims to improve the sharing of information and processes between taskforce agencies by developing a centralised location in which this can take place.

Nevertheless, it is clear that the administrative legacy from Project Wickenby is the suite of collaborative arrangements that have supported its operation as a multi-agency taskforce.

Legislative reform

2.76 Project Wickenby agencies share a common outcome to support reform of administrative practice and policy and, where applicable, to recommend changes to legislation. Agencies identify emerging issues that adversely affect the ability of the taskforce to achieve the desired Wickenby outcomes and escalate as necessary through relevant cross-agency forums and agency processes with a view to proposing legislative amendments.

2.77 A number of reform opportunities have been developed during the course of Project Wickenby, as outlined in Table 2.5.

Table 2.5

Project Wickenby law reforms

Tax specific	Non-tax specific
Improving cross-agency information sharing—Section 3G of the <i>Taxation Administration Act 1953</i> (TAA) allowed the Commissioner of Taxation to make disclosures of taxpayer information to Project Wickenby taskforce officers and to officers in other taskforces that may be prescribed by regulations (Tax Laws Amendment (2007 Measures No. 1) Act 2007 (Act No. 56) 12 April 2007). ⁸⁴	Amendments to the <i>Foreign Evidence Act 1994</i> to simplify provisions relating to the admissibility of foreign business records in criminal proceedings instituted in Australia became effective on 4 June 2010.
Repeal of Section 3G and replacement by s355-70 of Schedule 1 to the TAA as part of an overhaul of taxpayer confidentiality provisions. Expiry date extended from 1 July 2012 to 1 July 2013, and a later date can be prescribed by government.	Amendments to the <i>Proceeds of Crime Act 2002</i> (POCA) were passed in May 2010 and received Royal Assent to clarify the interaction between the POCA and the tax laws
Suite of tax defensive measures aimed at protecting Australia from secrecy haven abuses by improving transparency and the effective exchange of information.	Changes to the <i>Australian Crime Commission Act 2002</i> to share information have been implemented to support their examination processes.

Source: ATO.

2.78 The major legislative reform was the introduction of Section 3G of the *Tax Administration Act 1953*, which allowed the disclosure of information held by the ATO to other taskforce officers, particularly ACC and AFP officers

⁸⁴ Australian Taxation Office legal database
<<http://law.ato.gov.au/ATOlaw/view.htm?docid=PAC/19530001/3G>> [accessed 8 October 2011].

conducting criminal investigations, for purposes relating to Project Wickenby. As at 30 June 2011, 1613 such disclosures had been made, 95 per cent of which were in writing and 5 per cent orally.⁸⁵

2.79 Under Australian international tax treaties, the ATO shares information about taxpayers engaged in abusive arrangements. In particular, Tax Information Exchange Agreements (TIEAs) are used to assist in overcoming the lack of access to specific transactional information in countries considered to be secrecy havens. Australia has signed 31 TIEAs over the last five years. This is a significant achievement, given that in June 2006 Australia only had one TIEA (as discussed in Chapter 3).

2.80 Another legislative reform involved changes to the ACC Act. In March 2006, the corporate lawyer central to the Swiss-based promoter was summonsed to appear at an ACC examination into tax fraud and money laundering as part of Project Wickenby. A court found the summons issued by the ACC to be invalid as no written reasons were given to explain why he was to be examined. This ruling threatened the success of other Project Wickenby investigations that relied on information gathered through people summonsed to ACC examinations. In 2007, while an appeal by the ACC was before the courts, amendments to the ACC Act were expedited to allow the ACC examiners to record their reasons for issuing a summons or notice to produce before, at the same time, or as soon as practicable after the summons or notice has been issued.⁸⁶ While resolving the issue, the retrospective nature of the legislation and speed in which it was passed in Parliament drew criticism about the proper application of the rule of law.⁸⁷

Further legislative reform

2.81 An internal review of lessons learnt from Project Wickenby identified that some law reform had been achieved. However, the CEOs meeting in March 2011 highlighted scope to improve reforms of the general taskforce

⁸⁵ Chapter 5 reports the results of ANAO testing of these disclosures and discusses related issues.

⁸⁶ The Bill to amend the ACC Act was introduced into and passed by the Senate on 18 September 2007. It was listed for debate in the House of Representatives on 20 September 2007 and came into effect on 29 September 2007.

⁸⁷ For example, the Law Council stated that it 'believes that the Australian Crime Commission Amendment Bill, which the Government intends to pass in haste, is specifically designed to perpetuate an injustice. The Government is inviting the parliament to be complicit in this act. The parliament should reject the proposals.'

information sharing framework and mutual assistance request processes.⁸⁸ The meeting noted that the working environment was more difficult than originally envisaged and legal challenges had significantly hampered operational progress. The CEOs sought to reinvigorate the review of possible reforms with a view to compiling a consolidated reform proposal to further engage with central agencies such as the Department of the Treasury and the Attorney-General's Department.

2.82 An internal ATO workshop and two cross-agency law reform workshops were then held in the following three months to assess the law reform proposals, drawing from Project Wickenby experiences. The workshop supported six potential reforms, to be further considered by the partner agencies. Together with a set of defensive measures⁸⁹, these types of issues were discussed with the Department of the Treasury in November 2011. Some of these law reform proposals will be developed and considered in developing Australia's position for international fora such as the G20 Leaders' meetings.⁹⁰

2.83 As specific funding for Project Wickenby was reduced in Phase 2, and is scheduled to expire after June 2013, there is less capacity to conduct investigations and audits, and therefore a greater requirement to facilitate more efficient and effective compliance tasks through reforms to legislation. These reforms could cover broader issues such as the clarification of the application of legal professional privilege, the simplification of mutual assistance request processes and the collective use of information by civil and criminal proceedings, as well as progressing the more focused reforms currently being considered, such as multilateral international treaties and harmonisation of Commonwealth agencies' secrecy provisions.

Conclusion

2.84 The project has enhanced the administrative approaches and contributed to some legislative reform to address the abusive use of secrecy havens. However, no specific targets were set to measure success in achieving these outcomes. The most notable administrative improvements have been a

⁸⁸ The treatment of legal professional privilege was also acknowledged as an ongoing obstacle for Project Wickenby investigations.

⁸⁹ Defensive measures relate to a set of reforms to treat the risks posed by inappropriate use of jurisdictions that lack transparency and effective exchange of information.

⁹⁰ Australia signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters when the Prime Minister attended the G20 meeting in Cannes on 3–4 November 2011.

suite of collaborative domestic and international arrangements to support the multi-agency taskforce. There is scope to contribute more strongly to processes to expedite relevant law reforms, in order to improve the effectiveness and efficiency of compliance activities as the project funding reduces.

3. Project Governance

This chapter examines the governance arrangements underpinning the administration of Project Wickenby, focusing on cross-agency coordination of the taskforce and assurance and reporting arrangements.

Introduction

3.1 Initial planning for Project Wickenby recognised that the tax evasion uncovered crossed the boundaries of the responsibilities of many government agencies. Rather than individual agencies being responsible for key project tasks, the focus was on enabling agencies to work together to achieve project outcomes. A joint taskforce was considered more likely to be successful than standalone approaches, as it could better harness the expertise and evidence-gathering powers of agencies to deal with the threats to the integrity of Australia's financial, taxation, regulatory and criminal law systems.

3.2 The taskforce approach was underpinned by the establishment of formal project governance arrangements⁹¹ based on joint decision-making. These arrangements specify Project Wickenby's own governance structures and recognise those of the partner agencies. Each Project Wickenby agency has its own agency-specific framework and processes that govern delivery of taskforce outputs.⁹² As the lead agency, the ATO has primary carriage for reporting to government on Project Wickenby's overall progress, and facilitating governance and assurance arrangements.

3.3 There are significant challenges in eight agencies, covered by different legislative frameworks, procedures and processes, working successfully together, particularly as this was the first time they had worked collectively in such an extensive whole-of-government arrangement to deliver specific project outcomes.

⁹¹ According to the *ANAO Better Practice Guide—Public Sector Governance*, July 2003, governance in the public sector refers to the processes by which organisations are directed, controlled and held to account.

⁹² These processes include agency strategic statements, program management units, strategic prioritising forums and operational based forums and working groups.

3.4 To assess the effectiveness of Project Wickenby's governance arrangements, the ANAO examined:

- cross-agency governance arrangements;
- compliance risk planning;
- performance monitoring and reporting;
- costing arrangements; and
- international cooperation.

3.5 The audit assessed the governance arrangements within the ATO for delivering Project Wickenby's intelligence and civil compliance interventions in Chapters 4 and 5. Chapter 6 outlines the internal governance arrangements for investigations conducted by the ACC and the AFP.

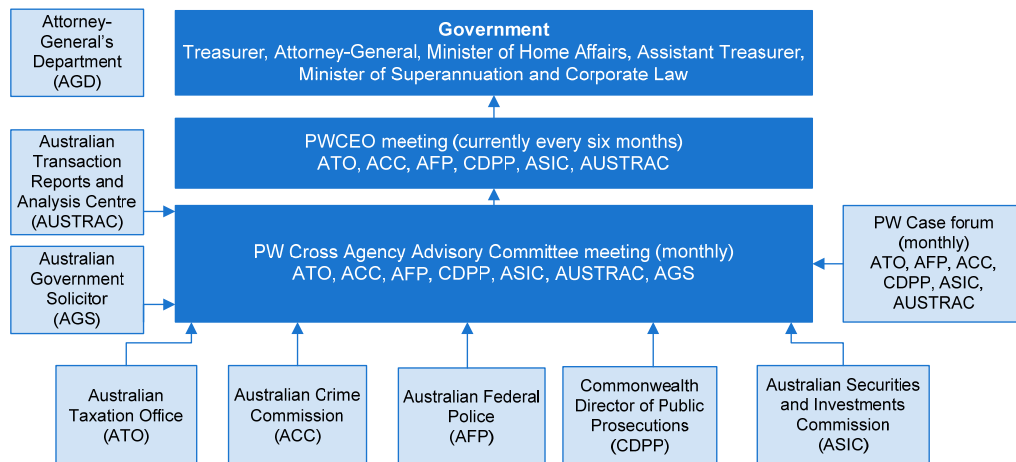
Cross-agency governance arrangements

3.6 The cross-agency taskforce governance and assurance processes were designed to assist effective collaboration and interoperability between the agencies to achieve the project's objective and outcomes. While these processes are complex, they were purposefully not over-engineered, recognising there was no one perfect model, and that the agencies had differing approaches and should not be overburdened with additional processes.

3.7 At an early stage of the taskforce, agencies worked together to develop the terms of reference to clarify their understanding of the respective agencies' roles and to specify the governance arrangements, which are shown in Figure 3.1. This framework has remained largely unchanged since the inception of Project Wickenby.

Figure 3.1

Project Wickenby governance arrangements



Source: ATO website, <<http://www.ato.gov.au/OnlineServices/content.aspx?menuid=36388&doc=/content/00220075.htm&page=3&H3>> [accessed 12 October 2011].

3.8 The key governance forum is the Project Wickenby Cross Agency Advisory Committee (CAAC). The committee includes senior representatives of each agency and is chaired by an officer nominated by the Commissioner of Taxation. Meetings are held monthly to consider key strategic and operational matters affecting all the participating agencies. The committee focuses on strategic risks, cross-agency approaches, legislative or other impediments, improving cross-agency working arrangements and assisting with planning and reporting, including reporting to government.

3.9 Other cross-agency cooperative arrangements in place are:

- Project Wickenby Chief Executive Officers (CEOs) or their representatives who meet regularly (twice a year since 2008) to review progress, plan for upcoming activities and provide high-level governance to the project;
- the ACC Project Wickenby Joint Management Group⁹³ that oversaw criminal investigations managed by the ACC, while the Project Wickenby Case Forum oversees other Project Wickenby investigations;

⁹³ The Joint Management Group ceased operating as a forum to consider ACC investigations in June 2010, as most of the investigations were concluding. The group then changed focus to a forum for discussion on mutual assistance requests.

- specific purpose working groups of senior to middle management officers, for example the IT Interoperability Working Group and Legal Risk Working Group; and
- Heads of Commonwealth Operational Law Enforcement Agencies (HOCOLEA): all the taskforce agencies are active members of this group, which oversees the Organised Crime Strategic Framework.

Operation of key cross-agency governance arrangements

3.10 The ANAO examined the operation of the CAAC, CEO and Case forums in meeting their specified roles, drawing on reviews conducted within and independent of the taskforce.

3.11 Examination of committee meeting minutes and action item records indicated that all three forums had effective working arrangements, with regular, well-attended meetings addressing key risks, involving open discussions between participants and relevant action items that were monitored until completion. These committees facilitated ongoing involvement of relevant partner agencies' activities at the strategic, operational and tactical levels. They set the tone for coordination, collaboration and commitment to success over the course of the project.

3.12 Similarly, the *Project Wickenby Mid Project Review* conducted jointly by the partner agencies found that the whole-of-government approach in Project Wickenby is a template for future inter-agency projects and noted that lack of tension between the agencies was due to strong cooperative relationships being built over time by key individuals involved.⁹⁴ The ATO internal audit of Project Wickenby completed in October 2010 also found that comprehensive governance arrangements were in place, relationships between the partner agencies were excellent, and the ATO had performed well as the lead agency.⁹⁵

3.13 The ATO played the major role in managing the taskforce governance arrangements, including relationships between the partner agencies. It was pivotal in developing and implementing strategies, providing assurance, monitoring and reporting arrangements, and generally collaborating with the other agencies to coordinate the many disparate elements of the project.

⁹⁴ ATO, *Project Wickenby Mid Project Review*, June 2008, p. 7.

⁹⁵ ATO, *Project Wickenby High Level Mitigation Strategy 12, Cross-agency taskforce governance*, p. 5.

3.14 Extensive participation in these committees by executives and senior officers was time consuming and expensive, although some financial cost was mitigated by the use of telephone hook-ups often involving members in different cities. The taskforce, in examining the governance of Project Wickenby, considers that regular monthly face-to-face meetings built taskforce cohesion, collaboration and trust.⁹⁶ In addition, the clear indications of support by CEOs and other senior officers were considered instrumental in breaking down initial barriers that existed at the operational level. Other lessons from the administration of Project Wickenby were that:

- effective collaboration on cross-agency projects is dependent on the establishment of an appropriate legislative framework and robust governance arrangements that support transparent decision making⁹⁷; and
- the capacity to draw on the different backgrounds, experiences and perspectives of agencies helped to improve the processes.

3.15 Unlike most ATO forums, including the Project Wickenby Case Forum, the Project Wickenby CEO and CAAC forums do not have an explicit charter but instead rely on more limited Terms of Reference. Specifying a charter would satisfy a criterion used by the ATO to evaluate the success of forums. The methodology and broader criteria are set out in a committee review template that supports the corporate practice statement *PS CM 2006/06: Committee Management*, for corporate committees and external stakeholder consultative forums. There would be benefit in Project Wickenby forums and committees conducting self-evaluations according to this model, as it contains useful criteria for assurance and to improve performance.

Conclusion

3.16 The Project Wickenby cross-agency coordination arrangements provide a template for future taskforce projects. Cross-agency committees were instrumental in developing and implementing strategies and building taskforce cohesion. The ATO performed well as the lead agency in coordinating these committees and managing other governance responsibilities.

⁹⁶ ATO, *Project Wickenby High Level Mitigation Strategy 12 Cross-agency taskforce governance*, 2010, p. 3.

⁹⁷ ATO, *Project Wickenby Key Lessons Learned for HOCOLEA Meeting*, p. 2.

Compliance risk planning

3.17 A risk management process was implemented from the outset of the project, based on the ATO compliance risk model. This model is consistent with Australian Standard/New Zealand Standard 4360:2004 Risk Management and OECD literature.⁹⁸ It comprises processes to identify, assess and prioritise risks, analyse compliance behaviour, and determine and implement strategies, based on ongoing evaluation and monitoring. As the lead agency, the ATO is responsible for facilitating and coordinating the risk management approaches of the taskforce.

3.18 In the early years, the taskforce risk management approaches focused on identifying and addressing overarching project risks (such as failure to achieve project success indicators) and a larger number of activity-based risks, or sub-risks (such as failure to make full use of intelligence). Risk management processes required the nominated risk sponsors to regularly review progress for each risk, and to lead discussions at risk management forums. At these forums, input was collated across all risks and across partner agencies, assessments were undertaken and some mitigation strategies developed. These assessments and any mitigation options were tested with the CAAC before being submitted to the next CEO meeting.

3.19 Risk management processes were revised in 2008 to improve the operation of the risk forum workshop, and again in 2010 to better align the specified risks with the new high-level strategy framework. Risks associated with implementing each of the 13 high-level mitigation strategies were monitored and reported monthly from May 2011. All but one of the 13 strategies was rated as green, using the ATO traffic light methodology, indicating that their objectives were being met.⁹⁹ The assessment and rating of strategies was updated according to a rolling schedule, rather than each month.

3.20 The ATO's monitoring of the implementation of high-level strategies provided an effective approach to managing the project risks. In addition, risk

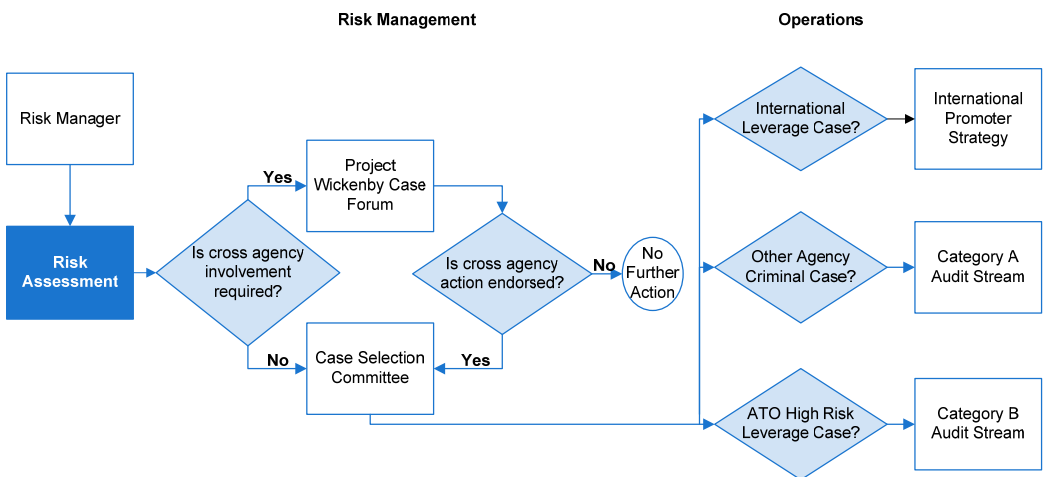
⁹⁸ OECD, *Monitoring Taxpayers' Compliance: A Practical Guide Based on Revenue Body Experience*, 2008, p. 8.

⁹⁹ In August 2011, Project Wickenby Strategy 11, *reform administrative, practice, policy and law* was rated amber, indicating that it required active monitoring, additional attention and some priority to achieve its objectives of providing a long lasting and worthy contribution to the future Australian policy, legal and administrative landscape.

management principles were applied throughout the many elements of Project Wickenby administration, as shown in Figure 3.2.

Figure 3.2

Risk management of Project Wickenby’s end-to-end processes



Source: ATO.

The ATO’s overall risk assessment

3.21 Three overall risk assessments of Project Wickenby and/or abusive secrecy schemes were also conducted by the ATO. The original risk rating in 2006 of ‘severe’ was downgraded to ‘high’ in 2009. This rating was maintained in 2010. The ‘high’ rating for the overall risk contrasts with the typically low or moderate rating assessed for most sub-risks, and warns against any complacency in preventing the abusive use of secrecy havens.

3.22 Discussion in the assessment reports, and subsequently at CAAC and CEO meetings, highlighted considerable uncertainty about the overall level of risk. Most notably, in late 2009 the CAAC had endorsed the rating to remain as ‘severe’ but participants at the CEO meeting¹⁰⁰ considered this was too harsh and should be downgraded. This decision arose partly because the risk definition was considered too broad and also to better reflect the achievements of the taskforce. While recognising the identification of many additional cases of potential international tax fraud, the CEOs noted that there was nevertheless

¹⁰⁰ *Project Wickenby CEO meeting minutes*, 18 November 2009.

a much better understanding of risk as much more was known about abusive secrecy haven schemes and practices than at the outset of the project. They also noted the unknowns of the past remained a concern and more work was needed across the board.¹⁰¹

3.23 While there is a management judgement to be made in terms of resource allocation, regular overall risk rating exercises provide valuable insights into the scale of challenge facing efforts to combat secrecy haven schemes. As discussed in Chapter 2, results of future overall risk rating assessments of the abusive use of secrecy havens should be considered against other broadly similar risks (such as organised crime), when determining proposals for funding and administering Project Wickenby past June 2013, when Phase 2 funding is scheduled to expire.

High-level planning

3.24 Since Project Wickenby commenced in 2006, many plans have been developed covering various elements of administration at the taskforce level, and the partner agencies have incorporated Project Wickenby activities into their corporate planning processes. The two main cross-agency plans for the project have been the:

- 2007 *Project Wickenby Project Plan*; and
- 2010 *Project Wickenby Cross Agency Taskforce Strategic Plan*.

3.25 The *Project Wickenby Project Plan* was endorsed in October 2007, which was 20 months after the project commenced in February 2006. The Project Plan was comprehensive, covering risk management, strategy and implementation, capability, governance and assurance. The plan established the planning framework but did not specify how often it or other plans would be updated.

3.26 The 2010 *Project Wickenby Cross Agency Taskforce Strategic Plan* updated the earlier Project Plan but with a greater strategic focus. Importantly, it provided a framework to implement 13 high-level strategies that were developed to address the project's strategic risks. This plan was also comprehensive, and covered risk management, governance, high-level strategies, measures of success and taskforce planning for the future. However, the governance section of the plan did not review or outline the planning

¹⁰¹ *ibid.*

framework, specify whether it would be updated or systematically integrate other taskforce plans.

3.27 There is also a *Wickenby Taskforce Secrecy Haven Strategic Statement 2010–13*, setting out ‘where we are now, where we want to be in June 2013, what we need to do to get there, and what will be done’. This is a standalone statement, separate from, and not included in, the Strategic Plan.

3.28 Planning was conducted on an ongoing basis through cross-agency and internal administrative arrangements, and two major high-level plans were also developed. Planning arrangements for Project Wickenby could have been more systematically developed, however, as there was no clear design or schedule for releasing or updating high-level plans, and the Strategic Plan did not explicitly reference the Strategic Statement or link to the project’s suite of sub-plans.

Conclusion

3.29 Project Wickenby largely adopted the ATO’s risk management framework. The implementation of high-level strategies in 2010 provided an effective approach to managing project risks, and risk management principles were applied throughout the many elements of Project Wickenby administration. Nevertheless, high-level planning arrangements for Project Wickenby could have been more systematically developed.

Performance monitoring and reporting

3.30 A key objective of the Project Wickenby reporting framework is to enable monitoring of the project's progress in achieving the specified project outcomes. Systems have been developed to monitor and report against major project milestones, deliverables, accomplishments and outcomes to provide visibility of progress and also enable teams and committees to take timely corrective action.¹⁰²

3.31 The ATO monitors and reports Project Wickenby performance at high levels, and against many strategies and activities. Senior management from the agencies working on the taskforce are kept informed of key developments and progress in achieving targets. The Government is also informed through the Snapshot Summary, and the ATO internet site provides information about the project and its progress to members of the community.

3.32 As reported in Chapter 2, Project Wickenby has a range of measures to gauge progress in achieving the specified objectives, outcomes and commitments to government, including the compliance dividend, cash collected, international fund flows, compliance effectiveness measures, community confidence surveys and other qualitative indicators. A number of mechanisms also regularly monitor and report on the many elements of project performance, as shown in Table 3.1.

3.33 There is scope, however, to rationalise and streamline some of the higher-level reports. This has been recognised by the taskforce.¹⁰³ While maintaining the useful Snapshot Summary, the CAAC Performance Report and CEO Traffic Light Report could be redesigned to incorporate consistent reporting against progress in implementing the 13 high-level strategies. Commentary could focus on identifying pressure points rather than recounting extensive case histories. It would be prudent, however, to await decisions on the future administration of Project Wickenby when the present funding is scheduled to expire in June 2013, prior to extensively reviewing and revising the performance reporting arrangements for the project.

¹⁰² ATO, *Project Wickenby Cross-agency Taskforce Strategic Plan*, p. 10.

¹⁰³ Minutes of January 2011 CAAC meeting.

Table 3.1**Mechanisms to monitor and report performance of Project Wickenby**

Report	Frequency	Target group	ANAO comment
Performance Report	Monthly	CAAC	Comprehensive report that tracks activities and outcomes, with detailed commentary.
Snapshot Summary	Monthly	CAAC & Assistant Treasurer ^A	Tracks activities and summarises results relating to project activities and outcomes. Available both 'in-confidence' and 'unclassified'.
Traffic light report & other measures	Biannually	CEO meeting	Monitors risk levels in implementing nine project strategies. Various other measures are presented at each CEO meeting.
Risk mitigation strategies	Monthly	CAAC	Draft template has been developed to report against the 13 high-level strategies.
Business Management Committee (BMC)	Monthly	BMC	Indicators include number of cases, liabilities raised, amounts collected, audit strike rates, and budget positions.
Stream reporting	Monthly	Project Wickenby Executive	Case level and aggregated monitoring and reporting for active compliance streams. Detailed reporting also provided for debt, objections, and communications.
Other	Various	Various	High-level reviews such as Mid Project Review in 2008, and internal audit in 2010. A <i>Project Wickenby Overview</i> is updated biannually.

Note: (A) The unclassified version is provided to the Assistant Treasurer each month.

Source: ATO.

Post-implementation review

3.34 In a letter from the Treasurer to the then Prime Minister seeking funding for the project in November 2005, the Terms of Reference for Project Wickenby stated that: 'the funding covers a four-and-a-half year period to June 2010, with a review to occur in October 2010.' This review was not undertaken. The ATO advised that several reviews of progress have been conducted and as the project did not finish in June 2010 (because of additional funding) it was not appropriate to conduct a post-implementation review in October 2010.

3.35 Given the commitment made to Government the ANAO considers it would have been appropriate for the taskforce to explicitly brief the current Treasurer about reasons why the funding review was not conducted as required, prior to the time the review was due. To respond to the Government's initial requirement, the taskforce could conduct a

post-implementation review after the completion of Project Wickenby Phase 2. Such a review could: assess the success of Project Wickenby in achieving its objectives and outcomes; inform any future activity under Project Wickenby; and usefully capture lessons learned for other cross-agency taskforces of this nature. The review could include coverage of the taskforce's progress in implementing the recommendations, suggestions and lessons for future administration contained in this audit report.

Recommendation No.1

3.36 To respond to the Government's requirement at the outset of Project Wickenby, the ANAO recommends that the ATO conducts a post-implementation review of the project after the scheduled completion of project funding in June 2013.

Tax Office response: *Agreed.* The review will include coverage of the taskforce's implementation of the recommendations made in this audit report. It will also consider whether suggestions and lessons for future administration contained in the audit report have been adequately considered and, where appropriate, implemented.

Cost of administering Project Wickenby

3.37 Project Wickenby agencies received specific Budget funding, as outlined in Figure 1.2 in Chapter 1. Total additional government resourcing for Project Wickenby is \$430.9 million, of which: Phase 1 received \$308.8 million from February 2006 to June 2012; and Phase 2 received \$122.1 million, covering 2011–13. Each agency is required to acquit its funding separately. The annual reports for the ACC, AFP and ATO for the financial years 2005–06 to 2009–10 all reported on project expenditure in each year.

3.38 As the lead agency for Project Wickenby, the ATO monitors overall expenditures on the project through the compilation of information on spending provided by the other agencies. This information is reported each month in the CAAC Project Wickenby Performance report.

3.39 The ATO has not verified the cost information provided by the other agencies, as it has not had access to the source data.¹⁰⁴ The ATO could request other taskforce agencies to provide certified statements of their expenditure on

¹⁰⁴ Under the reporting requirements of the Commonwealth Financial Framework, partner agencies are not required to provide the source data to the ATO.

the project. This certification would allow the lead agency to assure the Government that funding had been appropriately spent across the project.

Expending project funds

3.40 Analysis of expenditure information collated by the ATO shows an underspend of additional funding for Project Wickenby in Phase 1 of \$28.6 million or 9.3 per cent of the overall budget allocation of \$308.8 million. This outcome arose from the combined effect of a large underspend by the Commonwealth Director of Public Prosecutions (\$47.6 million or 74 per cent of its \$64.1 million in spending), which offset a considerable overspend by the ACC (\$26 million or 152 per cent more than its \$17.1 million budget).

3.41 The Commonwealth Director of Public Prosecutions underspend was due to delays in referrals of prosecutions, because the program of investigations was behind schedule, mainly as a result of difficulty obtaining sufficient evidence from overseas. Project costs incurred by the ACC were significantly higher than planned due to the additional time and effort required to manage litigation, and fewer ATO staff being seconded than originally anticipated, as discussed in paragraphs 6.67 and 6.68.

3.42 While some flexibility in overall project funding was built in at the outset, in practice moving funds to where they were needed proved difficult for some agencies. The agency-based approach to the management of funds by central agencies was an impediment to flexibility.¹⁰⁵ The taskforce noted that, where outcomes are shared, greater flexibility is required to move funds between agencies as the understanding of risk improves and the focus of action changes. In this regard, the taskforce made a contribution to the Commonwealth Financial Accountability Review¹⁰⁶, citing Project Wickenby as a case study example of a taskforce facing difficulties transferring money between the partner agencies.

‘Additional’ project funding

3.43 Funding of Project Wickenby was based on an additional \$308.8 million for Phase 1, with the funding proposal and methodology clearly separating the

¹⁰⁵ ATO, *Project Wickenby Key Lessons Learned for HOCOLEA meeting*, undated, p. 1.

¹⁰⁶ The Commonwealth Financial Accountability Review was announced on 8 December 2010 and will explore options to modernise and improve the Commonwealth's financial framework. The current framework, which is underpinned by the *Financial Management and Accountability Act 1997* and the *Commonwealth Authorities and Companies Act 1997*, was largely developed in the early 1990s.

costs and benefits arising from this funding from those arising from pre-existing resourcing. In particular, 48 full-time staff were identified as working within the ATO on Project Wickenby risks prior to the receipt of this funding. However, once underway, project costing practices have been to exclude pre-existing costs, while benefit calculations have appropriately combined outcomes from pre-existing and additional project resources and activities.¹⁰⁷

3.44 Future projects with funding provisions that clearly separate additional and pre-existing costs and outcomes need to have in place reporting systems to distinguish these two components. This would provide greater assurance to government that the total approved funding amounts were being allocated to the project. It would also mitigate the risk that project commitments were not met partly because pre-existing funds were subsequently allocated to other areas of an agency.

Cost of administering the project in the ATO

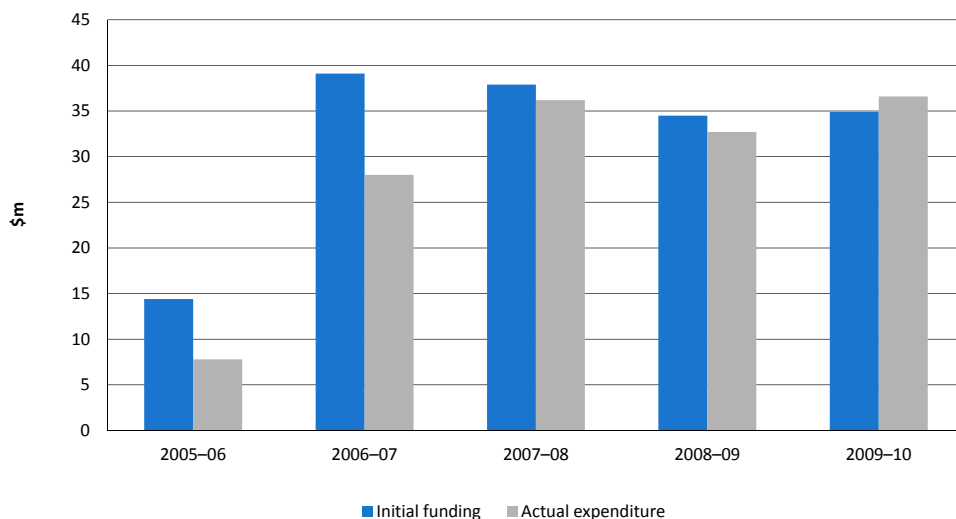
3.45 The ATO is accountable for the funding it receives and is responsible for using those funds efficiently. The Serious Non Compliance business line uses the ATO Unit Cost Analysis system to measure output costs both for planning and reporting purposes.

3.46 The ATO received a total of \$235 million over the two phases of Project Wickenby—\$160.8 million for Phase 1 and \$74.2 million for Phase 2. The ANAO examined the actual cost to the ATO of administering Project Wickenby in Phase 1, from 2005–06 to 2009–10 (as shown in Figure 3.3).

¹⁰⁷ The *Project Wickenby Project Plan*, 2007, p. 32, noted that 'overall revenue outcomes for the project need to reflect the outcomes attributable to the additional funding as well as the outcomes attributable to resources working on Wickenby mischief prior to the receipt of the additional funding'. However, 'system limitations and churn in the people system mean that it is not possible to quarantine the revenue and case outcomes of the original workforce from the revenue and case outcomes of the additional workforce and it is only possible to report revenue outcomes at a whole of project level'. The plan did not address disaggregating costs to additional and pre-existing categories. Further, an ATO presentation of December 2004 indicated that funding around 50 staff in the ATO over the subsequent three years would cost around \$5 million per year.

Figure 3.3

Acquittal of funding to the ATO for administering Project Wickenby Phase 1, 2005–06 to 2009–10



Source: Information provided by the ATO.

3.47 The ATO underspent its overall Project Wickenby Phase 1 funding by 12 per cent, when comparing actual expenditure against the initial funding allocation. However, the underspending was eight per cent when taking into account an adjustment of \$6.6 million to the initial funding allocation, to return budget savings. Major underspending occurred in the first two years, as the ATO's compliance and law programs were progressed more slowly than anticipated.

3.48 As shown in Table 3.2, the main categories of expenditure of Project Wickenby funding in Phase 1 were compliance (particularly for the Serious Non Compliance business line), law and corporate. The largest proportional underspends were in law and debt operations.

Table 3.2**Main categories of expenditure of Project Wickenby funding by the ATO in Phase 1**

Activity	Budget (\$m)	Actual (\$m)	Variance (%)
Compliance	107.8	98.3	-8.8
Law	17.5	9.2	-47.6
Operations—Debt	5.9	4.3	-27.1
Enterprise Solutions & Technology	3.0	2.8	-6.7
Indirect funding (corporate)	26.7	26.7	0.0
Total	160.9	141.3	-12.2

Source: Information provided by the ATO.

3.49 The ATO effectively monitored Project Wickenby expenditure against budget funding.¹⁰⁸ However, given the challenges associated with extensive objections, appeals, and high levels of debt, there was scope to more fully use funding allocated to the law and debt areas of the ATO, to further support effective administration of Project Wickenby.¹⁰⁹

Conclusion

3.50 Efforts to move funds between partner agencies to where they were most needed proved difficult for the taskforce due to the agency-based emphasis given to the management of funds inherent in the Commonwealth Financial Framework. The project's funding proposal clearly separated the costs and benefits arising from the additional funding from those arising from pre-existing resourcing. However, once underway, project costing practices have been to exclude pre-existing costs. Apart from not including pre-existing costs, the ATO effectively monitored Project Wickenby expenditure against budget funding.

¹⁰⁸ Notwithstanding that the ATO should have separated pre-existing from additional Project Wickenby funding, as discussed in paragraph 3.44.

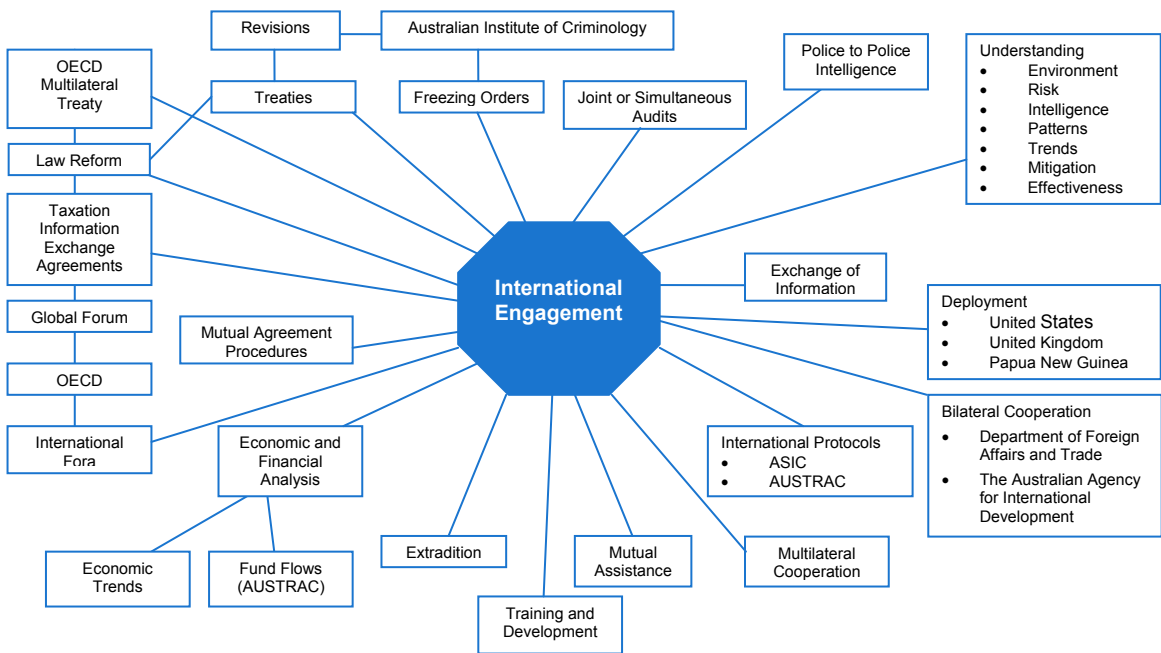
¹⁰⁹ Chapter 6 discusses ACC and AFP resourcing, including managing Project Wickenby budgets.

International cooperation

3.51 The Project Wickenby taskforce has had considerable international engagement, including with foreign revenue agencies, foreign law enforcement agencies and multilateral forums. These engagements support Project Wickenby activities to gather intelligence, conduct criminal investigations and civil audits, recover debts, and reform administrative practices, policies and legislation (as shown in Figure 3.4).

Figure 3.4

International engagements by Project Wickenby taskforce



Source: ATO.

3.52 International engagement, particularly sharing information obtained by other revenue authorities, has provided considerable intelligence to Project Wickenby, and generated major compliance activity for the taskforce. Examples include information provided by the United Kingdom, French and United States revenue services and New Zealand law enforcement involving promoters in Liechtenstein, Switzerland, Panama and Vanuatu. Much international engagement has involved operational arrangements to obtain or transfer information relating to these and other ongoing criminal investigations and civil audits.

Information exchange

3.53 The Attorney-General's Department (AGD) manages mutual assistance requests (MARs) for formal assistance from other jurisdictions' law enforcement agencies on criminal investigations and prosecutions. The use of MARs was critical in a number of Project Wickenby investigations, such as the extradition of an offshore promoter and the prosecution of a number of Australian taxpayers. Chapter 6 examines the use of MARs in some detail.

Tax Information Exchange Agreements

3.54 Australia has been an active participant in the work of the OECD and the Global Forum to enhance and expand the existing exchange of information networks. In the last couple of years, more progress towards a full and effective exchange of information has been made than in the previous decade. In April 2011, 660 Tax Information Exchange Agreements (TIEAs) were in place to increase taxation information exchange across borders. Australia has signed 31 TIEAs, of which 18 are currently in force and able to be used. One of the significant TIEAs signed (although not yet ratified) was with Vanuatu, a jurisdiction that had earlier indicated no desire to sign such an agreement with Australia.

3.55 While still early days, 27 exchange requests have been made via various TIEAs requesting taxpayer specific information, 17 of which relate to Project Wickenby. These requests tend to be complex, reflecting the compliance focus on high-risk taxpayers and behaviours. They have been useful for identifying offshore assets for debt recovery purposes. The ATO advised that one recent TIEA request with the British Virgin Islands resulted in the identification of taxpayers who had not paid tax on approximately \$30 million in gross income by over-claiming depreciation deductions.

3.56 The ATO advised that of the nine information exchange requests for Project Wickenby where enquires had concluded as at August 2011, all TIEA partners successfully responded. The use of TIEAs and information exchange requests adds to the Project Wickenby deterrent effect, where schemes become no longer viable for Australians operating through countries with TIEAs.

Liechtenstein project

3.57 An example of a Project Wickenby project involving international collaboration on secrecy haven risks affecting multiple countries involves Liechtenstein. In this instance, a group of five revenue authorities (Australia, New Zealand, the United States of America, Canada and the United Kingdom) were concerned about the compliance risks posed by the activities of a

Liechtenstein bank and worked together to collect intelligence, including on how the bank operated, what structures were used and the various services provided.

3.58 Compliance action was coordinated between the revenue authorities and, on 26 February 2008, Australia along with the other four nations undertook overt action including access visits under s.263 of the *Income Tax Assessment Act 1963*, letters to taxpayers and media releases. Australia also undertook a simultaneous audit with the United States Inland Revenue Service on a high profile taxpayer, where the Liechtenstein data was a crucial source of information.

3.59 Foreign revenue authorities contacted as part of the audit provided positive comment about the knowledge and approaches that officers of the taskforce brought to the initiative, which gave Australia an advantage in the fight against international tax fraud.

International forums

3.60 Australia is a member of, and contributor to, a number of international forums that concentrate on international tax issues. This includes working with international bodies like the OECD and the Financial Action Taskforce on money laundering, in order to enhance the transparency of business record keeping and the exchange of information (see Table 3.3).

Table 3.3**Project Wickenby taskforce involvement in international forums**

Forum & membership	Focus	Project Wickenby involvement
OECD Groups, particularly the Forum of Tax Administrators	Share information and expertise to enable revenue bodies to prevent, detect and respond to non-compliance, including in relation to offshore arrangements.	ATO has joined the Forum of Tax Administrators subgroup of offshore compliance. OECD Tax Crime Group showed interest in a Project Wickenby presentation.
Seven Country working group on secrecy havens	Cooperate to improve each country's capacity to deal with the risks secrecy havens pose to their systems.	Exchanged information on 79 occasions with six other countries from 2008–09 to 2010–11.
Joint International Tax Shelter Information Centre (JITSIC)	Five countries identify and curb abusive tax avoidance transactions, arrangements and schemes.	Improved arrangements to share intelligence, risk assessment and risk treatment strategies regarding financial intermediaries of mutual interest
Financial Action Taskforce on money laundering	33 countries develop and promote policies to combat money laundering and terrorist financing.	Provided input to Australia's responses to a number of Financial Action Taskforce recommendations with implications for money laundering and tax evasion.

Source: ATO.

3.61 The ATO has provided considerable input to multinational forums working on measures to address secrecy haven risks.

Reforming administrative policy, practice and legislation

3.62 As discussed in Chapter 2, the Project Wickenby taskforce's support for reform resulted in amendments to the *Foreign Evidence Act 1994* to allow offshore business records to be more easily admitted into evidence. Partner agencies are also contributing to the development of a suite of legislative and administrative defensive measures and law reforms to enhance international collaboration. These reforms include: entering into multilateral treaties with other G20 countries to detect, deter and deal with secrecy havens and other offshore risks; and better supporting international debt recovery.

3.63 The ATO has a substantial program of international visits, training and forums and Project Wickenby has been a key driver for many of these. The project has had extensive international exposure in the last few years. For example, the ATO provided a submission to the United States Senate

Committee on Homeland Security and Government Affairs for a hearing into secrecy havens, banks and United States tax compliance conducted by their Permanent Subcommittee on Investigations in July 2008. In addition, a senior ATO officer was lead speaker at an OECD Conference on Tax Crime in 2010, where Project Wickenby was recognised internationally for its approach to dealing with tax crime.

3.64 Foreign revenue authorities contacted as part of the audit advised that Project Wickenby has acted as a catalyst for secrecy haven reform by coordinating information exchange, international investigation techniques and directing resources effectively.

3.65 The AFP also undertook capacity building in Vanuatu to progress a critical mutual assistance request. Without this capacity building, Vanuatu authorities would have experienced difficulty in satisfying the AFP's request to the evidentiary standards required and within a reasonable timeframe. The capacity building included providing technical and operational support to the Vanuatu authorities to assist them to identify, manage and treat the requested evidence. The AFP also provided equipment to assist with the collection of evidence, such as photocopiers and cameras.

Conclusion

3.66 The Project Wickenby taskforce has had considerable international engagement, including through 27 information exchange requests that supported audits and debt recovery activities. Representatives of foreign entities that have cooperated on Project Wickenby activities provided positive comment about the knowledge and approaches of taskforce officers.

4. Intelligence and Case Selection

This chapter examines how Project Wickenby agencies, particularly the ATO, obtain intelligence and determine cases to be subject to criminal investigations and civil compliance interventions.

Introduction

4.1 The fight against international tax fraud and other financial crime is a complex undertaking as necessary evidence can be disguised and well hidden. Problems in accessing evidence are compounded where the banking and legal frameworks of secrecy havens obstruct the disclosure of information to Australian agencies. Promoters and intermediaries can also adapt their approaches to concealing evidence of impropriety by increasing the sophistication of their financial products and using new technologies.

4.2 The ATO and Project Wickenby partner agencies therefore require effective intelligence capabilities to identify, recognise and understand the evolving compliance risks. While some Project Wickenby compliance interventions have arisen from voluntary disclosure initiatives or relate to a small number of key promoters, it is essential that the agencies sustain a broader intelligence capability, in order to support compliance interventions and other mitigation strategies.

4.3 The ATO's Connected Intelligence Strategy provides the framework for coordinating Project Wickenby intelligence activities and clarifying the required capability, relationships and coordination.¹¹⁰ This strategy has three distinct parts: strategic; operational; and tactical intelligence. Strategic intelligence involves analysing information to understand trends in relevant activities conducted in high-risk secrecy havens. Operational intelligence focuses on developing intelligence and investigative opportunities relating to those secrecy havens and to ensure available intelligence is extracted from current cases and communicated in a timely manner. Tactical intelligence is the direct intelligence support for those cases subject to investigation and other compliance interventions.

4.4 The ANAO examined key elements of the ACC and AFP intelligence gathering activities, but focused on assessing the effectiveness of the ATO, as

¹¹⁰ ATO, *Project Wickenby High Level Mitigation Strategy 1, Connected Intelligence*, p. 1.

the lead agency, in coordinating and conducting intelligence activities for the Project Wickenby taskforce. The ANAO reviewed the following areas:

- the risk population;
- strategic, operational and tactical intelligence; and
- prioritising cases for investigations and civil compliance interventions.

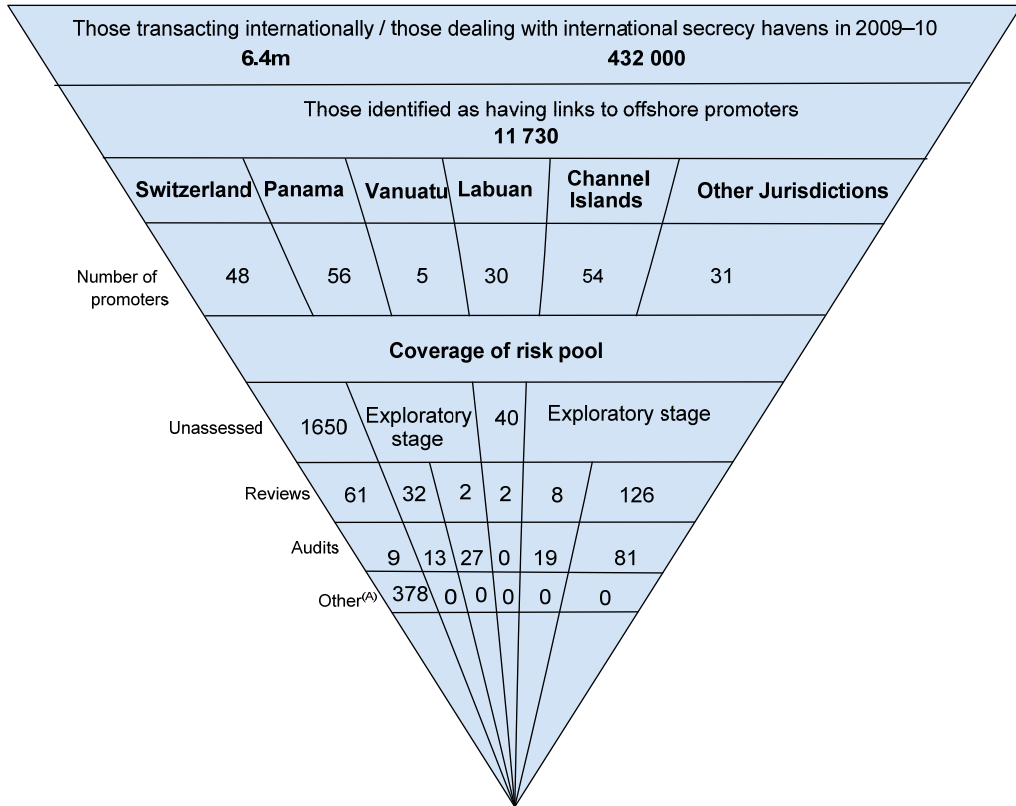
Risk population and intelligence capability

Risk population

4.5 Project Wickenby's 'risk population' refers to taxpayers with some prospect of having conducted international tax fraud or financial crime. These taxpayers are often identified as 'at-risk' based on the locality and nature of their financial dealings. An objective for the taskforce is to gauge the scale and composition of this risk population.

4.6 The ATO has analysed data from tax returns, financial transactions, and community and partner agencies in Australia and internationally to identify the risk population. As shown in Figure 4.1, the risk population is difficult to estimate with any confidence, but is potentially large. It can be given useful bounds by considering categories such as those Australian taxpayers having dealings with key identified secrecy havens (around 130 000 in June 2010) and those having dealings with known promoters of the main tax secrecy havens affecting Australia (11 730 identified from AUSTRAC analysis in June 2010).

4.7 The identified risk population has grown rapidly in recent years, from around 500 cases detected relating to the Swiss-based promoter in 2005 to at least 11 730 in June 2010, as discussed above. This growth has mainly arisen from a better understanding of the potential population, improved identification of cases, and increased access to new data sources. Many of these potential cases have been identified from a few key sources, for example, about 2800 cases are linked to Vanuatu and Liechtenstein, 2000 cases involve Panama and over 1000 cases relate to Labuan and Jersey. The size of the risk pool could change rapidly at any point in time, including in response to changes in the compliance environment.

Figure 4.1**Project Wickenby risk population and treatment**

Note: (A) Other includes the risk population relating to: letter strategies; the number of disclosures; treatments which resulted in no further action; and Project Wickenby risks that were referred to another ATO Business Line.

Source: ATO.

4.8 As discussed in the previous chapters, the overall risk rating for the project is currently assessed by the taskforce as ‘high’, having reduced from ‘severe’ in November 2009. Key reasons for this assessment were that much more is known about the risk, and the sporadic risk (direct marketing of schemes to the community) associated with the abusive use of secrecy havens has largely been dealt with.¹¹¹ The taskforce also considered that the inherent risk will always exist as there are some people who will choose to conceal their income or assets and seek to avoid their obligations.¹¹²

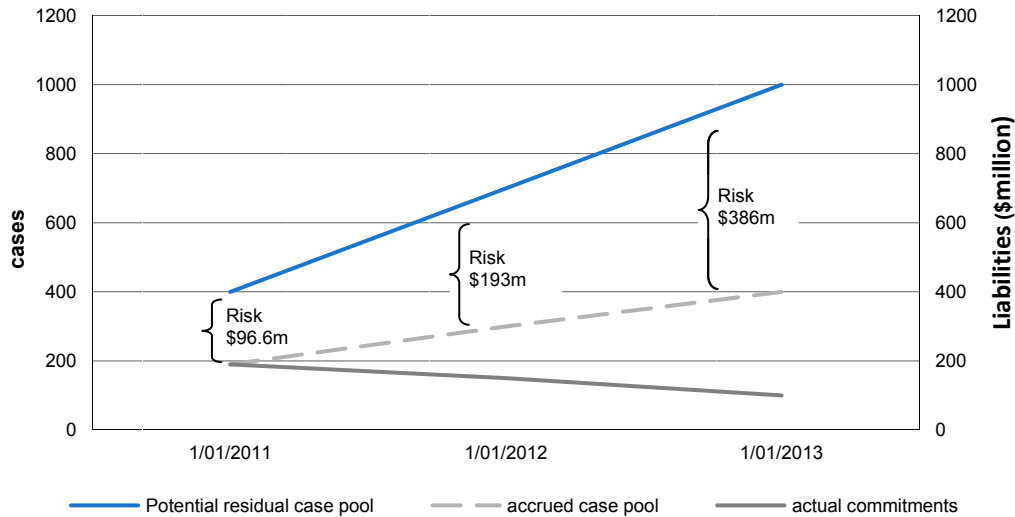
¹¹¹ ATO, *Project Wickenby Cross agency advisory committee Meeting Minutes, November 2010*, p. 5.

¹¹² *ibid.*, p. 5.

4.9 Nevertheless, the risk being addressed by Project Wickenby remains significant. As shown in Figure 4.2, the ATO estimated the amount of revenue foregone from tax evasion facilitated by the main secrecy havens as increasing to nearly \$400 million by June 2013, which exceeds that estimated at the commencement of the project in 2006.

Figure 4.2

Secrecy haven tax revenue at risk



Source: ATO.

4.10 While recognising the limitations of this measurement, the ANAO considers the methodology used by the ATO to calculate the amount of Australian tax revenue at risk from the abusive use of secrecy havens was reasonable as it was based on recent intelligence and compliance intervention history, and was constructed with the intent not to overstate the likely residual risk.¹¹³ This analysis suggests, therefore, that despite the impact of Project Wickenby on deterring, detecting and dealing with particular international secrecy havens, the associated risks remain high. It is also notable that funding for Project Wickenby is scheduled to cease in June 2013, and any reduction in mitigation activities is likely to lead to higher residual risks if the responsible agencies are unable to reprioritise existing demands on their resources or

¹¹³ The methodology applied assumptions about: the size of the candidate pool identified from existing projects; coverage of these candidates through planned audit activities; and return to revenue from these audits.

obtain additional budget funding to pursue criminal and civil compliance interventions.

4.11 The ongoing presence and activities of promoters and the potential high residual risk of offshore tax evasion and related financial crime warrants ongoing monitoring of the risk population. Project Wickenby agencies will reasonably need to sustain an appropriate intelligence function to inform policy reforms and proactive strategies to minimise the activities of promoters, as well as to inform compliance intervention activities.

Overall intelligence capability

4.12 The improved capacity of intelligence activities to identify large potential case pools has given the ATO and Project Wickenby partner agencies confidence that their intelligence activities are functioning reasonably effectively. This view is reflected in *Project Wickenby Strategic Risk 1: Connected Intelligence* being rated as green in the August 2011 traffic light report. This rating indicates that the ATO considers that the strategy is achieving its objective to support and inform Project Wickenby operations and other strategies.

4.13 Earlier, the *Project Wickenby Mid Project Review*, completed in June 2008, found that the agencies had success in gleaning intelligence from their operational work, but recommended the formation of a new centralised intelligence group to improve strategic intelligence.¹¹⁴ This recommendation has been addressed, as have many other suggestions in the review to improve intelligence capabilities. However, some scope remains to enhance the intelligence activities, as discussed in the following section.

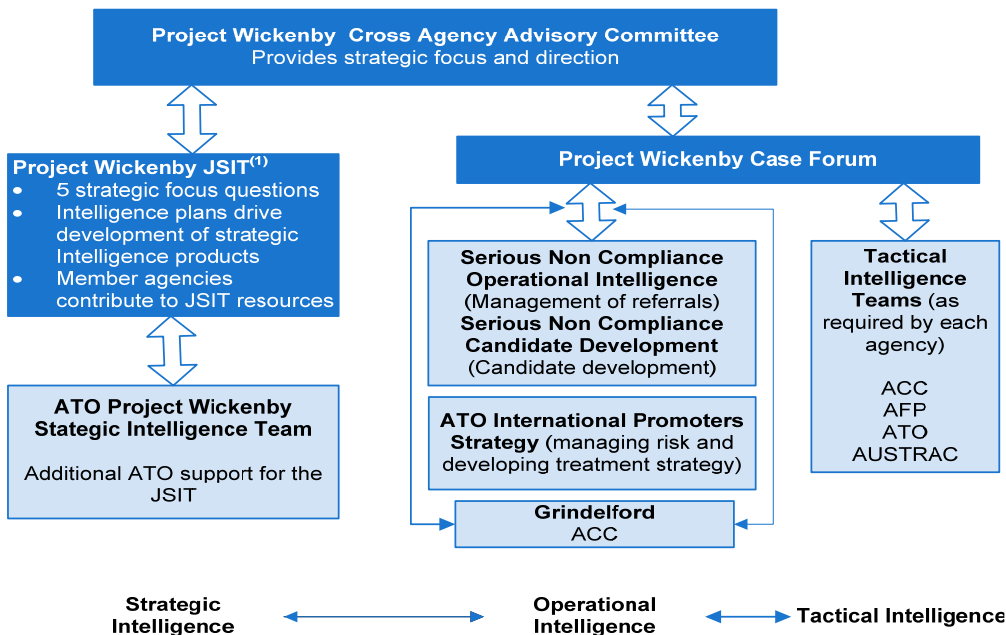
¹¹⁴ ATO, *Project Wickenby Mid Project Review*, June 2008, p. 7. The implementation of the recommendation from this review is discussed in paragraphs 4.18 to 4.24 of this audit report.

Intelligence and detection

4.14 Figure 4.3 outlines the Project Wickenby Intelligence model, based around the three levels of intelligence—strategic, operational and tactical.

Figure 4.3

Project Wickenby Intelligence Model



Note: JSIT refers to Joint Strategic Intelligence Team, as discussed in paragraphs 4.18 to 4.24.

Source: ATO, *Project Wickenby Strategy No.1: Connected Intelligence*.

4.15 This model provides for the collection, analysis and distribution of intelligence across these levels and between partner agencies. Under these arrangements, the Cross Agency Advisory Committee determines the project level strategic directions and sets priorities for the intelligence strategy. In turn, the intelligence strategy informs the Cross Agency Advisory Committee on current and future risks and threats associated with abusive secrecy haven arrangements.

Strategic intelligence

4.16 The aim of Project Wickenby’s strategic intelligence capability is to understand high-risk secrecy havens, including vulnerabilities in their regulatory and legal frameworks, and patterns and trends in financial transactions involving Australia, to inform mitigation treatment strategies.

4.17 As discussed in paragraph 4.13, the *Project Wickenby Mid Project Review* recommended the formation of a new centralised intelligence group to improve strategic intelligence. This recommendation was accepted and addressed through the creation of the Joint Strategic Intelligence Team (JSIT).

Joint Strategic Intelligence Team

4.18 The JSIT was formed as a standalone, cross-agency team working in one location to coordinate strategic intelligence. From 2009, the JSIT operated at ATO premises in Melbourne, and included resources from the ATO, ACC, AFP, AUSTRAC and ASIC. A framework was developed to share intelligence information between out-posted officers, although problems persisted with the interoperability of the information systems between agencies.¹¹⁵

4.19 Key activities of the JSIT have included: undertaking analysis and preparing reports on high-risk havens; managing a cross-agency project examining the lack of transparency (opacity) of international transactions in Australian listed securities markets; examining the operation of organised crime groups in the Wickenby environment; and conducting a range of other strategic intelligence scans.

4.20 From early 2011, partner agencies reduced their input to the JSIT, citing resourcing constraints. In light of the funding situation, the JSIT adopted a 'virtual' approach, with a focus on the ATO producing secrecy haven profiles, drawing on content provided electronically by other agencies, particularly AUSTRAC. The JSIT may also be tasked by the CAAC to provide other strategic intelligence briefs. The narrowing of the JSIT's breadth and focus in 2011 means that the strategic intelligence function has reverted to its previous form.

4.21 Fewer benefits were achieved than expected from implementing the standalone, major cross-agency strategic intelligence function for Project Wickenby, particularly given the problems experienced in sharing information between agencies.

4.22 The other main observation of the Mid Project Review was that major strategic intelligence projects are better managed by the lead agency than minor partners, as the lead agency is more likely to have sufficient resourcing

¹¹⁵ For example, a JSIT project was discussed at the March 2011 CEO meeting, where it was recognised that interoperability problems inhibited analysis involving share registry data, AUSTRAC financial flows, ATO tax file number matching and income tax data, as well as intelligence provided by the ACC.

and senior executive support to progress them.¹¹⁶ The ANAO, therefore, does not suggest major changes to the current strategic intelligence approaches for the project.

4.23 There is scope, however, to better measure the effectiveness of the strategic intelligence function, and to integrate planning across the three levels of intelligence. As at June 2011, JSIT had not explicitly reported against the five specified key intelligence needs. There were a number of plans covering intelligence functions, particularly for the JSIT and International Promoters Strategy but there was little coordination between them, and no integrated intelligence plan had been developed since the initial plan in 2006.

4.24 In the future, there may be an opportunity for the JSIT to draw on intelligence gathered by the ACC Fusion Centre. This centre was established in July 2010 and brings together people from a range of government agencies to provide a more comprehensive picture of the targets, risks, threats and vulnerabilities associated with criminal activity.¹¹⁷

Operational and tactical intelligence

4.25 As discussed in paragraph 4.3, operational intelligence focuses on developing new intelligence and investigative opportunities in relation to the abuse of secrecy haven arrangements and ensuring that all available intelligence is extracted from current cases and communicated in a timely manner. Major operational intelligence activities for Project Wickenby include:

- the ATO International Promoter Strategy, drawing on broader intelligence capability within the ATO;
- AUSTRAC analysis;
- the ACC's Project Grindleford that provided an operational intelligence capability through the use of its examination powers;
- the Project Wickenby Case Forum; and
- coordination with international sources, including revenue authorities and law enforcement agencies of other countries.

¹¹⁶ The experience of the JSIT was that ASIC was not able to continue to contribute to the project on the opacity of international transactions in Australian listed securities markets past 2010 because of resourcing constraints and other priorities.

¹¹⁷ ACC website, <<http://<.crimecommission.gov.au/media/faq/fusion.htm>> [accessed 10 August 2011].

4.26 Tactical intelligence is delivered by each agency as required to support their Project Wickenby activities. The key to generating new tactical opportunities is the target generation activities of operational intelligence teams and compliance case teams, working in combination with the International Promoters Strategy and appropriately with partner agencies.

International Promoter Strategy

4.27 The focus of the International Promoter Strategy (IPS) is to identify offshore promoters, onshore intermediaries and associated taxpayers involved in abusive secrecy haven schemes by using intelligence and analytical capabilities within the ATO and by working collaboratively with partner agencies nationally and internationally. Its aim is to develop treatment strategies to mitigate international promoter risks. The IPS evolved from the consolidation and assessment of cases and secrecy haven risks other than those involved with or linked to the original Swiss-based promoter examined by Project Wickenby.

4.28 A geographic regional focus is applied by the IPS team to those jurisdictions that present a revenue risk to Australia, in order to ascertain the type of mischief being promoted within higher risk regions. Where necessary, the IPS goes beyond country boundaries to address clusters of promoters and to align these intelligence activities with other initiatives, such as those stemming from information provided by international partners.

4.29 The IPS also coordinates with and draws on information from JSIT, other relevant areas in the ATO, including the bank transparency strategy¹¹⁸ and Serious Non Compliance Risk and Strategic Intelligence, which filters information from the public, tax professionals, and the media. The IPS team has also engaged partner agencies regarding operational and tactical intelligence, including the AFP (operations) and the ACC (examinations).

4.30 The risk profiling of 12 secrecy havens conducted by the IPS in June 2010 found that most jurisdictions were following the broader trends of a decreased number and value of inward and outwards flows in 2008–09 and

¹¹⁸ The bank transparency strategy involves working with financial institutions to identify Australian taxpayers with accounts or structures in secrecy havens that are used for tax avoidance or evasion or to facilitate crimes such as money laundering. A cross-agency approach to this strategy includes domestic and overseas banks, and involves intelligence sharing with international revenue agencies pursuant to double tax treaties. In mid-2011, the ATO was analysing approximately 40 000 records disclosed from 15 banks examined as part of the project. Early analysis indicated significant compliance issues from at least two banks as around 40 per cent of their clients had not disclosed foreign source income in their tax returns.

2009–10, although two had significant increases, and these were identified for further attention by Project Wickenby agencies. Many civil actions had been taken (over 2000 risk reviews and audits with over \$200 million in liabilities raised and nearly \$30 million collected) associated with this risk profiling, but there had been few criminal prosecutions (involving only three promoters). The focus of compliance interventions was on six of the 12 havens, with little civil or criminal action and associated information exchanges in the other six havens.

4.31 As part of the strategy, IPS has exchanged tactical intelligence with tax treaty nations as a step towards representations that will seek reform of some haven jurisdiction's information exchange policies. An example involves Vanuatu, where the ATO has coordinated compliance actions with the New Zealand Inland Revenue Department against those involved in abusive arrangements, as well as working together to reform the transparency of financial transactions involving Vanuatu.

4.32 IPS has been able to assess the risks of many participants from some secrecy haven countries, such as Vanuatu, as it has identified many promoters, their intermediaries and clients, the types of schemes, and revenue at risk. Completing this more detailed work in other key secrecy havens would further clarify the estimates of the Project Wickenby risk population and support the selection of cases for compliance activity and representations for broader reform approaches.

4.33 In addition, there is an opportunity for IPS to review the major intelligence sources for Project Wickenby to better focus on those sources that have produced greater compliance outcomes. The IPS team could also examine processes to capture intelligence gleaned by Project Wickenby ATO audit teams¹¹⁹, to provide assurance that it is being appropriately considered in intelligence and risk assessment exercises.

AUSTRAC analysis

4.34 A major source of information is the Australian Transaction Reports and Analysis Centre (AUSTRAC), which monitors international transactions in the financial system. AUSTRAC data is one of the ATO's key intelligence sources for Project Wickenby secrecy haven risk analysis. The ATO uses online

¹¹⁹ These processes include the Intelligence Analyst Workbench, which provides intelligence analysts within the ATO with tools to collect, store and analyse intelligence information.

facilities to access the AUSTRAC system. This gives the ATO the ability to view information reported to AUSTRAC, complete a range of searches and download data for further analysis. AUSTRAC also provides a range of other offline financial intelligence services to the ATO, including customised analytical downloads of offshore financial flow information.

4.35 The *Project Wickenby Mid Project Review* identified scope to conduct more sophisticated scans of AUSTRAC data, using new and emerging methodologies, to identify changes in behaviour.¹²⁰ Phase 2 has subsequently funded AUSTRAC, where Phase 1 did not, and a more extensive program has recently been developed to examine possible abusive financial arrangements involving secrecy havens.

4.36 One project being undertaken is the development of a jurisdictional population analysis model to better understand those entities who have previously engaged in transactions involving international secrecy havens. The analysis is not yet completed but aims to establish patterns and trends around individuals, entities, groups, and clusters of Australian residents that have either sent to or received funds from havens.

Project Grindleford

4.37 At the commencement of Project Wickenby, the ACC was responsible for undertaking nine criminal investigations. In 2007, the ACC identified the need to better harvest operational and tactical intelligence from these investigations.¹²¹ Its main response was Project Grindleford, which provided for a national team within the ACC that used coercive powers, particularly examinations of witnesses, to supply evidence and intelligence to Project Wickenby partners. It primarily supported investigations undertaken by the AFP and ASIC, and audits undertaken by the ATO regarding suspected tax fraud and money laundering activities by Australian residents using international secrecy havens.

4.38 Outputs of Project Grindleford related to the development of targets or candidates for Project Wickenby. Project Grindleford relied on referrals by other agencies and, accordingly, its value was dependent on the quality of intelligence contained in those referrals. As shown in Figure 4.4, the number of examinations held as part of Project Grindleford increased in 2009–10 when

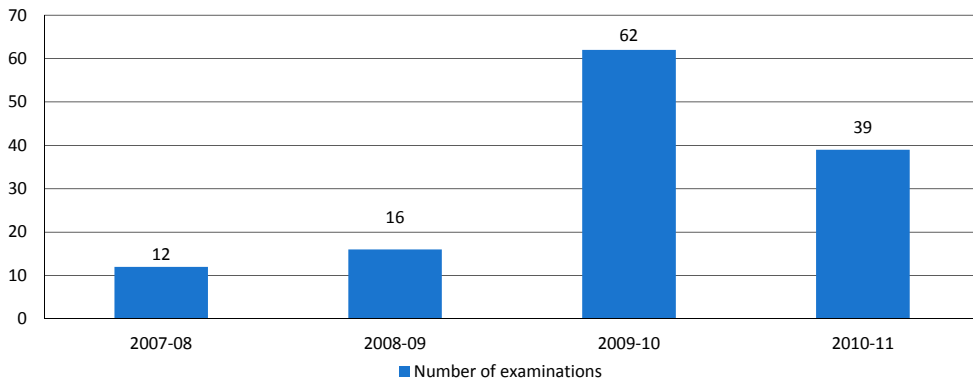
¹²⁰ ATO, *Project Wickenby Mid Project Review*, June 2008, p. 7.

¹²¹ Project Wickenby CEO meeting June 2008.

compared to the preceding years, although there was a slight reduction in 2010–11.

Figure 4.4

Project Grindleford examinations to 20 February 2011



Source: ATO.

4.39 In total, there had been 129 Project Grindleford examinations to 20 February 2011. The ATO estimated that \$57 million in tax revenue had been raised from people subject to those examinations who subsequently declared omitted income. At the same time, feedback from partner agencies was that: new intelligence was generated from 69 per cent of all examinations held; and 97 per cent of all examinations held were deemed to be of value.

4.40 To find savings as a result of reduced budget funding, the ACC ceased Project Grindleford in 2011–12. The ATO and ACC are subsequently working on a separate project (Project Sasanof) under the ACC’s Targeting Criminal Wealth Determination to conduct examinations for Project Wickenby.¹²²

4.41 To compensate for the reduction in Operation Grindleford examinations, the ATO could make greater use of its own civil powers to obtain oral information at interviews for the purpose of raising revenue. Such interviews could be conducted under s.264 of the *Income Tax Assessment Act 1936*, which requires a person to attend and give evidence about income or tax assessment(s).

¹²² The ATO provided \$500 000 in 2011–12 to enable the ACC to conduct around 40 examinations for Project Wickenby.

Case Forum

4.42 One of the three roles of the Project Wickenby Case Forum is to optimise opportunities to harness and share intelligence from current investigations and audit activities.¹²³

4.43 Case Forum meetings commenced in May 2007, following the legislative amendments that allowed more ready dissemination of information from the ATO to partner agencies. This multilateral forum replaced a previous trilateral Case Forum¹²⁴, and has more involvement in decision-making than merely facilitating the exchange of information. The Case Forum was revised in 2008, to better integrate cross-agency consideration of existing cases, new cases and intelligence. Case Forum meetings are held monthly, prior to the CAAC meetings.

4.44 The ANAO reviewed the minutes, papers and action items arising from a selection of Case Forum meetings held between January 2009 and May 2011, to assess its role in harnessing and sharing operational and tactical intelligence. This assessment showed that:

- the meetings focused on reviewing current cases, and involved considerable discussion of tactical intelligence, mainly identifying where ATO evidence may be able to support investigations conducted by the AFP and, to a lesser extent, ASIC; and
- there were relatively few recorded instances of action items involving agencies working together at these meetings to generate operational intelligence (for example involving ATO analysis of intelligence sources used by ASIC).

4.45 Overall, the Case Forum provides an effective means by which the main partner agencies coordinate their intelligence and information case holdings to support Project Wickenby objectives. There was, however, scope for the Case Forum to have a greater focus on operational intelligence issues.

¹²³ A later section in this chapter examines the Case Forum's role to consider and endorse new criminal investigations. Chapter 6 examines some elements of the Case Forum's oversight of existing investigations.

¹²⁴ Standing members of the Case Forum are from the ATO, AFP, ASIC, Commonwealth Director of Public Prosecutions and ACC. The previous Case Forum had representation from the ATO, AFP, and ASIC.

Overseas sources

4.46 The complexity and opacity of international tax arrangements involving multiple jurisdictions means intelligence sharing across jurisdictions is critical to the effective mitigation of international tax risk. As discussed in Chapter 3, the Project Wickenby taskforce has had considerable interaction with foreign revenue and law enforcement agencies in conducting intelligence activities. Moreover, many compliance project clusters have begun with information provided by foreign revenue authorities and law enforcement agencies, including in the three jurisdictions the taskforce has had a strong focus on—Switzerland, Lichtenstein and Vanuatu.

Conclusion

4.47 Intelligence about the nature and impact of the abusive use of secrecy havens has improved markedly since the inception of Project Wickenby. The risk population is now better defined and strategic intelligence provides a better understanding of the broad risks. Operational intelligence has identified many cases for potential compliance treatments, including through intelligence briefs undertaken by IPS. To enhance the use of intelligence, IPS could review the major intelligence sources for Project Wickenby to better focus on those sources that have produced greater compliance outcomes. Tactical intelligence has facilitated the extensive transfer of information at the case level, particularly through Project Grindelford examinations and case forum meetings.

Case selection

4.48 Criminal investigations and civil audits are integral to the taskforce's approach to dealing with the risks of international tax fraud and evasion. The ACC and AFP conduct most investigations and the ATO conducts audits of taxpayers potentially engaged in the abusive use of secrecy havens as part of Project Wickenby. Appropriate case selection plays a critical part in enabling compliance interventions to address risks and in turn to improve voluntary compliance. The implications of inappropriate case selection are also important, as noted by the Commissioner and supported by the Joint Committee of Public Accounts and Audit that 'if you pick the wrong people, it actually reduces community confidence rather than increases it.'¹²⁵

¹²⁵ Joint Committee of Public Accounts and Audit, *Report 410 Tax Administration*, June 2008, pp. 127-128.

4.49 The ANAO examined the selection of cases for compliance interventions under Project Wickenby, covering:

- the initial classification of cases in 2005 and 2006;
- criminal investigations conducted by the AFP; and
- audits and risk reviews conducted by the ATO.

Initial prioritisation and selection of cases for investigation by the ACC

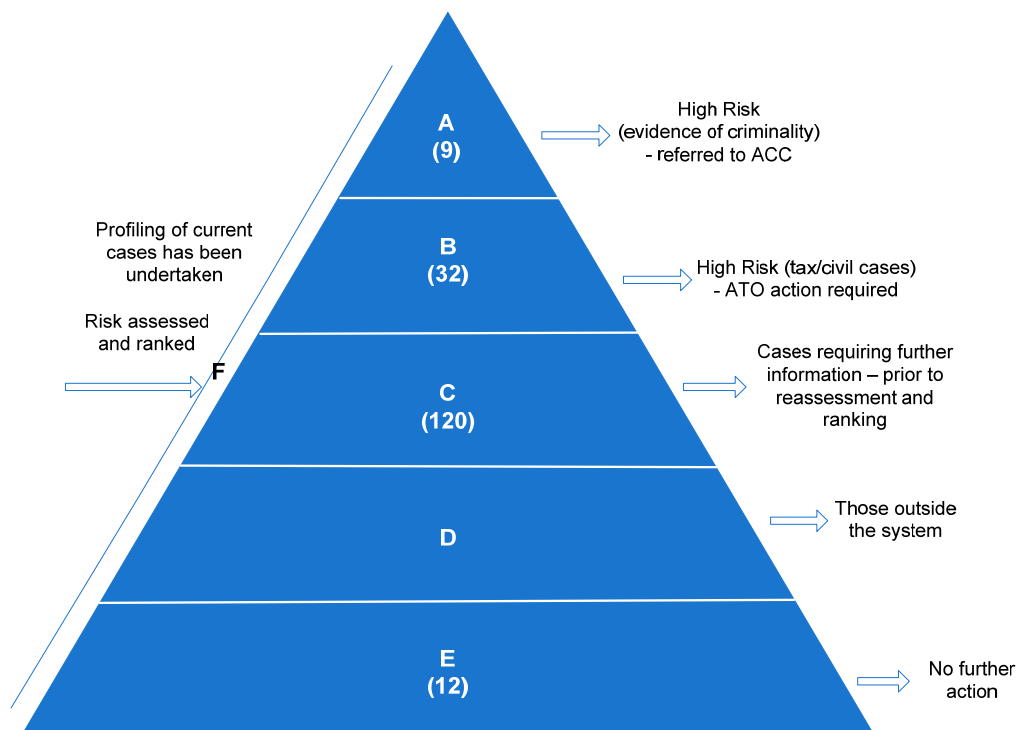
4.50 At the outset of Project Wickenby, the strategic focus was to maximise the incentive for voluntary disclosure and establish a strong deterrent to future scheme promotion and participation. The immediate focus was to take decisive action against involvement with the Swiss-based promoter, before developing this capability to address involvement with other promoters of similar arrangements.

4.51 On this basis, the ACC profiled evidence obtained from the initial Swiss-based promoter in early 2005, according to the six categories shown in Figure 4.5. This categorisation involved continued progression of the most serious criminal (A) cases already with the ACC, and deploying multi-agency capabilities to address other initial promoter cases potentially involving tax evasion. The intention was for the ATO to carry out a vigorous audit program of (B) cases, obtain more information for (C) and possibly (D) cases, take no further action on (E) cases and further examine (F) cases relating to other international promoter cases through the IPS.¹²⁶

¹²⁶ Where warranted, actioned cases may also use the *Proceeds of Crime Act 2002* and be referred to ASIC for breaches of the corporations law.

Figure 4.5

Project Wickenby case categorisation, as at June 2005



Source: ATO.

4.52 Prioritisation was conducted according to an interim case categorisation model. Categories were based upon risk, complexity, revenue at risk and economies of scope.¹²⁷ The ANAO reviewed documents relating to the prioritisation process and considered the approach sound. The ANAO also reviewed information from the ACC outlining reasons for the early selection of cases for criminal investigation in 2004. While not systematically considering cases against clear criteria at that stage, there was qualitative discussion of the merits of investigating each selected case.¹²⁸ Information providing reasons for selection of all cases in the other categories through to the commencement of Project Wickenby was not readily available.

¹²⁷ ATO, *Operation Wickenby Organisational Design*, December 2005, p. 4.

¹²⁸ ACC, *Project Wickenby Case Selection Outcomes*, 2004.

4.53 As Project Wickenby proceeded there was considerable change in the composition of these categories as more information was obtained about individual cases. For example, the June 2006 CAAC meeting reported a significant increase in the number of Category B cases to 289, including almost 100 from further profiling of Category C cases, one of which moved to a Category A criminal investigation.

4.54 A feature of the criminal investigation strategy was the decision to task the ACC with those cases relating to the Swiss-based promoter, and the AFP with those of other promoters. There is no clear record of the reasons for this allocation. The ACC, however, was already conducting investigations relating to the Swiss-based promoter and was willing to continue these cases within the taskforce framework. As a key taskforce member, the AFP was expected to lead a significant proportion of investigations, drawing on their powers to collect information internationally, and so a clear distinction was for them to focus on other identified promoters.

4.55 While this allocation of investigations provided clear delineation of cases, it did not necessarily direct cases to those agencies with the most appropriate powers to obtain evidence. It was possible to draw on the various agency powers within the cooperative operational mechanisms of the taskforce (such as ACC examination of those subject to AFP investigations). There were likely to have been operational efficiencies from providing greater flexibility to allocate investigations to agencies on the basis of the most suitable powers and capabilities to conduct them. The ANAO suggests that future similar taskforces provide greater flexibility to allocate investigations to respective agencies on the basis of the suitability of their powers and capabilities.

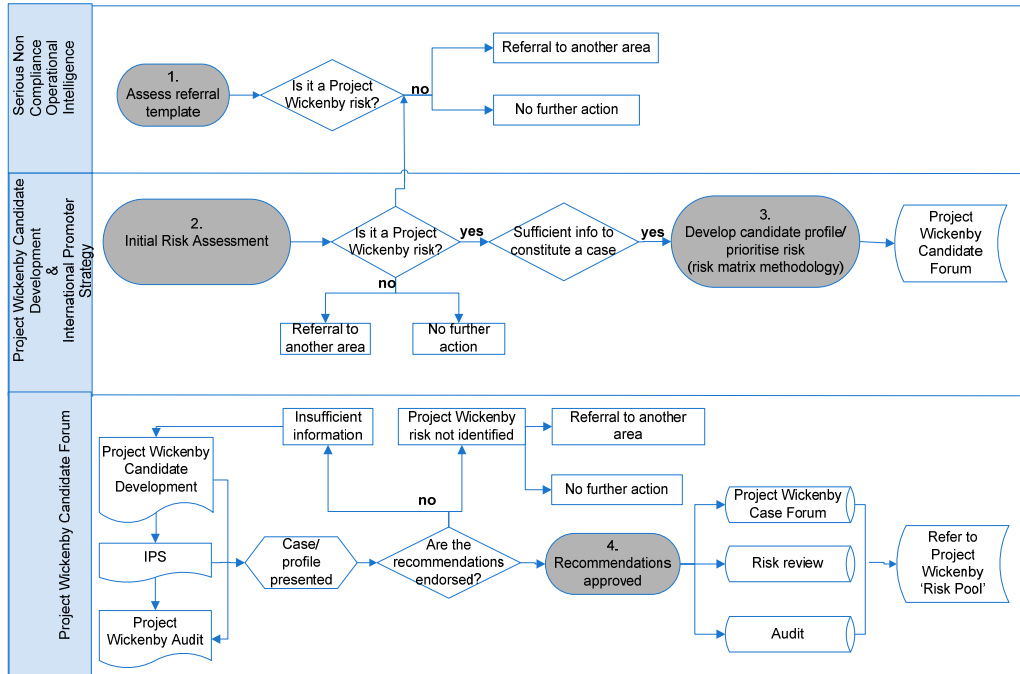
Selecting subsequent cases for criminal investigation by the AFP

4.56 Case referrals for criminal investigation are endorsed by the Project Wickenby Case Forum in accordance with the strategic direction and criteria set by the CAAC. Once endorsed by the Case Forum, the case referral is required to be approved by the relevant law enforcement agency's own internal governance process before it can become an accepted Wickenby investigation to which Project Wickenby-funded resources may be allocated.

4.57 Some delays were encountered in referring cases, with the AFP only receiving one Category F referral by September 2006.¹²⁹ The incidence of referrals increased strongly thereafter, with AFP staff working with the ATO target development stream to ensure that the threshold for suspected criminality was met. By September 2007, nine of the 13 total Project Wickenby investigations had been accepted by the AFP, with the last accepted in October 2009.

4.58 Prior to 2009, the referral of Project Wickenby investigations was based on an assessment against known criminal typologies. However, many potential cases did not match these typologies, and there was considerable discussion over a number of months at Case Forum meetings about the suitability of particular cases for investigation. These discussions took place on a case-by-case basis, without clear criteria to assess the cases. In early 2009, a more systematic approach was introduced, with templates and defined criteria for referring and assessing each case to be considered by the forum, as set out in Figure 4.6.

¹²⁹ At the September 2006 CEO meeting, the AFP expressed a concern that it would be unable to fully expend project funding without additional referrals. The ATO indicated the delays experienced in referring cases to the AFP were due to problems with case officer allocation and continuity, and developing a model major investigation plan with a 'top down' promoter focus.

Figure 4.6**Project Wickenby risk assessment and case selection process**

Source: ATO.

4.59 Ten of the 13 AFP investigations had been approved before 2009, and the lack of clear selection procedures made it difficult to analyse their suitability for inclusion as Project Wickenby cases, including why they were preferred to other cases. However, these investigations did involve the type of criminality targeted by the taskforce, and have largely resulted in people being charged with indictable offences.

4.60 The Project Wickenby risk assessment and case selection process often commences with initial risk scans (including major project-based assessments) undertaken by Project Wickenby intelligence teams. These risk assessments, and other intelligence such as input by Project Wickenby audit teams, are further considered through the IPS, which obtains additional information, including the views of partner agencies. The IPS then provides a summary report of preferred cases for the Case Forum to decide whether or not to refer them to the AFP as a Project Wickenby investigation. This framework provides a comprehensive basis for referring cases for criminal prosecution, by applying an iterative approach to collecting and analysing information involving relevant areas with the ATO and partner agencies.

Selecting cases for criminal investigation since 2009

4.61 Since early 2009, cases have been referred, assessed and prioritised for criminal investigation on the basis of their suitability, having regard to factors including:

- strength of links to project objectives;
- evidence availability and likelihood of prosecution;
- severity of misconduct;
- public interest, including media and community awareness, impact on community confidence, deterrent factors;
- impact on revenue;
- links to strategic initiatives such as inter-jurisdictional cooperation, opportunities for representation and reform; and
- resource requirements and availability having regard to competing priorities and available funding.

4.62 The ANAO examined the minutes of Case Forum meetings since January 2009, and found that this process facilitated a consistent approach to referring, prioritising and assessing cases for criminal investigation as part of Project Wickenby. Around eight cases have been considered by the Case Forum each year from 2009 to 2011, of which over half have been referred to the AFP for approval through its internal governance processes.

4.63 There have been few Project Wickenby criminal investigations commenced in recent years (with only three since May 2008). This has largely resulted from budget constraints, as existing investigations are likely to require the bulk of available funding over the duration of the project. In this regard, the AFP noted at the July 2010 Case Forum meeting that it was nearing capacity for Project Wickenby cases, and similarly the March 2011 CEO meeting acknowledged that new criminal investigations would be limited to matters with the greatest strategic value.

4.64 While the case referral and assessment processes in place since 2009 have clearly defined criteria, they do not specify any weighting for these criteria. As a consequence, some criteria are weighed more heavily than others across different cases. Strategic considerations, such as addressing emerging secrecy haven jurisdictions or types of abusive schemes are often relatively significant, as are expectations of evidentiary requirements, bearing in mind

the difficulties encountered in many Project Wickenby investigations in obtaining international evidence.

4.65 As a result of changes in the importance of the referral and assessment criteria over time, and the limited available funding for new criminal investigations, some cases similar to those that were accepted for investigation in the early years of the project have not been accepted since 2010. For example, the ANAO's review indicated that cases relating to the initial Swiss-based promoter, and also those with significant challenges to obtaining evidence, are now less likely to be investigated than in the early years of the taskforce.

4.66 There would be merit in the taskforce reviewing the importance of commencing new investigations. Conducting new cases would act as a deterrent to those currently involved in, or considering, the abusive use of secrecy havens, given that they may face criminal conviction and custodial sentences.

Selecting cases for civil audit and review by the ATO

4.67 Audits and risk reviews form a major component of the risk treatment strategy for Project Wickenby. These activities are costly to manage, and it is crucial to allocate resources to those cases providing the greatest return from the investment. The initial cases selected for civil audit and review by the ATO were derived from the information obtained from the Swiss-based promoter. There were a number of refinements to the selection processes and criteria, with a significant change being the introduction of the ATO's Project Wickenby Candidate Forum process in early 2010, partly in response to a previous ANAO recommendation.¹³⁰

4.68 The Candidate Forum comprises Project Wickenby compliance stream leaders from across the country as well as technical and intelligence representatives. It meets each month to prioritise suitable candidates for compliance treatment, and considers information and recommendations provided by a Candidate Forum team. As such, this forum's primary role is to provide assurance that the candidates that are selected for audit and/or review

¹³⁰ ANAO Report No.24 2008–09, *The Australian Taxation Office's Management of Serious Non-Compliance*, May 2009. Recommendation No.5 proposed that a centrally coordinated unit assess referrals for compliance cases.

represent, on a national basis, the highest priority issues and current risks. Accordingly, candidate selection is based on the following principles:

- prioritising candidates according to risk—as soon as possible (ASAP), high, medium or low—with only ASAP and high-risk cases generally selected for review or audit;
- assessing risk against a wide range of criteria, including the: potential damage to community confidence in the ATO should the audit not proceed; extent of identified mischief, including potential revenue gain; and identification of new typologies, themes, and promoters;
- more generally considering why candidates are suitable for audit or risk review, what priority they should be afforded, and what risks are posed by their behaviour; and
- transparency—with documentation clearly recording why the review or audit activity is appropriate.

4.69 The ANAO examined a selection of Candidate Forum documentation, including meeting minutes and action items in 2011 and the Case Outcomes Register for May 2011. Documentation supported the decisions in relation to candidates that were proposed to progress to audit or review or that required more information. There was sufficient information about the candidates on the referral forms, and the reasons for accepting them as Wickenby cases. The rationale for not selecting certain candidates for compliance treatment was also adequately documented.

4.70 The inclusion of the key senior ATO staff from across the various streams and regions provided consistency in the selection of candidates. The Candidate Forum also managed the distribution of candidates, with a ‘workbank’ of reserve candidates used to provide flexibility in maintaining workloads in varying locations.

Conclusion

4.71 Initial prioritisation of cases for criminal and civil action was based on a sound case categorisation model. However, tasking the ACC with those investigations relating to the Swiss-based promoter, and the AFP with those of other promoters did not necessarily direct cases to the agencies with the most appropriate powers to obtain evidence. Processes for selecting cases for criminal investigation have been refined since 2009. Nevertheless, there has been some inconsistency in selecting cases over time, as evolving strategic

priorities and reduced funding have meant investigations that were selected earlier in the project may not have been conducted in more recent years.

4.72 Refinements have also been made to processes for selecting cases for civil audit and review. The ATO has consistently prioritised and managed the compliance caseload across work streams and geographically since early 2010. It has also clearly reported reasons for selecting, or not selecting, candidates that are to progress to audit or review since early 2010.

5. Civil Compliance Interventions

This chapter examines how the ATO conducts the program of civil compliance interventions for Project Wickenby.

Introduction

5.1 Project Wickenby's civil audit and review strategy deals with the risk of taxpayers using offshore tax arrangements to secrete income or falsify deductions. It focuses on the correct lodgement, assessment and payment of tax due by Australian taxpayers with financial dealings in secrecy havens. The ATO manages and applies this strategy by: demanding outstanding returns; conducting compliance interventions to determine if the correct tax has been paid; raising tax assessments where the ATO determines the correct tax has not been paid; resolving any subsequent objections to amended or default assessments; and seeking to recover proper amounts due, including penalties and interest. ATO officers also assist partner agencies with criminal investigations by providing tax and financial analysis expertise.

5.2 A core component of the strategy is the conduct of compliance interventions through risk reviews and audits. A risk review is often the first step following case selection and is designed to assess whether tax risks arise from a taxpayer's self-assessment. An audit examines cases where there is a risk of material underpayment of taxation, in order to establish the taxation liability and/or enforce adherence with obligations.

5.3 Audits and reviews are targeted so as to have a direct impact on those subject to audit, with an administrative penalty imposed to act as a deterrent and encourage future tax compliance. Publicity of the audit program is designed to modify the behaviour of the broader population that use secrecy havens in an abusive way by influencing the risk population's belief that there is an increased prospect of detection and punishment.

5.4 As shown in Table 5.1, the ATO reported that 2259 compliance interventions—754 audits and 1505 risk reviews—had been completed since the inception of the Project Wickenby taskforce to 30 June 2011. The early years of Project Wickenby had a focus on audits, with almost 80 per cent of risk reviews commenced and completed since June 2009.

Table 5.1**Project Wickenby compliance interventions, reported results to 30 June 2011**

Outcome / status of interventions	Audits	Reviews	Total
Interventions in progress (no.)	170	526	696
Interventions completed (no.)	754	1505	2259
Interventions completed that raised liabilities (no.)	355	50	405
Tax liabilities raised (\$ million)	\$1 036	\$55	\$1 092
Tax collections (\$ million)	\$209	\$33	\$242

Source: Information provided by the ATO.

5.5 The audits and reviews completed by 30 June 2011 had raised almost \$1.1 billion in liabilities, with \$242 million collected.¹³¹ Most Project Wickenby liabilities have been raised through audits, with four per cent arising from 50 reviews completed by 30 June 2011. Over half of all Project Wickenby liabilities to that date (51 per cent) were attributable to the 20 largest audit cases, many of which were interrelated.

5.6 The ANAO examined the effectiveness of key elements of the ATO's Project Wickenby civil audit and review strategy by reviewing the:

- management of the civil compliance intervention program;
- conduct of risk reviews and audits;
- resolution of objections, appeals and prosecutions arising from tax assessments raised by the ATO; and
- debt recovery.

5.7 The ANAO's review of these elements focused on the ATO's administrative processes, including key approval and control mechanisms. The ANAO did not assess the accuracy of decisions involving the application of tax law or other relevant considerations.

Managing the civil compliance intervention strategy

5.8 Project Wickenby's civil audit and review strategy is administered separately within the ATO's Serious Non Compliance business line, by the Tax

¹³¹ Compliance activities have been conducted in ATO offices in all mainland state capital cities, particularly Sydney.

Implications of Economic Crime segment. Key internal units responsible for managing and supporting this program are the:

- Project Wickenby Executive, which endorses compliance projects and oversees Project Wickenby intelligence, risk, compliance and revenue collection strategies;
- Serious Non Compliance Audit Business Management Committee, which monitors the overall Project Wickenby compliance program against key targets; and
- Project Wickenby Technical Panel, which provides guidance on technical issues.

Streams conducting compliance interventions

5.9 The three separate functional streams in the ATO that conduct compliance interventions for Project Wickenby are:

- Category A, which conducts audits and reviews primarily connected with criminal investigations conducted by the AFP and ACC, assists these agencies with their investigations, and discharges other roles such as supporting in-house prosecution of taxation offences;
- Category B, which conducts most audits and reviews, including over 40 connected with partner agency criminal investigations. This stream is separated into two sub-streams, with one manager for New South Wales and Queensland and another for Victoria, South Australia and Western Australia; and
- the International Promoter Strategy (IPS) stream, which undertakes a relatively small number of reviews to risk assess international promoters, Australian intermediaries and high-risk taxpayers.

5.10 In these roles, Category A conducts complex audits to a standard required to support criminal prosecutions (that is to contribute to briefs to the Commonwealth Director of Public Prosecutions that provide reasonable prospects of successful prosecution), as well as acting as witnesses in committal hearings and during trials. The stream also provides specialist skills, such as tax and financial analysis to partner agencies, mainly through secondment or outposting of ATO officers to those agencies. Many Category B audits have comparable complexity to Category A cases, support criminal investigations, and are required to have a similarly high level of audit analysis, documentation and reporting.

5.11 The above organisational structures for managing the conduct of Project Wickenby audits and reviews are based on the initial separation of criminal and civil cases, and the distribution of compliance interventions geographically. These arrangements are well established but would benefit from a review given that funding for the project is scheduled to cease in June 2013. This review could determine whether these structures remain the most efficient and effective means of administering civil compliance activities as the volume of work decreases. In doing so, the review could assess the ongoing need for a separate compliance stream (Category A) nominally to support criminal investigations where the other major stream (Category B) is also supporting criminal investigations.

ANAO sampling of civil compliance interventions

5.12 Project Wickenby case officers conduct audits and reviews according to processes defined within the ATO's IPEC model—initiate, plan, execute and close—and are expected to record case details in the electronic case management system. Audit processes are underpinned by the requirements of the Taxpayers' Charter to appropriately inform taxpayers at key stages.

5.13 The ANAO reviewed the ATO's case management frameworks and processes for Project Wickenby, including a sample of 340 completed cases, which represented 15 per cent of the 2259 closed cases as of 30 June 2011.¹³² The sample included cases from each of the three administrative streams, as shown in Table 5.2.

¹³² The selected sample, 340 cases, is statistically significant with a 95 per cent confidence level and five per cent margin of error. It covered cases: in each state that conducted them; for each year they were completed; across most major projects; and according to whether there was a positive result for the ATO.

Table 5.2**ANAO sample of Project Wickenby compliance interventions completed from inception to mid-May 2011**

Outcome / status of interventions	Reviews	Audits	Total	Per cent of all completed (%)
Category A	1	30	31	25
Category B	113	132	245	15
International Promoter Strategy	56	8	64	12
Total	170	170	340	15

Source: ANAO

Risk reviews conducted by the ATO

5.14 Risk reviews provide the ATO with an opportunity to assess taxpayers against selected compliance risks. For Project Wickenby, the ATO has used reviews extensively since 2009 to assess the risks associated with clusters of taxpayers, often relating to particular haven jurisdictions or to promoters of potentially abusive schemes. Issues detected through a review may be escalated to an audit. Reviews can also provide a planning and/or profiling tool for informing case decisions while delivering intelligence on specific risks, entities and industries.¹³³

Choice of review type

5.15 Reviews are categorised by type, and differentiated according to factors including tax type (such as income tax), compliance focus (such as secrecy haven), taxpayer characteristics (including highly wealthy individuals) and extensiveness (particularly comprehensive reviews). Each review type has a designated standard cycle time. Seventeen types of reviews were used for Project Wickenby to 30 June 2011, as indicated in Table 5.3.

¹³³ Internal ATO document, *Definition of Active Compliance types*.

Table 5.3**Project Wickenby reviews completed by 30 June 2011**

Type of review	No of cases	Outcome ^A (%)	Cycle time (days)	On time (%)
Income tax micro comprehensive	769	28	240	50
All correspondence review high volume	306	8	40	82
Income tax monitoring watching brief	280	29	365	86
All case refinement high volume	46	43	60	46
Income tax high wealth individual risk assessment	26	8	240	46
Income tax specific enquiry	23	0	30	0
Income tax voluntary disclosure	16	81	40	40
All voluntary disclosure high volume	3	100	40	0
All comprehensive review	3	33	240	100
Other ^B	33	30	75 ^C	28
Total	1 505	25		62

Notes: (A) The most common outcomes are raising a liability or progressing to audit.

(B) This is the average of the other types of reviews.

(C) Other reviews include: income tax small and medium enterprises comprehensive; income tax small and medium enterprises office specific; promoter risk; all phone high value; income tax individuals specific; income tax individuals tax haven review high value; voluntary disclosure; and comprehensive review schemes.

Source: ANAO analysis of completed Project Wickenby reviews.

5.16 The type of review selected is important as it influences the scope, coverage, method and timing of the review. Analysis for this audit found that the selection of the three most frequently used review types was reasonable, as the reviews conducted satisfied the purpose and followed the standard methodology of each review type. In other cases, however, rather than the reviews involving analysis of evidence leading to findings against identified risks and recommendations regarding further action, the output was simply a profiling of taxpayers. The ATO should consider adding another type of product to the automated case management system, such as profiling, which would allow auditors to separately record activity, and not lead to an overstatement of the number of reviews conducted.

5.17 The choice of review type is discretionary, and there was little specific rationale provided for the choice of some of the less commonly-used review types.

The ATO has recognised these inconsistencies and reviewed the use of risk review and audit types in the Serious Non Compliance business line in 2010, resulting in the consolidation of a number of risk types and the number of options being considerably reduced. Further refinement of the choice of review types for Project Wickenby would help ensure the most appropriate type is chosen, and, therefore, the most useful compliance approach is applied.

Review results

5.18 Only 25 per cent of Project Wickenby reviews completed by 30 June 2011 had an outcome¹³⁴, with 18 per cent resulting in a liability being raised.¹³⁵ The most common review type 'income tax micro comprehensive', did not produce a positive result for the ATO in 72 per cent of cases, despite significant effort involving a 240 day standard cycle time. Only eight per cent of the second most common review type 'all correspondence review high value' had positive results. To improve the use of resources, and minimise imposts on clients, there would be merit in the ATO reviewing the choice of review type and their results.

Review timeliness

5.19 As shown in Table 5.3, only 62 per cent of Project Wickenby reviews met the cycle time standard. Reasons for this lack of timeliness include delays in allocating cases and sending information requests (particularly query letters) and in receiving responses to information requests. The combination of these factors can easily result in a review exceeding its cycle time standard, which is considerably shorter than for audits.

Conclusion

5.20 The ATO has used reviews extensively since 2009 to assess risks for clusters of taxpayers, often relating to particular haven jurisdictions or to promoters of potentially abusive schemes. The ANAO's analysis identified opportunities to improve the: choice of review type; results achieved, particularly for the two most commonly used review types; and performance in adhering to cycle time standards. Other findings from the analysis of these

¹³⁴ The ATO defines an outcome as a financial result, voluntary disclosure, lodgement or progression to audit.

¹³⁵ Liabilities raised relate to lodgements stemming from the ATO enquiries and subsequent voluntary disclosures by taxpayers.

reviews were similar to those for Project Wickenby audits, and are discussed in the following section.

Recommendation No.2

5.21 To improve the assessment of identified risks and selection of cases for audit, the ANAO recommends that the ATO: assesses the choice of risk review type; analyses risk review results; and improves project management to meet risk review cycle time standards.

Tax Office response: *Agreed.* An examination of Project Wickenby risk reviews will be undertaken to address the above points raised by the ANAO. Consideration will be given to the appropriateness of implementing any outcomes from this examination across the Serious Non Compliance business line.

Audits conducted by the ATO

5.22 Compliance audits are more intrusive and resource intensive examinations of the affairs of a taxpayer than risk reviews. Audits are used where the ATO believes a taxpayer is not complying with their tax obligations and warrants in-depth examination.¹³⁶

5.23 As previously noted, Project Wickenby audits follow the IPEC structure (initiate, plan, execute and close). The ANAO's analysis of the audit sample reflected the ATO's Integrated Quality Framework¹³⁷ classifications of: administrative soundness in satisfying key elements of the IPEC model; integrity; appropriateness; transparency; and timeliness.

¹³⁶ Audits can either escalate from a review or commence without a review if warranted by available information. Audits can be 'desktop', where the ATO contacts taxpayers, or their agents, via correspondence or telephone to clarify aspects of transactions and to request further documentation. Field audits may also be conducted, where evidence is collected from taxpayers' premises.

¹³⁷ The Integrated Quality Framework is the ATO's principal corporate means for improving and assuring the quality of its work.

Administrative soundness—case profiling and planning

5.24 Key elements of the ATO's administrative soundness classification are the work processes followed by auditors to meet legal and policy requirements. This encompasses case profiling and planning, and recording the use of proper authorisations and delegations for decision making.¹³⁸

5.25 Profiling and planning is to be completed in the early stages of every audit, and should demonstrate an understanding of key risks and address relevant operational issues.¹³⁹ Audit plans are to outline what tasks need to be completed, how they will be done, who will do them, and when they are to be completed. All audits are to have formal approved plans based on the risks outlined in profiling summaries. The ANAO's analysis found that 63 per cent of 165 completed Project Wickenby audits sampled had a profiling document that specified the risks to be addressed, as shown in Table 5.4.

Table 5.4

Profiling and planning Project Wickenby audits

Criteria	Sample size (No.) ^(A)	Met criteria (No.)	Met criteria (%)
Profiling document exists and provided sufficient information to support planning	165	105	63
Planning document exists and identified risks	156	123	79
Planning document outlined methods and identified key tests	123	112	91
Planning set milestones and timeframes	123	113	92
Planning considered stakeholder impacts	123	119	97

Note: (A) The sample size refers to the total number of audits reviewed for each criteria. Some cases could not be assessed for a variety of reasons, such as early exits, multiple related cases, and system or document access problems.

Source: ANAO analysis of completed Project Wickenby audits.

5.26 The major reason for the audits not having profiling and planning documents on file was a reliance on related profiling and planning documents, but with no specific reference to these documents on the audit's paper or electronic files.¹⁴⁰ Where case profiles and plans are based on related primary

¹³⁸ Recording the use of proper authorisations and delegations for decision making is discussed in the following section on the transparency of audit processes.

¹³⁹ ATO, *Work processes: P-1-A Profile client for SNC*, and *P-2-A Prepare plan for SNC audit*.

¹⁴⁰ These primary reports included intelligence briefs or profile reports covering identified promoters or intermediaries and their clients, or covering a taxpayer's related trusts, companies or associates.

documents, it is important that these documents are attached to each case in the electronic case management system, to ensure ATO auditors assigned to a case at any stage have access to this information.

5.27 There has been improvement over time in profiling and planning practices for Project Wickenby. For example, 87 per cent of audits examined for 2010–11 had a case plan on file, which was almost double the 44 per cent observed for 2007–08.

5.28 Where profiling documents existed, the risks were clearly specified. Similarly, virtually all existing audit plans in the sample were linked to profiling risks or otherwise identified compliance risks. There was scope, however, for audit plans to be more complete, uniform and compliant with ATO guidelines. Areas for improvement included outlining the methods to test risks, providing realistic estimates of time targets and milestones rather than using generic data, and considering stakeholder impacts.

Documentation of audit processes

5.29 Documentation of audit processes enables: monitoring and quality control throughout the conduct of the audit; effective succession if audit staffing changes; access to key information in any objection or legal process; subsequent review for assurance and quality improvement purposes; and natural justice for the taxpayers involved. Key elements of this documentation are the reporting of reasons for decisions, appropriate use of case management systems and effective evidence management.

5.30 The ANAO's analysis indicated a mixed performance regarding whether the cases and evidence had been documented appropriately, and also whether the evidence and analysis supporting case decisions was adequately demonstrated (as shown in Table 5.5).

Table 5.5**Documentation of Project Wickenby audits**

Criteria	Sample size (No.) ^A	Met criteria (No.) (%)	
Recording approvals regarding planning and the initial and final case decisions	162	112	69
Appropriate use of case management systems	170	97	57
Case notes show evidence and basis of decisions	162	131	81

Note: (A) The sample size refers to the total number of audits reviewed for each criteria. Some cases could not be assessed for a variety of reasons, such as early exits, multiple related cases, and system or document access problems.

Source: ANAO analysis of completed Project Wickenby audits.

Use of case management systems

5.31 ATO audit guidelines require approvals and sign-offs to be recorded by an appropriate delegate at defined stages, including: at the completion of planning; regarding the key decisions and outcomes of the case; and at the final procedural sign-off of the case. Project Wickenby's Civil Audit and Review Strategy specifies that all audits and reviews are to be recorded on the automated case management system. The approving officer is required to record their approval against each procedural sign-off on the case management system.

5.32 Only 112, (or 69 per cent), of the 162 cases examined had recorded each of these three key decisions on the electronic case management system.¹⁴¹ Where all these decisions were not recorded on the electronic case management system, no other system had been used for this purpose. Cases should not be finalised without these approvals. However, the ANAO identified cases that were loaded into the electronic case management system after the planning stage had been completed, and had omitted approvals of planning and initial case decisions.

5.33 The ATO advised that the reasons for not including all information on the electronic case management system included the large size of Project Wickenby audits, and commencement of audits prior to the system's introduction for Project Wickenby audits in mid-2006. However, the ANAO

¹⁴¹ There was also an improvement over time in the recording of key decisions for Project Wickenby. Of those assessable audits completed in 2010–11, 92 per cent had recorded each of the three key decisions on the electronic case management system, compared to only 53 per cent observed for 2007–08.

considers that these reasons do not preclude the recording of key decisions on the electronic case management system.

5.34 Beyond the recording of key decisions, appropriate documentation of Project Wickenby audits requires the effective use of the automated case management systems throughout the audit process. Examples of other instances where the electronic case management system was not appropriately used to record audit decisions and outcomes included: when escalating reviews to audits; providing reasons for early exit decisions or ceasing a case; and relying on paper files or share drives to record formal access or formal information-gathering processes.

5.35 In other instances, documents such as finalisation letters held on Project Wickenby audit files on the electronic case management system were draft versions which were not signed and potentially not the version sent to the client. To provide greater certainty about correspondence with clients it is important that records of final signed documents sent to clients are recorded on the electronic case management system.

5.36 Incomplete or inaccurate records on the electronic case management systems pose a risk to the effectiveness and cost of conducting Project Wickenby audits in the context of high levels of challenge by taxpayers. Inability to readily access and demonstrate key documents and approvals also disrupts subsequent objection, appeal and debt collection processes, as well as related criminal prosecutions. Such disruption can be further exacerbated when audit staff are reassigned or depart and key knowledge is lost.¹⁴²

Managing evidence

5.37 Evidence management is the administration and control of evidence related to a tax decision, which can be used by independent parties with confidence to understand the rationale for the decision. Appropriate storage of evidence is particularly important when a taxpayer challenges a case decision or the Commissioner begins proceedings against a taxpayer. ATO work processes require every statement of fact in an audit report is to be supported by reference to a piece of evidence.¹⁴³

¹⁴² For example, comments on file for one audit noted that substantial problems were caused for the progression of an audit because the senior auditor had departed.

¹⁴³ ATO, *Work process: Evidence*, [accessed via Intranet 8 September 2011].

5.38 For the ANAO's sample, the case notes contained evidence that clearly demonstrated the basis for audit decisions in 81 per cent of cases. These notes typically referenced records of conversations, interviews or other client contact, requests for information and responses, data from systems accessible to ATO auditors and analysis of information obtained. In the 19 per cent of cases where the case notes did not sufficiently record evidence that provided the basis for decisions, there was either limited or no case note records of key evidence, including support for no further action decisions.

5.39 Rather than using a dedicated evidence management system, Project Wickenby audits used the ATO's electronic case management system or hard copy files. The electronic case management system was used to manage evidence for the majority of Project Wickenby audits, particularly those commenced in the last two years. Where the electronic case management system was used, comprehensive records of evidence were usually attached to the audit files. Evidence on hard copy audit files assessed by the ANAO was also generally comprehensive and easy to access.

5.40 Across the sample of Project Wickenby audits examined, there was considerable variation in the extent to which evidence was managed in hard copy form or on the electronic case management system. There was also a difference in the management of evidence for audits where there was an associated criminal investigation and brief to the Commonwealth Director of Public Prosecutions, as the evidence was more complete and better structured than in purely civil cases.

5.41 A major reason given for ATO auditors managing evidence on hard copy files rather than on the electronic case management system was the size of the case, which can involve thousands of pages of evidence. ATO staff in some offices advised the ANAO that the electronic system did not efficiently and effectively manage evidence in large cases due to storage constraints, reliability problems and cumbersome processes for scanning in paper documents.

5.42 Nevertheless, staff in other ATO offices, such as in Sydney, were able to overcome any such concerns, and readily used the electronic case management system to manage evidence for large Project Wickenby audits. These staff also satisfied the requirements of an ATO Job Aid that stated that all evidence

except that subject to legal professional privilege or a settlement should be attached to the audit file on the electronic case management system.¹⁴⁴

5.43 Quality assurance reviews of Project Wickenby audits in recent years also identified issues regarding the untimely and inadequate use of the electronic case management system (as discussed in paragraph 5.87).

Case decision reporting

5.44 The ATO prepares a case decision report for each audit that: explains the issues being addressed; outlines the key evidence collected; provides arguments supporting reasons for decisions reached; and discusses other pertinent aspects of the audit process. Based on a draft case decision report, taxpayers are sent a draft case fact sheet or position paper for consideration, and their responses are factored into the final decision outlined in the final case decision report.

5.45 The ANAO analysed key elements of Project Wickenby audit case decision reports, based on requirements of the IPEC model. As shown in Table 5.6, 36 of the applicable 156 finalised audit files reviewed, (or 23 per cent) did not include a final case decision audit report on the electronic case management system or hard copy file. Twelve of these 36 cases had some documentation of reasons for case decisions, such as a Reason for Decision or Position Paper sent to taxpayers, which provided a summary of reasons for decisions reached. However, they were not equivalent to audit case decision reports, as they lacked key information that linked risks, evidence, analysis and decisions and provided a record of client responses to ATO positions and arguments. Reliance on related case documents (as explained in paragraph 5.26 in relation to missing profiling and planning documents) was the reason for the lack of a final audit report on file in another 10 instances.¹⁴⁵ In 14 other instances, however, there was simply no record of a case decision report being created and attached to the Project Wickenby audit file on the electronic case management system or on the associated hard copy file.

¹⁴⁴ ATO internal document, *Job Aid: Document management in Siebel (LBI)*. The job aid provided an option, however, to reference documents on the electronic systems to paper files rather than attach each document electronically.

¹⁴⁵ The electronic case management system enables the ready linking of cases, and if actioned appropriately would overcome the problem of missing final case decision reports.

Table 5.6**Project Wickenby audit case decision reports**

Criteria	Sample size (No.) ^A	Met criteria (No.)	Met criteria (%)
Case decision report exists	156	120	77
Activities undertaken addressed all risks	120	120	100
Report describes the evidence gathered and links this to key decisions	120	119	99
Relevant legislation or ATO views were discussed	120	112	93
Reasoning was clearly set out	120	118	98

Note: (A) The sample size refers to the total number of audits reviewed for each criteria. Some cases could not be assessed for a variety of reasons, such as early exits, multiple related cases, and system or document access problems.

Source: ANAO analysis of completed Project Wickenby audits.

5.46 In virtually all instances where case decision reports existed, they demonstrated that the audit activities undertaken had addressed all the risks and had linked the evidence gathered to key decisions. Analysis in the case reports was also systematic and clear in linking evidence to established ATO positions and tax law to determine positions in addressing compliance risks. These reports showed sufficient reasons for, and the basis of, decisions, often based on standard ATO positions and arguments.

5.47 While not assessing the overall technical validity of decisions reached, the ANAO considers that the case decision reports examined demonstrated that the Project Wickenby auditors applied sound audit practices as they: addressed identified risks; gathered sufficient relevant evidence; analysed this evidence according to agreed ATO positions; and factored in taxpayer's contentions.¹⁴⁶

Integrity of audit processes

5.48 The ATO considers integrity in terms of work practices that satisfy APS values and the Code of Conduct, and the Taxpayers' Charter. This concept includes the proper collection, dissemination and use of information. The ANAO's examination of integrity issues focused on:

¹⁴⁶ Similarly, while not reviewing the imposition of penalties from a technical perspective, the ANAO notes that virtually all cases imposing penalties had extensive notes outlining the reasons for decisions reached.

- information collection and dissemination;
- conflict of interest declarations; and
- the provision of letters to taxpayers explaining their review rights.

Integrity of information collection and dissemination

5.49 Taxation Acts have various secrecy provisions that prohibit ATO officers from accessing, recording or disclosing taxpayers' taxation information except in performing their duties or in specific situations permitted by taxation laws. There are severe penalties for breaking these provisions.

5.50 A number of issues and allegations surfaced in late 2007 and early 2008 regarding the information handling practices within the Serious Non Compliance business line, including Project Wickenby. These allegations were independently investigated, with the outcomes reported in December 2008.¹⁴⁷ The investigation found that there had been some problems in Serious Non Compliance concerning the disclosure of tax information, though the problems appeared not to be major and strategies were either being adopted to address them or had been recommended. The review report made 22 recommendations regarding the management of information exchanged between the ATO and other agencies, with attention given to the practices of Project Wickenby. An ATO internal audit completed in November 2010 found that all 22 recommendations from this review had been completed within the capacity of the business line.¹⁴⁸

5.51 The detailed investigation and ensuing focus on improving information exchange processes, including through guidance on maintaining information secrecy and disclosing information, has strengthened the information exchange arrangements for Project Wickenby.¹⁴⁹ Processes to collect and disseminate information used in Project Wickenby investigations and audits have also been subject to legal challenge. As reported in Chapter 2, only six of 43 such challenges regarding criminal investigations were fully or partially successful. Similarly, only two of 35 civil legal challenges regarding ATO audits and risk reviews were partially successful.

¹⁴⁷ Boucher D., *Report of a Review of Information Handling Practices in the Serious Non Compliance Business Line of the Australian Taxation Office*, December 2008.

¹⁴⁸ ATO, *Internal Audit Executive Summary, Interagency Exchange of Information*, 26 November 2010, p. 2.

¹⁴⁹ ATO, *SNC Practice Note 2009/04—Information secrecy and disclosure*, December 2009.

5.52 Nevertheless, risks surrounding the illegitimate exchange and use of information between criminal and civil agencies persist. As discussed in Chapter 2, a broad reform option that could be raised by the taskforce in the future is to further break down the information barriers created by the tension between civil and criminal powers. This reform option was raised in the *Project Wickenby Mid Project Review* in 2008 but has not subsequently been advocated by the taskforce. The report proposed that reform could take the form of ‘taskforce’ legislation enabling each agency to bring its powers to the table for a designated purpose, including criminal investigations.

5.53 The ATO Category A stream, which is responsible for audits that support criminal prosecutions, listed illegitimate information sharing as a risk that may prevent the stream from achieving its outcomes. The mitigation strategy is to ‘ensure all requests, exchanges and provision of information comply with legislation and policies and are documented appropriately.’¹⁵⁰ The ATO advised that it has assurance that this risk is being mitigated as a result of the processes and practices in place.¹⁵¹

5.54 The Category B stream also conducts audits that support criminal prosecutions, yet its plans do not always identify or address the risk of illegitimate information sharing.¹⁵² The ANAO considers that Category B stream or team plans should identify and explicitly mitigate risks of illegitimate information sharing, similar to the Category A stream.

5.55 Information collection and sharing processes and practices for Project Wickenby are extensive. However, the extent to which all relevant requirements were being met was not apparent. As an example, the ANAO could not readily locate some requests for, and approvals of, information obtained through applying s.263 and s.264 of the *Income Tax Assessment Act*

¹⁵⁰ ATO, *SNC Project Wickenby Cat A Stream Plan 2010–11*, July 2010, p. 12.

¹⁵¹ In particular, the ATO advised that all documents disseminated by Category A to the law enforcement agencies go through the Serious Non Compliance Disclosure team who obtain the necessary approvals from an SES officer. Where Category A officers are seconded to a law enforcement agency, their access to ATO taxpayer information systems is removed. Officers such as prosecution witnesses who are required to disclose taxpayer information to the Commonwealth Director of Public Prosecutions for the purposes of disclosure to the court or to the defendants are required to follow the Serious Non Compliance Practice guidance and make a record of the disclosure and place it on the Category A share drive in the relevant disclosure folder.

¹⁵² For example, the *Project Wickenby NE Team and Business Plan, 2010–11* does not identify the risk of illegitimate information sharing.

1936¹⁵³ in the audit files on the electronic case management system. While the ATO was subsequently able to provide the relevant approvals from a variety of sources for a sample of cases, more consistent use of the case management system would better support management assurance about information collection and handling processes.

Stakeholder comments on integrity issues

5.56 The ANAO sought feedback from major Australian accounting and tax industry stakeholder organisations, as well as legal and accounting practitioners, about experiences regarding Project Wickenby. These groups provided some general comments but reported few issues regarding the integrity of audits or investigations.

5.57 Two issues raised by these stakeholders were the leaking of sensitive information¹⁵⁴ and the ATO not returning documents to taxpayers. The ANAO did not observe these issues when sampling audits and noted that none of the 43 complaints (discussed at paragraph 5.66) regarding Project Wickenby related to such integrity issues.

Conflict of interest declarations and letters explaining review rights

5.58 As outlined in Table 5.7, the ANAO's analysis identified scope to improve practices to help ensure auditors make and record declarations that they do not have a conflict of interest in conducting an audit on a particular taxpayer.

Table 5.7

Integrity of Project Wickenby audits

Criteria	Sample size (No.) ^A	Met criteria (No.)	Met criteria (%)
Conflict of interest declaration made	156	60	38
Letters to taxpayers explaining review rights	88	88	100

Note: (A) The sample size refers to the total number of audits reviewed for each criteria. Some cases could not be assessed for a variety of reasons, such as early exits, multiple related cases, and system or document access problems.

Source: ANAO analysis of completed Project Wickenby audits.

¹⁵³ Applying s.263 and s.264 of the *Income Tax Assessment Act 1936* involves collecting information either by visiting taxpayers' premises or issuing a written notice from the Commissioner of Taxation.

¹⁵⁴ Chapter 6 discusses allegations of leaked information relating to criminal investigations.

5.59 At the time of ANAO fieldwork, the ATO had contradictory protocols advising staff to complete a conflict of interest declaration.¹⁵⁵ The *Corporate Management Practice Statement PS CM 2004/02* has an employee completing a Conflict of Interest Declaration before starting on a body of work, while Serious Non Compliance business line policy was for case officers to complete this declaration at the commencement of duties in the business line. The ATO advised that it will update the conflict of interest policy to remove this contradictory guidance. The updated policy should require that a conflict of interest declaration be recorded for each risk review or audit, rather than on an exceptions basis. Decisions made during reviews, such as to take no further action, can be as influential as those made in major audits, and warrant a conflict of interest declaration.¹⁵⁶

5.60 ATO policy also requires a letter to be sent to taxpayers explaining their rights to a review of audit decisions. These letters were provided to taxpayers in all Project Wickenby audits examined where amended assessments were issued.

Appropriateness of audit processes

5.61 The appropriate conduct of audits involves issues related to dealing with taxpayers, including interactions to understand their circumstances, taking these circumstances into account when determining audit approaches and decisions, and communicating decisions clearly to the taxpayer. The ATO's Project Wickenby auditors expended considerable effort to understand client circumstances, through risk profiling, planning, initial interactions and discussions regarding the sampled audits and in determining decisions (as shown in Table 5.8).

¹⁵⁵ On the basis of requiring a conflict of interest declaration to be recorded on the electronic case management system in all cases, the ANAO found that 35 per cent of cases satisfied this policy.

¹⁵⁶ It may be appropriate to allow a conflict of interest declaration to cover multiple cases, such as in instances involving bulk letter campaigns. In this regard, ANAO analysis found that only 29 per cent of all risk reviews had a conflict of interest declaration on file.

Table 5.8**Appropriateness of Project Wickenby audit processes**

Criteria	Sample size (No.) ^A	Met criteria (No.) (%)	
Research and planning indicate client circumstances were understood	166	130	78
Communication was appropriate	151	112	74
Costs and inconvenience to the taxpayer were appropriately minimised	152	133	88

Note: (A) The sample size refers to the total number of audits reviewed for each criteria. Some cases could not be assessed for a variety of reasons, such as early exits, multiple related cases, and system or document access problems.

Source: ANAO testing of completed Project Wickenby audits.

5.62 In the audits sampled, communication was generally appropriate as compliance decisions were clearly communicated to the client and finalisation letters were usually suitable to the circumstances of clients. There was scope to better personalise letters, however, by varying the text more frequently from the basic ATO templates.

5.63 The ANAO held discussions with a number of stakeholders and stakeholder groups as part of the audit, (as discussed in paragraph 5.56). One of the few criticisms from these groups was that Project Wickenby auditors did not effectively communicate with them throughout audits, and in particular were not transparent about why they were asking for information and how it was likely to be used.

Minimising imposts on taxpayers

5.64 A further criticism from stakeholder groups was that Project Wickenby audits were onerous as the ATO required extensive information from clients, including information already held from responses to previous requests or other sources.¹⁵⁷ More broadly in this regard, audits commenced in the early years of Project Wickenby were more detailed than audits commenced in later years, as the ATO had initially applied a risk-based approach that considered most clients likely to be serious non-compliers. As the profile of Project Wickenby clients became more apparent, and in response to funding pressures and experiences of long audit cycle times, the ATO has progressively adopted

¹⁵⁷ The ANAO identified one instance of requests for information already held by the ATO.

approaches involving more transparent audit processes and readier acceptance of audit evidence.

5.65 The ANAO also identified an instance of a major Project Wickenby case where taxpayers had approached the ATO with details of a tax scheme and the ATO had agreed to respond if there was a problem with its legitimacy. The ATO did not respond until almost four years later, when it identified serious non-compliance issues and instigated audit activity and criminal investigations through the Project Wickenby taskforce. It is obviously important that the ATO satisfies its undertakings to clients to provide advice about tax schemes so as to encourage voluntary compliance and assist taxpayers to avoid participation in fraudulent schemes and the accumulation of significant tax debts.

Seeking client feedback

5.66 The ANAO received relatively few criticisms of the administration of Project Wickenby audits from stakeholders, including when key stakeholder groups canvassed their members to provide such feedback. This low level of criticism is also consistent with the number of complaints to the ATO about Project Wickenby—43 to 30 August 2011.

5.67 Nevertheless, there have been some client criticisms, such as regarding excessive requests for information, the time taken to complete audits and objections, and case officer communication with clients. To better gauge the level and validity of client concerns, the ATO could attach a client feedback questionnaire to Project Wickenby audit finalisation letters, or otherwise survey clients. Attaching a client feedback questionnaire to audit finalisation letters is a common practice for many ATO business lines, which is applied to support a more collaborative relationship with clients and to improve administrative practices.

5.68 Project Wickenby guidelines do not require such feedback as there are doubts to its objectivity in an often adversarial environment. While there are many contentious Project Wickenby audits, around half of all completed audits did not raise liabilities, yet had considerable imposts for clients. Given the overall profile of Project Wickenby audits and outcomes, the ATO could consider selectively surveying taxpayers.

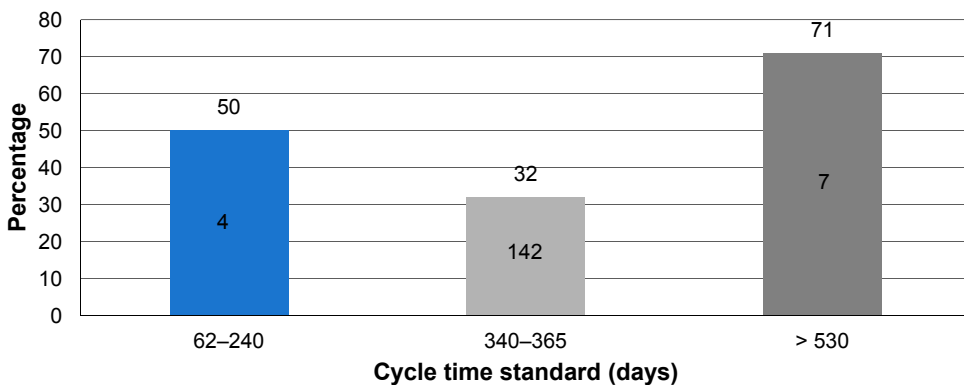
Timeliness

5.69 The ATO has a number of audit types and associated expected duration periods (or cycle time standards) that can be selected for Project Wickenby audits, depending on their seriousness, complexity and nature.

5.70 Of the sampled Project Wickenby audits completed by 30 June 2011, 93 per cent had a cycle time standard close to one year, while four per cent had standards between 18 months and two years. Only three per cent had standards of eight months or less. Project Wickenby audits have not met cycle time standards in around two-thirds of cases, mainly because of delays encountered on audits with cycle time standards of around one year (as illustrated in Figure 5.1).

Figure 5.1

Project Wickenby audits adhering to cycle time standards, to 30 June 2011



Note: Numbers within histograms indicate the total number of sampled audits in each category.

Source: ANAO analysis of ATO data.

5.71 The average time taken to complete the sampled Project Wickenby audits was 541 days. Those audits that did not meet the cycle time standard exceeded it by an average 362 days. The minimum recorded audit cycle time was three days and the maximum 1799 days.

5.72 These calculations understate the time taken to complete Project Wickenby audits, and the duration by which they have exceeded standard cycle times. Many audits had implausibly short cycle times, indicating that most work was completed prior to being recorded on the electronic case management system.¹⁵⁸ In addition, 36 per cent of sampled audits did not have a commencement date recorded, leaving the ATO without the ability to accurately report on the length of time taken to complete them.

¹⁵⁸ For example, 57 of all 755 completed Project Wickenby audits had a recorded cycle time of less than 60 days, compared to an average standard cycle time of 386 days. Of these, 57 audits recorded as having being completed quickly, 26 had outcomes while only 18 were recorded as 'early exits'.

5.73 The ANAO has previously recommended that the ATO ‘review and amend as necessary the procedures and processes on the creation and closing of cases on the new case management system’.¹⁵⁹ Analysis from this audit indicates that the ATO should further review and amend processes relating to the creation and commencement of cases.

5.74 Project Wickenby senior management in the ATO have focused on reducing audit cycle times for a number of years, and have attempted to streamline processes through: developing typologies for many abusive schemes; having more transparent processes; mentoring junior staff; and making greater use of default assessments. Nevertheless, the complexities of many audits, interaction with criminal investigations and likelihood of challenge have resulted in extensive delays to audits compared to the expected cycle times.

Conclusion

5.75 Project Wickenby auditors have applied sound audit practices, generally following processes to address identified risks, gather sufficient relevant evidence, analyse this evidence according to agreed ATO positions and factor in client contentions. However, the use of the electronic case management system to record key audit decisions and manage documents and evidence could be improved. There was considerable variation in the extent to which audit evidence was managed on this system or in hard copy form, and over 20 per cent of sampled cases did not contain evidence that provided the basis for audit decisions.

¹⁵⁹ ANAO Audit Report 34 2008-09: *The Australian Taxation Office’s Management of Serious Non-Compliance*, May 2009, p. 55. Recommendation No.2 proposed that the ATO ‘review and amend as necessary the procedures and processes on the creation and closing of cases on the new case management system’.

Recommendation No.3

5.76 To adequately record key decisions and manage evidence, the ANAO recommends that the ATO updates guidance about the use of the electronic case management system for Project Wickenby audits, assesses levels of adherence to this guidance by Project Wickenby staff, and monitors performance.

Tax Office response: *Agreed.* A review of the guidance issued by the Serious Non Compliance business line to Project Wickenby staff about the use of the electronic case management system for Wickenby audits will be undertaken.

5.77 The relatively few criticisms of Project Wickenby audits by stakeholders focused on onerous and slow audit processes and ineffective communication by case officers. To learn from such feedback, the ATO could selectively survey taxpayers. To expedite audits, the ATO could examine approaches to improve project management and require greater adherence to existing protocols for recording the commencement of cases. Allegations of improper information handling practices involving Project Wickenby agencies made in 2007 and 2008 were independently investigated. While some problems were identified they were found not to be major, and the ATO adopted strategies to improve information handling processes and practices.

Recommendation No. 4

5.78 To support the efficient conduct of Project Wickenby compliance interventions, the ANAO recommends that the ATO improves project management practices to reduce Project Wickenby audit cycle times, including by reinforcing adherence to electronic time recording protocols.

Tax Office response: *Agreed.* An examination of Project Wickenby compliance interventions will be undertaken by the Serious Non Compliance business line to address the above points raised by the ANAO. Consideration will be given to the appropriateness of implementing any outcomes from this examination across the business line.

Quality management and assurance

5.79 The ATO has instituted processes to help ensure appropriate technical decisions are made consistently across the office. Two key components are the national case 'call over' framework and quality assurance arrangements.

Case call over

5.80 The national case call over framework involves the regular periodic review of all open audits by senior ATO staff, to support cases to progress according to plan.

5.81 The case call over framework was refreshed in 2008, recognising that some ATO auditors were not conducting regular reviews of their cases and some were not recording the cases as required in the electronic case management system and on paper file. Subsequently, the ANAO audit of the *ATO's Management of Serious Non-Compliance* tabled in May 2009 found that 'the call over process was not applied consistently across all the different regions, with the interval of call over panels varying significantly.'¹⁶⁰

5.82 The revised case call over framework requires three levels of call over, with directions about how to record the outcomes on the electronic case management system and on paper files. The three levels are a: monthly review of the case by case officer and team leader; quarterly formal review to the level of regional manager; and half yearly formal call over to the level of regional director.

5.83 The ANAO's analysis found:

- very little recording of the outcomes of any of the levels of case call over on the electronic case management system (20 per cent of 174 eligible cases reviewed);
- little separate recording of monthly call overs in paper files in the format specified;
- separate records evidencing that monthly and half-yearly call overs were regularly conducted, and generally as required; and
- variations between regions as to whether and how the quarterly case call overs were conducted.

5.84 ATO audit staff advised that case call overs were often not recorded in the electronic case management system as they were adequately recorded elsewhere (such as in spreadsheets recording progress against plans each month). Further, records of call overs usually cover each of the multiple cases discussed, and the full record can not be attached at the individual case level as

¹⁶⁰ ANAO Audit Report No.34 2008-09, *The Australian Taxation Office's Management of Serious Non-Compliance*, p. 84.

it would breach security provisions. The record would need to be modified to cover only each individual case.

5.85 The ANAO suggests that the ATO reviews the guidance and practice regarding case call overs for Project Wickenby to provide assurance that the process is delivering effective quality control as intended, and is applied consistently throughout ATO offices.

Quality assurance

5.86 The ATO *Practice Statement Law Administration 2009/06* describes the processes to be followed in conducting periodic technical quality reviews of written interpretative decisions. As part of these processes, each business line is required to conduct an annual audit program according to the Integrated Quality Framework (IQF), including a sample of completed active compliance audits.

5.87 A total of 122 Project Wickenby audits were reviewed under the IQF and previous Technical Quality Review frameworks from September 2007 to May 2011.¹⁶¹ Under both frameworks, close to 85 per cent of sampled Project Wickenby audits met the expected standards. Nevertheless, problems were identified, and addressed through improvement initiatives involving training, case assistance and communication measures.¹⁶² Under the IQF framework, the main issues raised in audits have been the untimely and inadequate use of the case management system, and cases exceeding cycle time.

5.88 The ANAO sample of audit cases included nine cases that had been subject to the quality assurance or Technical Quality Review processes. The ANAO reviewed these cases and reached similar conclusions to the IQF analysis, indicating that the IQF approach is providing valuable quality assurance information regarding Project Wickenby audits. Future initiatives arising from IQF reviews should address the effective use of the case management system and the timeliness of Project Wickenby audits.

Objections, appeals and in-house prosecutions

5.89 Many Project Wickenby taxpayers undertake actions to challenge compliance intervention activities and outcomes, including through objections, appeals and procedural challenges.

¹⁶¹ The Integrated Quality Framework replaced the Technical Quality Review framework in September 2009.

¹⁶² ATO, *Minute of 26 May 2011*, reporting on outcomes of Serious Non Compliance business line TQR and IQF quality assessment of Project Wickenby audits, p. 2.

Objections

5.90 The *Tax Assessment Act 1953* (s.14ZL) provides for a person dissatisfied with a taxation decision to object to the assessment. Resolving objections is undertaken by an independent area within the ATO—the Micro Enterprises and Individuals business line. A Project Wickenby Objections team in that business line considers and determines objections that are lodged in response to original or amended assessments arising from audit activities.

5.91 There has been a high rate of objections from taxpayers subject to Project Wickenby compliance interventions, with a total of 254 objections, or 63 per cent of the 405 interventions that had raised a tax liability to 30 June 2011. Pressure is likely to increase on the Project Wickenby Objections team in coming years, resulting from the greater use of default assessments.¹⁶³

5.92 As shown in Table 5.9, most of the completed objections have been disallowed (53 per cent), with few allowed in full (3 per cent) but many allowed in part (34 per cent). The ATO advised that the main reason for allowing objections in part or full has been the provision of additional information by the taxpayer.

Table 5.9

Project Wickenby objections and outcomes

Objection / outcome	2010–11	All years
Objections made	102	254
Objections completed	94	181
- Disallowed	54	96
- Allowed in part	22	61
- Allowed in full	5	6
- Other, withdrawn, settled, invalid or unknown	13	18

Source: ANAO testing of completed Project Wickenby audits.

¹⁶³ Where an income tax return is not lodged by the due date, the Commissioner has the responsibility of obtaining lodgement of that return. A default assessment under section 167 of the *Income Tax Assessment Act 1936* provides that the Commissioner may exercise judgment as to the amount on which income tax ought to be levied, and that amount then becomes the taxable income of the taxpayer for the purposes of making an assessment under section 166.

5.93 During 2010–11, the ATO achieved the specified service standard for 72 per cent of Project Wickenby objections.¹⁶⁴ However, the elapsed time from date of receipt of the taxpayer's objection until determination averaged 207 days. This extended period was mainly because of later dates for decision being negotiated with taxpayers, relating to requests for additional information. Later dates were negotiated for 60 of the 94 Project Wickenby objections determined during 2010–11.

5.94 To better manage the relatively large number of objections arising from Project Wickenby, the ATO was developing an objections strategy, together with documented processes and guidelines, in early 2011. This approach included separate processes for treating new objections and progressing existing cases. The approach had not been fully implemented at the time of audit fieldwork, and so was not reviewed by the ANAO.

Appeals to Project Wickenby compliance decisions

5.95 If taxpayers are dissatisfied with an objection decision, section 14ZZ of the *Tax Assessment Act 1953* states that they may apply to the Administrative Appeals Tribunal for a review of the decision or appeal to the Federal Court or Supreme Court against the decision.

5.96 The ATO has been successful in defending appeals to Project Wickenby assessments. Of the 35 matters referred to the Administrative Appeals Tribunal or the Federal/Supreme Courts finalised between June 2008 and August 2011, the ATO was successful in 33 matters and partly successful in the remaining two cases.¹⁶⁵ There have also been a number of procedural challenges in respect of: the Commissioner's use of his statutory powers; the accountant's concession; and the Commissioner's ability to use documents received/disseminated from other agencies. The ATO considers these procedural challenges have been successfully managed, albeit that they have added to the time taken to finalise audits and raise assessments.

5.97 The ATO has recognised opportunities to further enhance its capability to respond to major challenges being experienced in managing disputes to

¹⁶⁴ The ATO's primary service standard for objections is to provide a decision within 56 days of receiving all necessary information. If needed, further information will be requested within 14 days, and the ATO will contact taxpayers within 14 days of receiving the information to negotiate a new reply date. The corporate benchmark for 2010–11 was 70 per cent, and the ATO achieved this service standard for 72 per cent of Project Wickenby objections.

¹⁶⁵ Finalised includes settled, dismissed or a decision reached.

Project Wickenby tax matters. In particular, objection and appeal matters have required consideration of new approaches to litigation management and dispute resolution (for example, mediation) in order to mitigate costs and resource requirements. There is also scope to better capture intelligence gathered through evaluating strategies adopted by taxpayers in disputing tax matters and to share this with partner agencies. Initially, intelligence about issues emerging from the dispute stage of ATO work was not appropriately brought to the attention of all Wickenby agencies for those matters where the Australian Government Solicitor is not involved.¹⁶⁶ In this regard, the ATO has reported on emerging intelligence about tax objection and appeals information at the Project Wickenby Legal Risk group meetings since September 2010.

In-house prosecutions

5.98 At 30 June 2011, 166 taxpayers had been referred for prosecution by the ATO for summary tax offences.¹⁶⁷ Of these, 62 people have been convicted of summary tax offences, including non-lodgement of tax returns. Penalties included fines up to \$10 000 for 10 offences.

Conclusion

5.99 Many taxpayers have undertaken actions to challenge Project Wickenby compliance intervention activities and outcomes, including through objections, appeals and procedural challenges. These ‘downstream’ issues add to the complexity, cost and time taken to administer Project Wickenby civil compliance interventions. Around one-third of completed objections were allowed in part, mainly because the taxpayer provided additional information. The ATO has taken steps to improve the processes for sharing intelligence with partner agencies that emerges from tax objection and appeal matters.

Recovering debts

5.100 The ATO anticipated difficulties in collecting liabilities raised by Project Wickenby, and provided Government with separate targets for cash collections and a compliance dividend. As discussed in Chapter 2, funding proposals for Project Wickenby anticipated that around 60 per cent of liabilities would be collected.

¹⁶⁶ ATO High Level Mitigation Strategy 6, *Legal and Technical*, p. 4.

¹⁶⁷ The ATO does not prosecute for failure to pay tax. The normal procedure is to proceed to judgement and then bankruptcy.

5.101 Debt levels have been higher than expected, with \$251 million in cash collected, being 23 per cent of the \$1.1 billion raised in liabilities as at 30 June 2011. Excluding proceeds of crime cases, the Project Wickenby Debt team had collected revenue of \$162 million, or 65 per cent of the total collections by Project Wickenby. As at 30 June 2011, cases with outstanding debt had assessments and penalties raised of \$795 million, of which only \$58 million, or seven per cent, had been collected.

5.102 Many factors have impeded the collection of debt, including that 62 per cent was in dispute (as shown in Table 5.10) and 47 per cent related to taxpayers residing in overseas jurisdictions or holding all their assets overseas.

Table 5.10

Project Wickenby debt, by category, at 30 June 2011

Case status ^A	No.	Value (\$m)	%	Comment
Disputed debt	110	491	62	Several cases are subject to legal action to recover the debts. The remainder have taken some action to progress payment, consented to judgment with a stay pending the outcome of the objection decision, paid the primary amount of tax or lodged an appeal regarding the decision to disallow the objections.
Legal action	55	298	38	Includes issue of summonses for payment, application for summary judgment, filing for company wind up and individual bankruptcy action.
Bad & doubtful	26	256	32	The majority of these debts are insolvency cases. The rest are cases with little prospect of recovery.
Insolvency	26	66	8	Tax will be irrecoverable in the majority of cases.
Other	47	61	8	Includes proceeds of crime collections, freezing orders, garnishee amounts, arrangements to pay tax, security over assets and overseas collections.

Note: (A) The categories are not mutually exclusive.

Source: ATO, *Debt – Project Wickenby Status Report June 2011*, p. 7.

5.103 The ANAO examined the ATO analysis categorising the types of debt and found it to be soundly based. Having the majority of debt in dispute and nearly half of all assets located overseas¹⁶⁸ makes it difficult to recover debts. Other issues that impact on the ability of the ATO to collect debts include the age of assessment, collection of penalties and litigious nature of taxpayers. In

¹⁶⁸ Other jurisdictions may decline to assist in the collection of revenue for Australia as it is considered that the collection of taxes is an act of sovereignty, and imposes limitations on collection enforcement.

many cases, assessments go back several years, taxpayer's income has often reduced, and together with the imposition of substantial penalties, interest and legal costs incurred in defending recovery proceedings, leaves the taxpayer unable to pay the debt.

5.104 Of 61 Project Wickenby debt cases involving a tribunal or court hearing, settlement or dismissal, the ATO was unsuccessful in six matters, of which four related to the same matter.

Departure Prohibition Orders

5.105 A Departure Prohibition Order (DPO) is issued where a person with a tax liability or obligation is likely to depart Australia without discharging the outstanding debt or obligation or making arrangements to do so. While a DPO is in force, a debtor is unable to leave Australia, unless it is revoked¹⁶⁹, varied or a Departure Authorisation Certificate issued. A Departure Authorisation Certificate permits the debtor to depart Australia temporarily, often if some form of security is assigned to the debt.

5.106 ATO policy is to issue a DPO only where there is: a substantial tax liability; grounds for believing assets are available to meet the debt in part or in full; and there are strong indications that the tax might not be recovered if the debtor left Australia. This enables the ATO to pursue recovery options against the debtor or the debtor's assets to secure payment or receive acceptable security.

5.107 In issuing a DPO to a Project Wickenby taxpayer, the debt case officer is required to follow ATO guidance relating to issues to consider and approval processes.¹⁷⁰ In brief, the officer analyses the behaviour, attitude and circumstances of the taxpayer to provide a reasonable basis for concluding whether the revenue would be at risk if the taxpayer was permitted to leave Australia without first paying the tax debt or making satisfactory arrangements for payment.

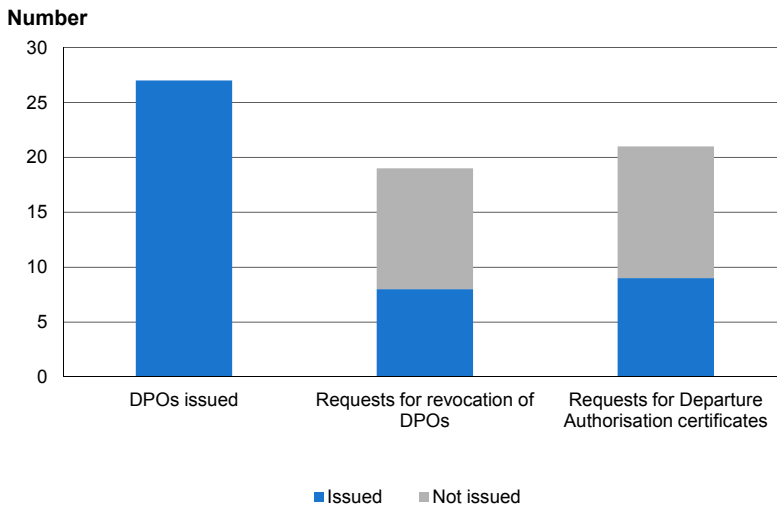
¹⁶⁹ The Commissioner can revoke a DPO where the tax liabilities of the taxpayer in respect of whom the order has been made have been wholly discharged or are subject to satisfactory arrangements for payment or are completely irrecoverable.

¹⁷⁰ ATO guidance is provided in the document *Departure Prohibition Orders—issue order*, and includes a checklist to assist the case officer to review the financial affairs of the taxpayer and their past tax behaviour to gauge the risk of them leaving Australia and not paying the tax debt. The guidance also covers preparing and serving the DPO. The ATO is reviewing processes for issuing DPOs, and expects some changes to be made, including relating to informing taxpayers of review rights.

5.108 DPOs were issued on 26 occasions for Project Wickenby debts since the inception of the taskforce in February 2006 to 30 August 2011, as shown in Figure 5.2. These DPOs were typically issued to debtors with tax liabilities in excess of \$100 000.

Figure 5.2

Project Wickenby Departure Prohibition Orders



Source: ATO.

5.109 The ANAO examined the 14 DPOs issued to Project Wickenby taxpayers in 2010–11, to determine whether they complied with the requirements set out in the relevant ATO guidance. Consistent with this guidance, each submission described the personal circumstances and tax history of the taxpayer, outlined actions the ATO has taken to retrieve debts, and assessed the taxpayer's ability to maintain a similar lifestyle overseas by examining their assets held in Australia and abroad and their liabilities. All assessments were appropriately approved.

5.110 The ATO had revoked five DPOs on Project Wickenby taxpayers up to 30 June 2011.¹⁷¹ These DPOs were revoked as a result of payments in part or full, or credit amendments.

5.111 The ANAO reviewed the documentation relating to the five Departure Authorisation Certificates issued to three Project Wickenby clients in 2010–11,

¹⁷¹ A further two DPOs were revoked due to possible technical breaches, however, a DPO was then reissued the same day for both Project Wickenby taxpayers.

and to four unsuccessful applicants. A detailed explanation was recorded of the reasons for not issuing the four certificates, and for issuing one certificate. The other four Departure Authorisation Certificates were issued as a result of direct negotiations involving the ATO delegate, and only summary reasons were recorded.

Negotiated settlements

5.112 As discussed in paragraph 5.96, 35 disputes between taxpayers and the Tax Office concerning Project Wickenby matters had been resolved at a court or Administrative Appeals Tribunal hearing in recent years. It is also open to the ATO to settle disputes prior to litigation¹⁷², although this has occurred on limited occasions for Project Wickenby cases.

5.113 As shown in Table 5.11, there were 17 negotiated settlements of Project Wickenby assessments to 30 June 2011, of which six were concluded at the Federal Court or Administrative Appeals Tribunal. The total reduction in liabilities arising from negotiated settlements of Project Wickenby assessments represented around three per cent of all liabilities raised to that date.

Table 5.11

Project Wickenby negotiated settlements, to 30 June 2011

Negotiated settlements	At court or tribunal ^A	Total
Number	6	17
Value in reduced liability	\$5.1m	\$29.1m
Average percentage reduction in liability from settlement	61%	57%

Note: (A) Settlement concluded at the Federal Court or Administrative Appeals Tribunal.

Source: ATO.

5.114 The ATO advised that a major reason for the low incidence of negotiated settlement of Project Wickenby disputes was that it often was not made aware of all relevant facts by the taxpayer, which precluded settlement. Another contributing factor was that those who were subject to criminal

¹⁷² To guide the settlement of taxation disputes, the ATO has developed a Code of Settlement Practice, as well as supporting Law Administration Practice Statements. The code sets out the circumstances where settlement may be appropriate and also where it is inappropriate.

sanction and were defending the case were not prepared to settle because agreeing to pay the tax bill may be seen as an admission of guilt.¹⁷³

Conclusion

5.115 Less than a quarter of all liabilities raised from Project Wickenby compliance interventions have been collected as at 30 June 2011. These high debt levels have arisen mainly because most ATO assessments are being disputed by taxpayers, and nearly half of all these taxpayers' assets are located overseas. The ATO had issued 14 DPOs in 2010–11 on the basis of appropriate approval of detailed submissions. Where the ATO has issued Departure Authorisation Certificates, more formal recording of the reasons for decision would reflect better practice.

¹⁷³ The ATO further advised that more individuals are willing to settle at the Federal Court or Administrative Appeals Tribunal stage, and an increasing number are seeking settlement at the objection stage.

6. Criminal Investigations

This chapter examines the planning, management, resourcing and timeliness of the criminal investigations conducted by the ACC and AFP for Project Wickenby.

Introduction

6.1 Project Wickenby's criminal investigation strategy involves the investigation of promoters and others who facilitate and profit from international tax evasion schemes. These investigations focus on cases where there is evidence to suggest the abusive use of secrecy havens to evade Australian taxation, financial and regulatory obligations. Outcomes of the investigations, following court judgments, may include the imposition of criminal sanctions, pecuniary penalties and the forfeiture of assets. As well as deterring those being prosecuted, publicity of the trials, convictions and incarceration of offenders can deter others from promoting, facilitating or participating in abusive schemes.

6.2 The ACC and AFP conducted criminal investigations for the Project Wickenby taskforce. By working in a joint taskforce arrangement, partner agencies are able to apply a combination of powers to combat tax evasion and other financial crimes.¹⁷⁴ This approach has enabled taskforce agencies to cooperate and leverage their capabilities, including by providing information to each other where the law permits.

6.3 The nature of Project Wickenby offences makes them challenging for agencies to investigate. Secrecy haven schemes involve the diversion of income and the construction of highly complex structures to shield the true nature of the arrangements. These factors have resulted in the collection of substantial evidence from countries with bank secrecy laws and extensive analysis to unravel and understand the nature of the schemes, transactions and money flows. In addition, the ACC has been subject to considerable ongoing litigation (including challenges to the High Court of Australia) that has added a significant burden, in terms of cost, effort and the ability to progress and finalise matters.

6.4 As discussed in Chapter 2, 62 people had been charged with serious criminal offences under Project Wickenby to 30 August 2011. Of these,

¹⁷⁴ Examples of key agency powers are: the AFP has surveillance and intercept powers; the ACC has compulsory coercive examination powers; and the ATO has civil powers of audit and financial penalties.

14 resulted from ACC investigations and 48 from AFP investigations. From these charges, 20 people have been convicted, with 18 receiving custodial sentences and two were awaiting sentencing at the time of preparation of this audit report.

6.5 The *Australian Government Investigation Standards* provides a framework to assist Australian Government agencies undertake investigations, and establishes the minimum standards required for investigations.¹⁷⁵ These standards are largely designed for agencies that are restricted to conventional investigative methods. Both the ACC and AFP have internal operating standards¹⁷⁶ that apply to more complex arrangements, such as tax evasion through the use of secrecy haven schemes. The ACC did not formally adopt the *Australian Government Investigation Standards* until 2011.

ANAO's assessment of criminal investigations

6.6 Successful criminal investigations rely on investigators adhering to administrative processes and making sound judgements based on sufficient and appropriate evidence. To assess the ACC's and AFP's conduct of Project Wickenby criminal investigations¹⁷⁷, the ANAO examined performance against the requirements of the two agencies' internal guidelines and the *Australian Government Investigation Standards*, focusing on investigation: oversight, coordination and monitoring; planning; management; resourcing; and timeliness.¹⁷⁸

6.7 The ANAO's review of these elements of the conduct of investigations focused on the adequacy of administrative processes and practices. To gain assurance that reasonable judgements were being made in respect of investigations, the ANAO also examined the approval of selected critical decisions by appropriately authorised officers.

¹⁷⁵ The Heads of Commonwealth Operational Law Enforcement Agencies have agreed that these standards will apply to all criminal investigations. In addition to these standards, the *Commonwealth Fraud Control Guidelines* details the policy framework for dealing with fraud against the Commonwealth.

¹⁷⁶ An example of internal standards is the ACC's *Standard Operating Procedures*, which provides guidance for criminal investigation activities undertaken by ACC staff. This guidance covers investigative powers that are not available to agencies for which the *Australian Government Investigation Standards* were designed, including but not limited to ACC examination powers, telephone interception powers and controlled operations that each have their own legislative compliance requirements.

¹⁷⁷ The ANAO examined the nine investigations undertaken by the ACC and 12 investigations undertaken by the AFP.

¹⁷⁸ Results of the ANAO's assessment are reported at an aggregate level, and the audit report does not identify or comment on individual cases.

6.8 The ANAO did not assess the appropriateness of decisions made by the ACC and AFP in conducting investigations, according to criminal law and other relevant considerations, as this was outside the scope of the audit. Also outside the audit scope were investigative practices¹⁷⁹ and the development of briefs of evidence for prosecution provided to the Commonwealth Director of Public Prosecutions. Investigation practices are tested through legal and judicial processes¹⁸⁰ and by other authorities, particularly the Commonwealth Ombudsman.¹⁸¹

Oversight, coordination and monitoring arrangements

6.9 Effective oversight, coordination and monitoring of investigations enable senior management in agencies to assist in the planning and to gauge the progress of investigations individually and collectively. These arrangements can also enable agencies to work appropriately together on investigations, identify problems and reassess resources, timeframes and investigation priorities. Oversight, coordination and monitoring arrangements for Project Wickenby investigations include cross-agency forums and the internal arrangements of the ACC and AFP.

Cross-agency oversight, coordination and monitoring arrangements

6.10 The Joint Management Group had oversight of the ACC's investigations. Between 2005 and 2010, the ACC hosted monthly Joint Management Group meetings that reviewed the progress of all ACC investigations. The ATO, AFP and Commonwealth Director of Public Prosecutions also attended these meetings. On 30 June 2010, due to the conclusion of many ACC investigations, this group changed focus to become a forum for discussion on progress and responses to mutual assistance requests.

6.11 As discussed in Chapter 4, the AFP's investigations have been monitored by the Project Wickenby Case Forum. The forum's role has been to consider referrals for new investigation cases, review Project Wickenby

¹⁷⁹ Investigative practices include obtaining witness statements, issuing search warrants, and interrogating potential offenders.

¹⁸⁰ As discussed in Chapter 2, there had been 43 procedural or other legal challenges to ACC Wickenby investigations and 12 to AFP investigations to September 2011. Outcomes have favoured the ACC in 31 of the court challenges, and the AFP in all cases.

¹⁸¹ The Commonwealth Ombudsman was conducting an own motion review into aspects of the administration of Project Wickenby at the time of audit fieldwork. The Ombudsman was focusing on evidence collection and information dissemination practices in a particular large investigation.

intelligence reports and oversee ongoing investigations. The ATO, ACC, ASIC, Commonwealth Director of Public Prosecutions and AUSTRAC also attended case forum meetings.

Internal oversight and monitoring arrangements

6.12 Within the ACC, the Organised Crime Management Committee, which replaced the Governance Operations Committee on 1 July 2010, have had oversight of the ACC's investigations. The Governance Operations Committee was responsible for overseeing the development and progress of special investigations such as Project Wickenby. The Organised Crime Management Committee has a similar function, which is to make decisions and provide advice to senior management regarding how the ACC will deliver against organisational objectives. Case officers are required to report periodically to the Organised Crime Management Committee.

6.13 The AFP's investigations are internally monitored by the Operations Committee, which is responsible for the general oversight of the AFP's Project Wickenby criminal investigations. Investigation teams are required to report monthly to the Operations Committee on an investigation's progress. In addition, supervisors conduct a standard review each month, assessing aspects of operational activity such as timeframes, future activities and case management issues.

6.14 The impact of the cross-agency and internal oversight and monitoring arrangements on the conduct of individual investigations is discussed further in paragraphs 6.27 to 6.30.

Investigation planning

6.15 Investigation planning provides a sound foundation for the success of an investigation. An effective investigation plan outlines the: required resources; treatment of allegations and potential offences; activities to be undertaken; and investigation approach. Investigation plans should be developed uniformly and systematically across investigations, and be updated when decisions have a material impact on the investigation.

6.16 The ACC and AFP use major investigation plans to address strategic planning needs and to set the overall framework of an investigation. Both agencies also have a planning template that provided a standardised approach for investigators to consider relevant issues.

6.17 The ANAO reviewed the major investigation plans for nine ACC investigations and 12 AFP investigations to determine the extent to

which they had met these planning requirements.¹⁸² Table 6.1 outlines the assessment of these investigations plans. It shows that all 21 Project Wickenby investigations had a major plan, although formally approved versions were not recorded in most instances.

6.18 Most plans outlined the resources required for Project Wickenby investigations and estimated the expected duration, although there was a mixed record of establishing key milestones. The plans generally underestimated the resource requirements, duration and timing of key milestones. On average, ACC investigations were completed in just under three times the planned duration¹⁸³ (49 months elapsed compared to 18 months planned), and AFP investigations were completed in three times the planned duration (36 months compared to 12 months).

¹⁸² Two of the 11 ACC investigations were not assessed by the ANAO—one was an extradition of a suspect to Australia, and the other was quickly terminated.

¹⁸³ The duration is the time between an agency accepting an investigation and delivering the final brief to the Commonwealth Director of Public Prosecutions.

Table 6.1**Major plans for Project Wickenby investigations**

Criteria	ACC	AFP
Existence of plan	All nine investigations had a major plan	All 12 investigations had a major plan.
Approval	None of the nine investigations had a record of signed, dated and approved major plans.	Five of the 12 investigations had a record of signed, dated and approved major plans.
Resource requirements considered	Eight of nine investigation plans considered the resources required for the investigation.	All 12 investigation plans considered the resources required for the investigation.
Expected duration outlined	Five of the nine plans estimated the time it would take to complete the investigation.	All 12 plans outlined an expected duration.
Key milestones developed	Five of the nine plans linked investigation phases with milestones.	Eight of the 12 plans linked investigation phases with milestones.
Cost of investigation considered	Costs of investigations were not considered in any of the nine investigation plans.	Costs of investigations were not considered in any of the 12 investigation plans.
Risk assessment undertaken	One of the nine investigation plans specifically addressed risks.	None of the 12 investigation plans specifically addressed risks.
Investigation plan updated throughout investigation	Three of the nine investigation plans were updated.	Two of the 12 investigations plans were updated.

Source: ANAO analysis of ACC and AFP investigation plans.

6.19 While the ACC recognised at the commencement of Project Wickenby that there would be considerable challenge from those under investigation, the extent of this challenge was beyond expectations, including being taken to the High Court by an individual on two occasions. Similarly, the AFP's expected investigation timeframes were based on experience with major fraud investigations, which were less complex than Project Wickenby investigations. The ACC and AFP advised that, since commencing Project Wickenby investigations, they have significantly increased their understanding of the operational complexities of Project Wickenby typology matters and their impact on investigational timelines.

6.20 The much longer than anticipated duration of investigations increased their cost. This was not apparent from the planning documents, as no investigation plan contained an estimate of investigation costs. Investigation costs are not included in the AFP's major investigation plans, as funding and resource allocation is managed at the Project Wickenby level rather than at the

individual investigation level. There would be benefit in the AFP costing large serious criminal investigations to assist in the budgeting, planning and reporting against funding allocations.

6.21 Another important omission from Project Wickenby investigation plans was the specific identification and mitigation of risks. Only one ACC plan specifically addressed risks and identified mitigation strategies. While another four ACC plans considered factors that may impact on the duration of investigations¹⁸⁴, these plans did not consider the impact of these risks more broadly. Three AFP investigation plans indicated that a risk assessment had been completed, although these could not be provided by the AFP. While both the ACC and AFP have managed investigation risks through ongoing monitoring and review of case progress, explicitly assessing and mitigating risks at the planning stage and throughout the conduct of cases would support effective investigation management.¹⁸⁵

6.22 Investigation plans communicate the direction of the investigation and support the preparation of operational and management briefings throughout the life of the investigation. By updating the major investigation plan to reflect key decisions, the plan provides a central point of information regarding the progression of the investigation. Investigation plans were not routinely updated to reflect critical decisions.¹⁸⁶

Conclusion

6.23 ACC and AFP planning practices for Project Wickenby investigations could have been improved, particularly by better estimating the expected investigation timeframes, explicitly assessing and mitigating risks, considering the investigation costs and updating major investigation plans to reflect critical decisions. Ensuring that approved major investigation plans are attached to the case management system would enhance project management. Improved planning would support the ACC and AFP in reviewing investigation progress

¹⁸⁴ Factors influencing the duration outlined in the four ACC investigation plans included legal challenges, resourcing/capability, and the time taken to receive responses to mutual assistance requests.

¹⁸⁵ The ACC advised it has learnt from its experience of conducting Project Wickenby investigations and is now in a much better position to anticipate risks, including risks associated with the complexities of investigating offshore tax schemes and the litigious behaviour of those subject to such investigations. The AFP advised that investigation-level risk management is central to the Management of Serious Crime methodology and is incorporated into AFP planning considerations.

¹⁸⁶ Both agencies used other mechanisms to advise senior management about the direction of investigations, as discussed in paragraphs 6.27 to 6.30.

and clarifying and refining strategies throughout the course of an investigation.

6.24 Some of the major investigation plans for Project Wickenby date back five years or more, and both agencies advised they have improved their planning processes over this time.¹⁸⁷ The AFP has also advised it is reviewing and implementing revised investigation management approaches and planning tools used for serious criminal investigations.

Investigation management

6.25 The *Australian Government Investigation Standards* emphasises the importance of applying appropriate investigation management approaches and systems in order to efficiently and effectively manage investigations. These standards include guidance around the use of electronic case management systems, how to deal with the evidence collected and aspects of project management.

6.26 The ANAO reviewed the approaches used by the ACC and AFP to manage Project Wickenby investigations, including:

- oversight, coordination and monitoring arrangements for individual investigations;
- making and approving critical decisions;
- the use of case management systems;
- the use of other document and evidence management systems;
- review, assurance and improvement mechanisms; and
- maintaining confidentiality of investigation material.

Oversight, coordination and monitoring arrangements for individual investigations

6.27 Project Wickenby investigations have been subject to oversight and monitoring, through cross-agency taskforce forums and the internal governance arrangements of the ACC and AFP. These forums and arrangements have provided senior management of the ACC and AFP with

¹⁸⁷ An example of improved ACC planning approaches is that the new Organised Crime Management Committee has established prescriptive requirements to manage the ACC work program and allocate resources in support of the delivery of ACC objectives.

the opportunity to coordinate Wickenby matters with other partner agencies and to address investigation risks on an ongoing basis.

6.28 As discussed, at the taskforce level, the Joint Management Group and Project Wickenby Case Forum, together with the Cross Agency Advisory Committee, have provided partner agencies with regular information about the progress, activities and challenges of criminal investigations undertaken by the ACC and AFP. This information has assisted the ACC and AFP to manage their Project Wickenby investigations, although minutes of these meetings indicated that few critical decisions were made at these forums, particularly regarding ACC investigations.¹⁸⁸

6.29 ACC management has also monitored progress of Project Wickenby investigations and received advice from case officers about future investigation directions through the Governance Operations Committee, Organised Crime Management Committee and other mechanisms such as weekly status/situation reports. However, there was little recorded evidence that these forums made or contributed to critical investigation decisions.¹⁸⁹ Both the agencies had processes in place for regular supervisor reviews of the investigations. These were undertaken at the Project Wickenby coordinator level and by investigation supervisors on both a monthly and weekly basis.

6.30 In addition to cross-agency monitoring, and supervisor reviews, the AFP's Project Wickenby investigations are monitored by the Operations Committee in each regional office. The Operations Committee reviews progress, resourcing and future direction of investigations within their region, with the AFP National Coordinator Project Wickenby liaising with the Operations Committee's to coordinate, provide advice and receive updates on the progress of the investigation.

¹⁸⁸ Critical decisions for Project Wickenby investigations are discussed in detail in the following section.

¹⁸⁹ The ANAO examined a sample of meeting minutes from the Governance Operations Committee, Organised Crime Management Committee and ACC Board between 2006 and 2011, and found that the majority of reporting at these forums was in relation to monitoring investigation progress or involved higher-level Project Wickenby decisions, rather than individual critical investigation decisions.

Critical decisions

6.31 Critical investigation decisions are those that significantly impact on the direction of the investigation. These decisions should be captured on primary case management systems as formal case decision records.¹⁹⁰

6.32 Critical decision records are to include information such as: the decision; the reason for the decision; the material used to inform the decision; and the officer making the decision.¹⁹¹ Both the ACC and AFP have provided limited guidance to their staff about the main elements of critical decisions, and case officers expressed uncertainty and differing views to the ANAO about when a critical investigation decision should be made and recorded.

6.33 Critical investigation decisions are required to be reviewed and approved by the investigation team leader, and recorded in the case management system by the case officer. The ACC did not appropriately record all critical decisions on the case management system, with only 12 critical decisions being recorded across the nine ACC investigations to October 2011. The ACC recorded critical investigation decisions in other locations, however, such as email systems, case officer personal logbooks or simply as case note entries in the case management system. The AFP has used the case management system more extensively and recorded 197 critical decisions across its 12 Project Wickenby investigations for a similar period.

6.34 Where critical decisions for investigations were made, and recorded on the case management system, the ANAO found that all were appropriately approved by the investigation team leader. In addition, those decisions deemed critical by the team leader and case officer were also notified, through the case management system, to senior executives for their review.

6.35 While being approved by the appropriate officer, critical decisions for Project Wickenby investigations were not fully compliant with the *Australian Government Investigation Standards* requirements. Where critical decisions were made, and recorded on the case management system, only 60 per cent of ACC decisions reviewed by the ANAO met the relevant requirements, whereas 84 per cent of AFP decisions were compliant. Reasons for departing from the

¹⁹⁰ The *Australian Government Investigation Standards* require agencies to develop and disseminate written procedures for making and documenting critical investigation decisions. ACC and AFP procedures require critical decisions to be recorded on their respective case management systems.

¹⁹¹ Attorney General's Department, *Australian Government Investigation Standards*, AGD, Canberra, September 2003, Section 4.7.

standards included insufficient recording of the reasons for, and evidentiary basis of, critical decisions.

6.36 To guide case officers in the recording of critical decisions, the ACC could develop a critical decision record template based on the *Australian Government Investigation Standards requirements*, similar to that developed by the AFP.

Use of case management systems

6.37 Effective case management systems provide assurance to agencies that records and key documentation supporting investigations are securely stored, logically organised and easily retrieved.

6.38 A case management system enables investigating officers to manage, record and report the activities of an investigation in a consistent and transparent manner. Both the ACC and AFP use the Police Real-time Online Management Information System (PROMIS) as the primary system for recording and managing operational activities and outcomes. The ACC and AFP internal guidance¹⁹² requires that PROMIS is used as the primary system for recording and managing investigations.

6.39 The ANAO examined the use of the case management system for Project Wickenby investigations by assessing whether key documents, including case referrals, tactical plans, situation reports and resourcing information, was attached to cases and critical decisions were appropriately and consistently recorded, as shown in Table 6.2.¹⁹³

¹⁹² ACC internal guidance is provided in *PROMIS Business Rules* and AFP internal guidance is provided in *National Guideline on Information Management* and *PROMIS Procedures and Investigation Management Guidelines*.

¹⁹³ Some key documents were on other systems, particularly the ACC's document management system and other AFP computer systems. However, it was not possible to readily search these systems to locate the relevant documents. Given these difficulties, and the prescribed guidelines of the ACC and AFP to use the case management system to record key management documents, the ANAO focused on the appropriate use of the case management system to manage Project Wickenby investigations.

Table 6.2**Use of case management systems for Project Wickenby investigations**

Document attached to PROMIS	ACC	AFP
ATO investigation referral	None of the nine investigations had attached the initial referral from the ATO.	All 12 investigations had attached the initial referral from the ATO.
Standard tactical plan	One of the six investigations where search warrants had been issued had attached all standard tactical plans.	One of the 10 investigations where search warrants had been issued had attached all standard tactical plans.
Situation report	Three of the nine investigations had fully completed situation reports for the investigation. The other six investigations had partially completed situation reports.	Ten of the 12 investigations had complete situation reports over the life of the investigation. The other two investigations did not have complete situation reports, but this was in accordance with a change in AFP procedures.
Resource spreadsheet	None of the nine investigations had attached a resource spreadsheet.	Three of the 12 investigations had attached a resource spreadsheet.
Evidence matrix ^A	Of the nine investigations none had an evidence matrix uploaded into the case management system, however eight were located on the document management system.	Of the 12 investigations four had an evidence matrix uploaded into the case management system, with another four located on network drives or the evidence management system.

Note: (A) Evidence matrices can assist in guiding the investigation by clearly outlining the allegation, offences, evidence of proof and avenues of inquiry.

Source: ANAO analysis of information held on ACC and AFP case management systems.

6.40 The primary initial document for Project Wickenby investigations is a report providing the rationale for the referral of the case from the ATO, which contains key information including potential offenders and details of alleged offences. All AFP investigations attached the ATO referral to the case management system, while no ACC investigations had the referral attached. Referrals for the ACC cases stemmed from analysis of the information received from the Swiss-based promoter undertaken by the ACC and the ATO. It would have better informed the initiation and planning of the ACC investigations if the rationale for selecting the cases for Project Wickenby criminal investigation was clearly set out and attached to the case management system.

6.41 The *Australian Government Investigation Standards* requires a tactical plan to be developed where search warrants are issued. Both the ACC and AFP attached complete records of these tactical plans on the case management system in only a small number of cases where warrants were issued.¹⁹⁴ It is important to note that in executing warrants and examinations, the agencies were required to document the reasons and justifications relating to a particular course of action.

6.42 Resource spreadsheets, or similar alternative scheduling approaches, can support the ongoing management and timeliness of investigations by providing a means to plan, track and allocate staff and other resources as situations change throughout investigations. Very few Project Wickenby investigations had resource spreadsheets managed at the case level. Rather, these spreadsheets were managed at the project or broader executive levels. While both agencies used other mechanisms to review the resourcing of investigations, managing resource spreadsheets at the case level would have better assisted the ACC and AFP to address the challenges to the allocation of resources and continuity of investigation case officers. An indicator of the extent of turnover of case officers leading Project Wickenby investigations is that there was an average of 2.3 case leaders for each ACC investigation and 3.6 case officers leading each AFP investigation. Having multiple investigators can potentially disrupt the continuity of investigations.

6.43 Evidence matrices are a useful tool that assists in guiding the investigation by outlining the allegation, offences, elements of proof and avenues of inquiry. They can also be used to illustrate and summarise the evidence obtained. Views from case officers were varied about the usefulness of evidence matrices and case officers had differing opinions about when the evidence matrix should be developed and what it should include. The two approaches were to develop an evidence matrix during planning and use it as a planning tool, while others would develop an evidence matrix later in the investigation to summarise and consolidate the evidence collected. The ANAO's review of the Project Wickenby evidence matrices¹⁹⁵ found that they

¹⁹⁴ Of the six ACC investigations which executed operational search warrants, one had all relevant tactical plans on PROMIS, while the others had attached some of the tactical plan to PROMIS and others to the document management system. Of the 10 AFP investigations in which operational search warrants were undertaken, one had all relevant tactical plan attached to PROMIS, five had some tactical plan attached and four had no tactical plan attached.

¹⁹⁵ Attorney-General's Department, *Australian Government Investigation Standards*, AGD, Canberra, September 2003, p. 8, explains that 'evidence matrices can be used to: facilitate planning; set the direction of the investigation; make decisions about the sufficiency of evidence; provide the basis for a record of interview plan; and as a briefing tool and in the review process'.

were not routinely attached to the case management system, although evidence matrices were identified for eight of the nine ACC and eight of the 12 AFP investigations. The AFP advised that evidence matrices are used as a guide and can be developed in different forms.

Other document and evidence management systems

6.44 While documentation can be uploaded and stored in PROMIS, the ACC and the AFP used other systems to manage investigation documentation and evidence. The ACC has used an enterprise-wide document management system, ACC Document Access Management Application (ADAMA), since 2007 to electronically manage criminal investigation documentation and evidence.¹⁹⁶ The AFP uses PROMIS and local network drives to electronically store case documentation, and uses the General Evidence Management System to electronically manage and store case evidence.

6.45 During fieldwork, ACC staff expressed concerns about the functionality limitations of ADAMA. The ANAO assessed the search capacity of the ADAMA system, and found the system prone to user errors and that search results potentially provided uncertainty in locating documents. Similar concerns with ADAMA were raised by the Commonwealth Ombudsman in a review conducted in 2009 of the ACC's collection, storage and dissemination of information.¹⁹⁷ Following the issues raised by the Commonwealth Ombudsman in 2009, the ACC has been reviewing the use of ADAMA and considering upgrades and further training that may assist with the usability and functionality of ADAMA.

6.46 At the time of audit fieldwork, some limitations of ADAMA were identified in relation to the search facility, necessitating the ACC having to implement additional measures to assist with the location of relevant documents when required. These additional measures, whilst providing additional assurance, create additional cost and are time consuming to apply.¹⁹⁸ There would be benefits in the ACC giving priority to completing the

¹⁹⁶ The ADAMA system operates on a single 'flat file' approach, where files are not stored within traditional folder and sub-folder structures. Retrieval of files is based on search functionality and user-level 'recently used files'.

¹⁹⁷ Commonwealth Ombudsman, *Report No.15 2009 Australian Crime Commission Review of Collection, Storage and Dissemination of Information*, Canberra, October 2009.

¹⁹⁸ ACC staff have also developed practices to avoid using ADAMA, including maintaining their investigation folder structure and key documents within Microsoft Outlook and storing investigation files on traditional network drives.

review of the effectiveness of ADAMA in order to better understand its limitations and the consequential impacts on the conduct of investigations and other key activities. Results of the review would inform mitigation strategies and support the development of a system that better meets the functional requirements of the organisation.

6.47 The AFP's General Evidence Management System allows investigators to electronically store evidence, which is useful when dealing with a large amount of physical evidence, such as bulk financial and company records common to Project Wickenby investigations, and to develop briefs of evidence.¹⁹⁹

6.48 The AFP's use of PROMIS and local network drives to electronically manage and store case documentation was not consistent across Project Wickenby investigations. For example, not all investigation management plans were uploaded into PROMIS. The AFP advised that it is in the process of procuring a commercial investigation, intelligence and incident management system that would replace PROMIS and better manage case documentation.

Investigation review, assurance and lessons learned

6.49 The *Australian Government Investigation Standards* requires agencies to have procedures that outline the basis for conducting internal review, evaluation or quality assurance.²⁰⁰ It is good practice to identify and apply lessons learned through investigation reviews and assurance activities to assist in future investigations.

Detailed internal review and evaluation

6.50 The ACC undertook a detailed review of Project Wickenby criminal investigations in 2007. This review examined all nine active investigations at the time and considered issues such as sufficiency of evidence and how to resolve outstanding matters.²⁰¹ There has been no systematic review or evaluation of all ACC investigations since that time, although there have been

¹⁹⁹ AFP investigators advised that the General Evidence Management System is critical to Project Wickenby investigations due to its capacity to manage large amount of evidentiary material, saving time and resources in compiling briefs of evidence for prosecution by the Commonwealth Director of Public Prosecutions.

²⁰⁰ *Australian Government Investigation Standards*, Section 7.5.

²⁰¹ Key findings of the review identified issues impacting on investigations, most notably were delays in obtaining evidence from foreign jurisdictions and in accessing evidence subject to legal professional privilege claims.

post-operational reviews of the prosecution of individuals who have pleaded not guilty.²⁰²

6.51 At the completion of an AFP investigation, a post-operational assessment was to be conducted if there were lessons learned. One of the two completed investigations had conducted a post-operational assessment at the time of fieldwork, and the other had clearly documented reasons why no assessment was conducted.²⁰³ One of the finalised AFP cases was also critically reviewed by the case officer, with a report outlining the status of the investigation, key challenges and critical issues. This review provided information for management to consider in administering other Project Wickenby investigations and deciding whether to proceed with the broader investigation based on required evidence, resources, and timeframes for completion. The AFP also conducted an internal audit in 2008 that provided assurances to the AFP Commissioner about its administration of Project Wickenby investigations.

Quality assurance

6.52 Quality assurance reviews of criminal investigations provide senior management with assurance that the conduct of investigations is consistent with corporate objectives, and meet standards of legality, propriety, effectiveness and efficiency. Quality assurance reviews also suggest and inform improvements for agencies training, changes to procedures, investigation management practices and policies.

6.53 The ACC has no quality assurance review framework in place to review criminal investigations and provide assurance about the overall management of investigations. Acknowledging the funding pressures being faced by the ACC, there would be merit in the ACC developing and implementing a quality assurance framework across the agency to: provide assurance to senior executives on the management of investigations; inform procedures, policies and training programs; and identify and disseminate better practices.

²⁰² These two case reviews were coordinated and conducted by the Commonwealth Director of Public Prosecutions and involved personnel from the ACC, ATO as well as prosecution counsel.

²⁰³ From 14 September 2011, the AFP will only prepare post-operational assessments in limited circumstances, depending on the investigation and at the discretion of the relevant management. The case management system will be used instead to capture and report emerging issues and lessons learnt.

6.54 Quality assurance reviews form part of the AFP's guidance on investigation management. The AFP quality assurance review framework examines investigation scope, processes, resourcing and outcomes from a sample of completed investigations. Neither of the two completed Project Wickenby investigations had been subjected to a quality assurance review by December 2011.

Lessons learned

6.55 While the ACC and AFP both had previous experience in investigating potential tax evasion, Project Wickenby was the first time they had been involved in investigations of serious and complex taxation evasion to that breadth and scale. The experience of both agencies has matured over the course of Project Wickenby, and they have both applied lessons learned to the ongoing management of existing investigations and new referrals.

6.56 Applying learning through a structured approach can strengthen the skills of investigators and agency knowledge for this type of criminal activity. One initiative was the AFP's development of a training program to increase investigators' understanding and knowledge of money laundering activities. Although not exclusive to Project Wickenby, the program shares the lessons learned from Project Wickenby in the broader training and skilling of investigators to undertake complex financial investigations, such as of tax evasion, as outlined in Figure 6.1.

Figure 6.1

The AFP's Money Laundering Investigation Program

Outline of the program

The AFP developed a training package to enhance their investigators' skills in analysing money laundering typologies, understanding money laundering legislation and applying effective investigation techniques. This training package, referred to as the Money Laundering Investigation Program, coincided with the need to skill Project Wickenby investigators.

The aim of the Money Laundering Investigation Program was to contribute to an increase in money laundering investigations and prosecutions; and to enhance the capacity of investigators to participate in multi-agency investigations.

From October 2007 to June 2011, 32 Money Laundering Investigation Program courses were delivered across Australia. Around one-third of participants who had undertaken the course are from organisations other than the AFP, including from other Project Wickenby agencies.

The course addressed a previous gap in investigations training on money laundering, including tax evasion, and is now a mandatory element of the AFP's training for Federal Agents.

Source: ANAO analysis of AFP information.

6.57 The ANAO considers that the Money Laundering Investigation Program effectively disseminated lessons learned from the Project Wickenby

investigations within the AFP and across partner agencies. The program provided training that enabled investigators to better understand criminal behaviours and apply effective investigation techniques to tax evasion and money laundering investigations.

Maintaining confidentiality of investigation material

6.58 Project Wickenby has received considerable public attention, particularly through media reporting of the investigation and prosecution of prominent people. Criminal investigations have generated over 1 000 media articles in Australian newspapers. The AFP has not received any complaints relating to the misconduct of AFP officers regarding Project Wickenby investigations. The ACC has received 13 complaints regarding Project Wickenby investigations, five related to material appearing in media articles and alleging that the source of the material was released by the ACC.

6.59 The ACC conducted internal reviews, approved at the senior executive level, into these five allegations. In no instances did the ACC identify that it had inappropriately released information. Three of these reviews were unable to determine the source of the information, and requested those making complaints to provide additional information if that was possible. Two ACC reviews, however, identified alternative sources of the information:

- one was an administrative error by the Federal Court which resulted in confidential material being released into the public domain²⁰⁴; and.
- another pertained to a mutual assistance request in 2005, the details of which were provided to the individuals that were the subject of the request, in accordance with Swiss law. The ACC was not aware of that legal requirement at that time, and has subsequently modified the information contained in such requests.

Conclusion

6.60 Project Wickenby criminal investigations were subject to management arrangements that provided regular oversight, coordination and monitoring at the taskforce level through cross-agency forums and internally through various operating committees. However, detailed evaluations or reviews have

²⁰⁴ The inadvertent access to information collected as part of Project Wickenby investigations occurred when a confidential affidavit was incorrectly filed in the public court registry, which the media had access to, rather than the confidential registry.

not been undertaken systematically across all Project Wickenby criminal investigations.

6.61 Critical decisions for Project Wickenby investigations recorded on the electronic case management systems were appropriately approved, but not always sufficiently explained. The ACC did not consistently or comprehensively record critical investigation decisions. The ACC and AFP did not use their electronic case management systems sufficiently to record all key investigation management documents, which posed a risk to the effectiveness of investigations given the level of legal challenges associated with the cases. The ACC's document management system had substantial functionality limitations, and the AFP was in the process of upgrading its electronic case and document management systems.

Recommendation No.5

6.62 To better manage criminal investigations, the ANAO recommends that the ACC and AFP improve procedures and practices to:

- (a) approve and record critical investigation decisions, activities and outcomes in case management systems; and
- (b) store, locate and retrieve investigation documentation from investigation management systems.

Australian Crime Commission response: *Agreed.*

The ACC accepts recommendation five which is designed to improve procedures and practices to approve and record critical investigation decisions and activities in the ACC's case management system. The ACC also accepts the second component of the recommendation regarding improvements to store, locate and retrieve investigation documentation from document management systems. The ACC acknowledges that not all Project Wickenby decisions were centrally documented or recorded on the case management system.

However, in accepting this recommendation, the ACC notes that Project Wickenby decisions were clearly documented and stored across a range of ACC systems. With sufficient user expertise in the use of the ACC's document management system, records are able to be located and retrieved. Noting the ANAO's concerns with the ACC's document management system, the ACC's Information and Knowledge Management Team has approved a complete review of ACC Information Management Framework and a federated search project is underway with the objective of making all ACC information resources searchable. Nevertheless, the ACC considers that when required, the

current document management system and the current case management system is able to provide all relevant information critical to evidencing investigation findings for those users with appropriate training of the systems. In light of recommendation 5, the ACC's risk and audit committees are reviewing how the ACC can better centralise documentation of critical decision making.

Australian Federal Police response: *Agreed.*

Project Wickenby investigations have been of a highly complex nature. They have often involved the use of complicated financial structures and the remittance of funds to offshore tax havens. Significant learning outcomes have been, and continue to be, realised due to the nature of these matters.

Since commencing Project Wickenby investigations the AFP has increased its understanding of conducting investigations of this type and complexity. Through that increased understanding the AFP has consequently improved its investigation management practices and enhanced the skill sets and capability of its investigators.

As noted in paragraph 6.24, the AFP has reviewed and implemented revised investigation management and planning tools for serious criminal investigations. This work is being undertaken by a national level investigations working group that is sponsored by the Deputy Commissioner Operations. The Commissioner is regularly briefed on the activity of this working group.

The revision of investigation management and planning tools has included adoption of protocols to better record critical decisions. The revised tools have also addressed other issues specified in the report relating to risk management.

As noted in paragraph 6.48, the AFP is in the process of acquiring a new investigation, intelligence and incident management system. Significant improvements will be made to current case management practices and procedures.

Investigation resourcing

6.63 Investigating offshore tax schemes is challenging due to the technical complexity of tax evasion arrangements. Specialist investigative skills such as forensic accountants are required to identify and track the associated financial

flows.²⁰⁵ Adequate resourcing of investigating agencies is important to ensure sufficient skills and expertise are available to complete investigations and prosecute those involved in international tax fraud and evasion.

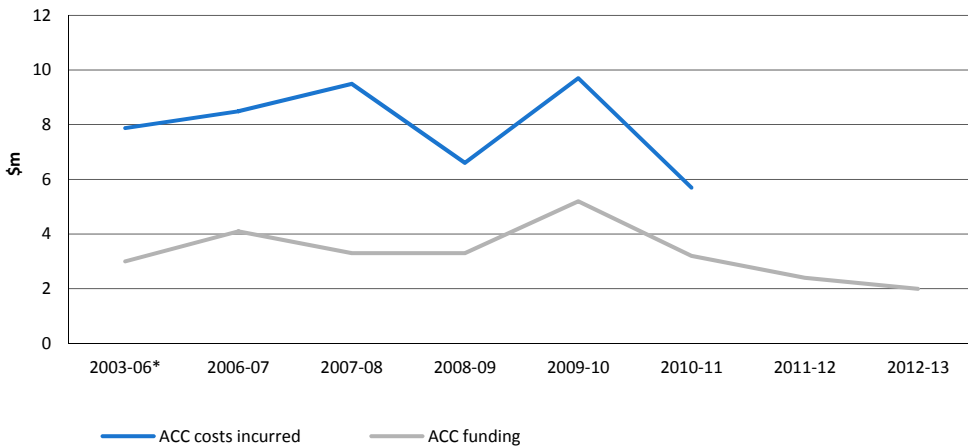
6.64 The ACC and AFP both received funding under Phase 1 (2005–06 to 2009–10) and Phase 2 (2010–11 to 2012–13) of Project Wickenby, with the ACC receiving a total of \$26.5 million and the AFP \$82.4 million, primarily to conduct criminal investigations.

ACC expenditure of Project Wickenby funds

6.65 Prior to receiving Project Wickenby funding, the ACC conducted Operation Wickenby criminal investigations as part of another project, with that project funding being rolled into the ACC base funding. The initial ACC funding submission for Project Wickenby was based on finalising the existing criminal investigations and the AFP was to conduct 10 promoter investigations referred to it by the ATO.

6.66 The ACC funding allocation has not covered the costs of conducting Project Wickenby investigations, as shown in Figure 6.2. The ACC had spent \$47.8 million on investigations by the end of the sixth year (2010–11), which was 80 per cent more than the total funding allocation of \$26.5 million.

²⁰⁵ United States of America Government Accountability Office, *Tax Compliance – Offshore Financial Activity Creates Law Enforcement Issues for IRS*, March 2009, p. 7.

Figure 6.2**Project Wickenby funding for the ACC compared to costs incurred**

Notes: Actual expenses include direct operating costs, such as direct staff costs, and exclude overheads and other support costs, particularly legal expenses, which were conservatively estimated by the ACC at \$5.9 million in October 2011.

*Includes expenditure from 2003 to 2006 under Operation Wickenby. Project Wickenby funding commenced in the 2005–06 financial year.

Source: ACC.

6.67 The ACC overspend was due to the additional time and effort required to manage litigation, and with fewer ATO staff being seconded than originally anticipated project costs incurred by the ACC were significantly higher than planned. In practice, Project Wickenby investigations elicited a number of challenges to the *Australian Crime Commission Act 2002*. While resource intensive, these cases, which were mostly successfully defended by the ACC, were broadly useful to ACC operations in consolidating their relatively new powers.

6.68 The ACC was aware that those being investigated under Operation Wickenby would challenge extensively through the courts. As such, it could have estimated the cost of responding to these challenges with greater accuracy in the initial budget bid. Project Wickenby CEOs agreed that future assumptions and assessment of resource requirements for Project Wickenby typology investigations needed to be more robust.²⁰⁶ Funding for the ACC

²⁰⁶ Project Wickenby CEOs meeting 16 June 2009, response to Mid Project Review Recommendation 4a.

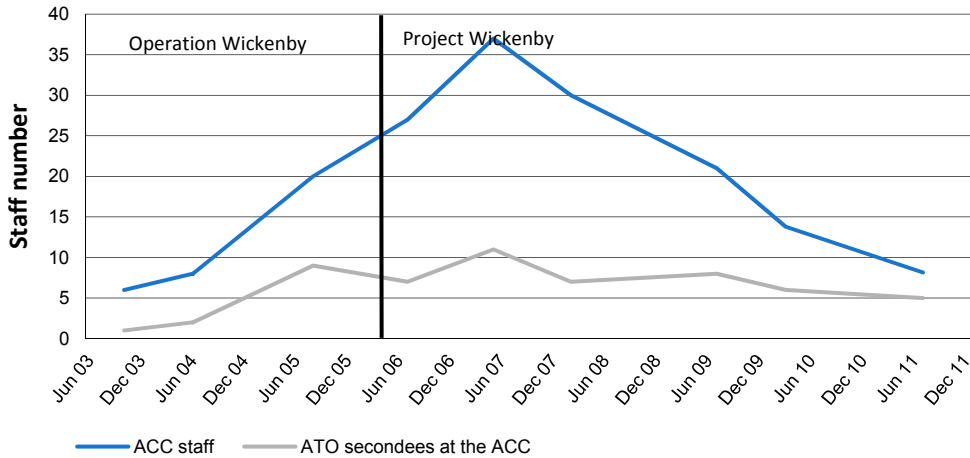
through Phase 2 of Project Wickenby has not covered the costs of conducting the ongoing investigations.

ACC staffing of Project Wickenby investigations

6.69 Figure 6.3 shows that the number of ACC officers working on the criminal investigations initially under Operation Wickenby and then Project Wickenby. Officer numbers peaked in May 2007 at 37 full-time equivalent staff, with 11 seconded ATO officers. Staffing numbers declined thereafter, with eight ACC officers and five ATO officers allocated to the remaining six active ACC investigations and prosecutions at July 2011.

Figure 6.3

ACC staffing of Wickenby investigations



Source: ACC.

6.70 Reductions in staff allocated to ACC Project Wickenby investigations in recent years reflects: the decline in investigative work required as investigations moved to the prosecution stages; a major investigation being pared back; and the impact of funding constraints. However, considerable resources are still required once prosecution briefs are submitted to the Commonwealth Director of Public Prosecutions (CDPP). ACC investigators are required to support the CDPP throughout the prosecution, undertake additional investigative tasks, prepare disclosure materials and conduct other activities to support the prosecution as required.²⁰⁷ The ACC advised that it

²⁰⁷ As at August 2011, the ACC had six active cases, either in the brief development or prosecution stage. Of these six, three investigations shared the same sole case officer, who split her time equally between cases.

will be employing a small but appropriate level of resources to support the prosecution process of its investigations.

AFP expenditure of Project Wickenby funds

6.71 By the end of the 2010–11 financial year, the AFP reported expenditure of \$61.3 million (91 per cent) of the \$67.5 million funding allocated at the commencement of the project in February 2006. At the peak, the AFP allocated over 70 officers to Project Wickenby criminal investigations. By the end of June 2011, around 35 officers were allocated to these investigations. Similar to the ACC, the peak in resource usage reflects the peak of investigative work for many cases in 2007 and 2008.²⁰⁸

6.72 The AFP's Sydney office conducted the majority of the Project Wickenby criminal investigations. This office has a large dedicated investigations team, with sufficient resources to conduct complex financial criminal investigations, including into offshore tax evasion schemes. These dedicated teams work on similar investigations, and share expertise and specialist resources, such as forensic accountants.

6.73 Allocating investigations to state and territory offices is based on the AFP's approach of managing investigations in offices in the closest proximity to the main potential offenders. Accordingly, other Project Wickenby cases are being conducted in Brisbane, Adelaide and Perth.²⁰⁹ This allocation approach can present challenges to the successful investigation and prosecution of serious tax evasion schemes. Factors impacting on the effectiveness of the smaller AFP offices to progress Project Wickenby criminal investigations have included:

- limited numbers of available investigative staff, and their frequent transfer off Project Wickenby investigations as other critical and higher-priority case work arose; and
- limited access to specialist investigators, such as forensic accountants who understand complex financial arrangements and associated investigation techniques.

²⁰⁸ This resourcing includes officers allocated to the AFP's largest Project Wickenby criminal investigation, which was based in the Sydney office. In early to mid-2008, about half of all officers allocated to AFP investigations were allocated to this one case.

²⁰⁹ AFP offices in Brisbane, Adelaide and Perth managed three, two and one Project Wickenby investigations, respectively.

Conclusion

6.74 The ACC funding allocation has not covered the costs of conducting Project Wickenby investigations, largely due to the extent of legal challenge. While the ACC could have better estimated the cost of responding to these challenges in the initial budget bid, funding for the ACC through Phase 2 of the project has not covered the costs of conducting the ongoing investigations. The AFP had reporting spending over 90 per cent of its Project Wickenby budget allocation to 30 June 2011.

6.75 A lesson from the complex financial investigations conducted for Project Wickenby is that there would be merit in the AFP reviewing the practice of allocating investigations to offices primarily based on their proximity to most of the key potential offenders. Other factors can be more important, including having access to sufficient numbers of dedicated investigators and to specialist technical skills and expertise. Centralising investigations into particular criminal activity types in one or two larger offices would allow the AFP to better coordinate activities, such as obtaining offshore evidence and sharing investigation techniques.

Recommendation No.6

6.76 To support timely and effective case management, the ANAO recommends that the AFP revise its practices for allocating serious tax and financial crime investigations among state and territory offices.

Australian Federal Police response: *Agreed.*

The AFP has an established record of flexibly deploying resources to meet priorities. The AFP acknowledges that in smaller AFP offices there is a reduced specialist capability for financial crime investigations. However, developing and increasing the capabilities of all AFP investigative staff in relation to Project Wickenby typology matters, regardless of the physical location of investigative staff, is a high priority for the AFP. The AFP has therefore adopted the practice of allocating Project Wickenby matters across offices, as and where appropriate.

Consistent with the recommendation, the AFP has now enhanced the flexible deployment model through the provision of improved national support and mentoring to Wickenby investigations in smaller offices. Project Wickenby investigations are allocated to smaller offices where the suspect(s) is located in that jurisdiction and/or the criminality has occurred in that jurisdiction. Support and mentoring is provided to the smaller offices through the National

and Sydney Office and includes increased investigation and specialist financial investigation support, and the provision of technical advice.

Investigation timeliness

6.77 Initiating, conducting and prosecuting criminal investigations within reasonable timeframes reflects better practice and helps to maintain confidence in Australia's financial and taxation systems. Concerns have been raised in the media about the length of time it has taken to progress criminal prosecutions under Project Wickenby, and the negative impact these prolonged cases have had on those being investigated.

6.78 Both agencies have taken significantly longer to complete Project Wickenby criminal investigations than planned. As previously discussed (in paragraph 6.18), ACC investigations on average were completed in 49 months (compared to the planned 18 months), and AFP investigations 36 months (compared to the planned 12 months).

6.79 The timeliness of these investigations was influenced by a number of factors, with varying impacts in different cases. The two main factors that presented challenges to the timely progression of the criminal investigations were the:

- need for foreign government assistance to obtain evidence of tax evasion that was located in foreign jurisdictions, including from multiple secrecy havens; and
- large number of legal challenges during the investigation and prosecution of these cases.

Foreign government assistance

6.80 The nature of offshore tax evasion schemes means that much of the evidence required to achieve a prosecution, or to establish the existence of criminal activity, is based in foreign jurisdictions. Gaining access to evidence located offshore is influenced by a number of factors, including the ability and willingness of the jurisdiction to assist. This process can be complex at the government-to-government level. Nevertheless, accessing this evidence was a critical element in demonstrating criminal activity to support Project Wickenby prosecutions.

6.81 Access to documentation and evidence in foreign jurisdictions can be sought through a mutual assistance request (MAR).²¹⁰ A MAR is the formal process countries use to request, provide and obtain formal government-to-government assistance in criminal investigations and prosecutions.²¹¹ The Attorney-General's Department (AGD) manages all of Australia's MARs to other countries on behalf of the Australian, state and territory governments by liaising with its counterpart agencies in other countries. In relation to Project Wickenby, AGD's role is to coordinate and facilitate international legal cooperation, including for mutual assistance and extradition cases. AGD also provides guidance on the domestic requirements of the foreign country and compliance with relevant treaties. To October 2011, there had been 81 Project Wickenby MARs, of which 54 were finalised²¹² and 27 were awaiting the assistance of foreign jurisdictions. The 81 MARs were made to 17 countries, many of which are secrecy havens.

6.82 ACC and AFP investigators advised that the MAR process has been a challenging element of their criminal investigations, as access to evidence and material overseas was critical to the majority of prosecutions. The complexity in the Project Wickenby MARs varied considerably, from requests for banking documents to complex warrant executions on businesses. The average time taken from initiation to receipt of MAR material was approximately 300 business days. The duration varied substantially across MARs, with the shortest being 96 business days with the United Kingdom and the longest taking 809 business days with Jersey.

6.83 The ACC and AFP underestimated the complexity, limitations and timeframes required to obtain adequate responses to the early Project Wickenby MARs. In response to these problems, the ACC and AFP improved the planning for, and use of, MARs. Key actions were to travel to the relevant

²¹⁰ Mutual assistance is governed in Australia by the *Mutual Assistance in Criminal Matters Act 1987* and the *Foreign Evidence Act 1994*. Australia is party to 29 bilateral mutual assistance treaties and a number of multilateral treaties, such as the United Nations Convention against Corruption, which include mutual assistance obligations. Treaties are not necessary to provide formal assistance, as Australia may make a MAR to any country.

²¹¹ Attorney-Generals' Department, *Mutual Assistance* [Internet] available from <http://www.ag.gov.au/www/agd/agd.nsf/Page/Extradition_and_mutual_assistanceMutual_assistance#m11> [accessed 20 June 2011].

²¹² MARs can be finalised either through the provision of the assistance requested, partial assistance where no further assistance is possible, or in a small number of cases, where the request has been withdrawn.

country to discuss the request, and assemble teams to provide technical and operational support to the requested country.²¹³

Conclusion

6.84 To support future investigations that require evidence held offshore, it is important that the ACC and AFP build on the MAR strategies developed throughout Project Wickenby. Improved MAR strategies would involve more accurate assessment of foreign evidence requirements, likely foreign government responses, timeframes and key activities. This is particularly important for the major secrecy havens involving Project Wickenby investigations.

Legal challenges

6.85 Legal challenges to investigations and judicial proceedings are part of the Australian legal system. Legal challenges can be made to virtually every aspect of an investigation, including the MAR process, legal professional privilege claims, responses to requests made under the *Freedom of Information Act 1982*, the validity and execution of search warrants, and regarding Commonwealth legislation.

6.86 Some of those allegedly involved in offshore tax evasion are highly wealthy, socially prominent, and willing and able to extensively challenge criminal investigations into their activities. As discussed in Chapter 2, the ACC has faced considerable legal challenges in relation to Project Wickenby cases, achieving successful outcomes for 31 of the 43 challenges made to September 2011. These challenges have delayed the progress of investigations, and added significantly to their cost.

Legal professional privilege claims

6.87 Legal professional privilege (LPP) or client legal privilege is a common law right, which exists to protect the administration of justice and the right of individuals and other entities to obtain confidential legal advice about their legal circumstances.²¹⁴ This right protects some legal advice from being used as evidence against an individual. The interaction of LPP and coercive information-gathering powers has presented a range of challenges for

²¹³ Chapter 3 discusses support provided by the AFP to Vanuatu authorities to assist them to respond to a MAR for a Project Wickenby investigation.

²¹⁴ Law Council of Australia, *Client Legal Privilege* [Internet], available from <<http://www.lawcouncil.asn.au/programs/national-policy/privilege.cfm>> [accessed 16 September 2011].

investigating agencies in the past. Project Wickenby investigations are no exception to this—while LPP protects information from being handed to an agency, coercive information gathering powers compel an individual to produce documents.

6.88 Claims of LPP often arise in tax fraud investigations as alleged offenders often use solicitors or are legal practitioners themselves. In many cases, broad claims of LPP have been made over material seized during search warrants. LPP claims were made in most ACC investigations for Project Wickenby, while claims were also made in some AFP investigations. Despite the significant number of LPP claims, most of the material seized was not covered by LPP.²¹⁵ This caused significant delays to the progress of investigations. Resolving these claims can be time consuming, and requires willingness from both parties to establish which documents are legitimately covered by LPP. If parties cannot agree on which documents LPP covers, courts must resolve the issues. This has occurred in a number of cases and further delayed investigations.

6.89 Despite the often blanket claims of LPP over material seized during search warrants, both the ACC and AFP endorse the principle of LPP. Both agencies have advocated reforms to the processes for applying LPP in submissions made to the Australian Law Reform Commission inquiry into client legal privilege in federal investigations. The Australian Law Reform Commission recommended that a more structured process be established for dealing with LPP claims. Although LPP has been identified by the Project Wickenby taskforce as an area for policy and legislative reform, little has been progressed to improve the LPP process.

²¹⁵ In one investigation, some 17 000 documents were in dispute in January 2010, which was reduced to 400 disputed documents by November 2010.

Conclusion

6.90 Extensive challenges to Project Wickenby investigations have generally vindicated ACC and AFP positions but added considerably to costs. Claims of LPP have also significantly delayed many investigations, as courts have been required to resolve LPP challenges in respect of extensive amounts of material. The ACC and AFP have advocated legislative reforms to processes for applying LPP, a subject which is supported by the Australian Law Reform Commission.



Ian McPhee

Auditor-General

Canberra ACT

9 February 2012

Appendices

Appendix 1: Agency responses



Australian Government
Australian Taxation Office

COMMISSIONER OF TAXATION

Ms Barbara Cass
Group Executive Director
Performance Audit Services Group
Australian National Audit Office
GPO Box 707
CANBERRA ACT 2601

13 January 2012

A handwritten signature in cursive script, appearing to read 'Barbara'.

Dear Ms Cass

RE: Australian National Audit Office Performance Audit on the Administration of Project Wickenby

Thank you for your letter dated 16 December 2011 and for the opportunity to provide comments on the proposed report on the Administration of Project Wickenby.

The Australian Taxation Office accepts the four recommendations pertaining to it as presented in the section 19 report.

It is pleasing to note the comments that recognise the improvements we have made in administration through the life of the project. That said, we are always open to suggestions for further improvement in any area of our administration.

I would like to thank the Australian National Audit Office audit team for the cooperative and professional manner they have adopted in undertaking this performance audit.

Yours sincerely

A handwritten signature in cursive script, appearing to read 'Bruce'.

Bruce Quigley
Acting Commissioner of Taxation
13 January 2012

ATO response to recommendations

Recommendation No.1

3.36 To respond to the Government's requirement at the outset of Project Wickenby, the ANAO recommends that the ATO conducts a post-implementation review of the project after the completion of Phase 2 funding in June 2013.

ATO Response – Agree.

The review will include coverage of the taskforce's implementation of the recommendations made in this audit report. It will also consider whether suggestions and lessons for future administration contained in the audit report have been adequately considered and, where appropriate, implemented.

Recommendation No.2

5.21 To improve the assessment of identified risks and selection of cases for audit, the ANAO recommends that the ATO: assesses the choice of risk review type; analyses risk review results; and improves project management to meet risk review cycle time standards.

ATO Response – Agree.

An examination of Project Wickenby risk reviews will be undertaken to address the above points raised by the ANAO. Consideration will be given to the appropriateness of implementing any outcomes from this examination across the Serious Non Compliance (SNC) business line.

Recommendation No.3

5.76 To adequately record key decisions and manage evidence, the ANAO recommends that the ATO updates guidance about the use of the electronic case management system for Project Wickenby audits, assesses levels of adherence to this guidance by Project Wickenby staff, and monitors performance.

ATO Response – Agree.

A review of the guidance issued by SNC to Project Wickenby staff about the use of the electronic case management system for Wickenby audits will be undertaken.

Recommendation No.4

5.78 To support the efficient conduct of Project Wickenby compliance interventions, the ANAO recommends that the ATO improves project management practices to reduce Project Wickenby audit cycle times, including by reinforcing adherence to electronic time recording protocols.

ATO Response – Agree.

An examination of Project Wickenby compliance interventions will be undertaken by SNC to address the above points raised by the ANAO. Consideration will be given to the appropriateness of implementing any outcomes from this examination across SNC.

APPENDIX 2

Comments to be used in report brochure

The ATO welcomes this review and considers that the report is supportive of the approach the Project Wickenby taskforce has taken to detecting, deterring and dealing with the abusive use of secrecy havens by Australian taxpayers. This includes the cross agency coordination and governance arrangements for the taskforce, which have been led by the ATO.

The report recognises that this is the first time such a broad range of Australian Government resources has been used to address the significant threat of this abusive use of secrecy havens and notes a number of instances where we have made improvements to our administration through the life of the project. The report also identifies a number of opportunities for further improvements. The ATO agrees with the four recommendations in the report pertaining to our agency.

UNCLASSIFIED



OFFICE OF THE
CHIEF EXECUTIVE

Our Ref: 12/3517

Ms Barbara Cass
Group Executive Director
Australian National Audit Office
GPO Box 707
CANBERRA ACT 2601

Dear Ms Cass *Barbara*

Audit Report – Administration of Project Wickenby

Thank you for your correspondence of 16 December 2011 enclosing a copy of the performance audit *Administration of Project Wickenby* seeking the Australian Crime Commission's (ACC) comments pursuant to subsection 19(1) of the *Auditor-General Act 1997*.

As requested, I have reviewed the performance audit and I attach formal ACC comments for inclusion in the attachment to the audit report.

Should you require further information please have them contact my office on (02) 6243 6613.

Yours sincerely

A handwritten signature in black ink, appearing to read 'J. Lawler', is written over a large, stylized, hand-drawn oval shape.

John Lawler APM
Chief Executive Officer
16 January 2012

Attachment A**ACC Comments on the ANAO Project Wickenby Performance Audit****Recommendation Five**

For the first time on this scale, the ACC conducted a series of criminal investigations designed to bring promoters of taxation evasion schemes to justice, deter tax evasion and build a comprehensive intelligence picture on tax and other financial crimes. Project Wickenby has been successful in demonstrating the effective collaboration of a cross agency task force. This success has ultimately made Australia less attractive for international tax evasion and other financial crimes.

As noted in the ANAO audit report, the ACC's practices have matured over the course of Project Wickenby. The ACC is now in a much better position to anticipate risks including risks associated with the complexities of investigating offshore tax schemes and the litigious behavior of those subject to such investigations.

Project Wickenby criminal investigations were ground breaking in terms of the complexity of the tax evasion schemes investigated. This involved the secretion of monies offshore, the extensive use of tax havens and highly complex structures used to shield the true nature of the arrangements.

These factors resulted in the need for extensive collection of evidence held offshore, the need to access documents and evidence held in countries with bank secrecy laws and extensive analysis to unravel and understand the nature of the schemes, transactions and money flows.

Further, it is worth reflecting that the ACC was subject to significant and ongoing litigation (including several challenges to the High Court of Australia) that could not have been predicted at the commencement of the investigations and that have added significant burden, in terms of cost, effort and the ability to progress and finalise matters. Nevertheless, while this led to an increase in costs to Project Wickenby, challenges to the ACC legislation have now developed significant precedent and case law in ACC's favor. This will likely result in fewer challenges to the ACC and therefore have a favorable impact on ACC's costs, risks and criminal justice outcomes.

The ACC accepts recommendation five to improve procedures and practices to approve and record critical investigation decisions and activities in the ACC's case management system. The ACC also accepts the second component of the recommendation regarding improvements to store, locate and retrieve investigation documentation from document management systems.

The ACC acknowledges that not all Project Wickenby decisions were centrally documented or recorded on the case management system and stored across a range of ACC systems. However, in accepting this recommendation, the ACC notes that ACC Project Wickenby decisions were clearly documented in a variety of official documents and that with sufficient user expertise, records are able to be located and retrieved.

In light of recommendation five, the ACC's risk and audit committees are reviewing how the ACC can better centralise documentation of critical decision making. Further, in early 2011 the ACC Executive approved the creation of an Information and Knowledge Management Team. This team commenced in July 2011 and has full ownership for the document management system and the issue of information discoverability more broadly. The Information Management Steering Committee has approved a complete review of ACC Information Management Framework and associated documents and a federated search project is underway with the objective of making all ACC information resources searchable.

For inclusion in report summary:

"The ANAO report outlines the success of Project Wickenby including the ACC's criminal investigations of promoters of taxation evasion and the ACC developed intelligence picture of tax evasion and other financial crimes. The ACC notes the findings of the ANAO's performance audit of the Administration of Project Wickenby. As the ANAO report indicates, the nature of Project Wickenby offences makes criminal investigations complex. This is particularly given the use of offshore secrecy havens which attempt to hide the true nature of individual's finances. Project Wickenby demonstrates the success that can be achieved by a collaborative cross agency task force in responding to offshore tax evasion schemes.

The ACC will address each of the ANAO findings and incorporate these into ACC investigations as well as policies and procedures moving forward. The ACC accepts recommendation five which comments on the central recording of critical investigation decisions in the ACC's case management system as well as improvements to the document management system. As acknowledged in the ACC's comments attached to the report, strategies for improvement have already been instigated to address ANAO findings."



COMMISSIONER

GPO Box 401, Canberra ACT 2601 Australia
Telephone +61 2 6131 5600 Facsimile +61 2 6132 6600
www.afp.gov.au
ABN 17 864 931 143

24 January 2012

Mr Ian McPhee PSM
Auditor-General
Australian National Audit Office
GPO Box 707
Canberra ACT 2601

Dear Ian

I refer to correspondence from the Australian National Audit Office (ANAO) of 16 December 2011, under the signature of Ms Barbara Cass, which provided the Australian Federal Police (AFP) with the proposed audit report on Administration of Project Wickenby. The proposed audit report has been provided to the AFP pursuant to sub-section 19(1) of the Auditor-General Act 1997.

I note that written comments were sought by 20 January 2012 but am aware of agreement from Dr Tom Clarke for a revised final submission date of 24 January 2012.

The AFP has welcomed the opportunity to contribute to the ANAO performance audit on Administration of Project Wickenby. The AFP embraces the commentary provided within the report and agrees with the recommendations arising from the audit as they relate to the AFP.

Should your office require any further assistance in relation to this matter, please contact Commander Ian McCartney, Manager Criminal Assets (6131 5789) or Ms Deborah Todd, Manager Internal Audit and Business Analysis (6131 5731).

Yours sincerely

P T Drennan APM
Performing the duties of Commissioner

ATTACHMENT A

PART 1

Formal agency comments on the proposed report including, in respect to each of the audit's recommendations, whether the agency agrees, agrees with qualification or does not agree. It is noted that these comments will be included in full as an appendix to the final report.

Recommendations 1-4 inclusive

AFP Response – the AFP provides no comments in relation to these recommendations.

Recommendation 5

To better manage criminal investigations, the ANAO recommends that the ACC and AFP improve procedures and practices to:

- approve and record critical investigation decisions, activities and outcomes in case management systems; and
- store, locate and retrieve investigation documentation from investigation management systems.

AFP Response – The AFP agrees with Recommendation 5.

Project Wickenby investigations have been of a highly complex nature. They have often involved the use of complicated financial structures and the remittance of funds to offshore tax havens. Significant learning outcomes have been, and continue to be, realised due to the nature of these matters.

Since commencing Project Wickenby investigations the AFP has increased its understanding of conducting investigations of this type and complexity. Through that increased understanding the AFP has consequently improved its investigation management practices and enhanced the skill sets and capability of its investigators.

As noted in paragraph 6.24 the AFP has reviewed and implemented revised investigation management and planning tools for serious criminal investigations. This work is being undertaken by a national level investigations working group that is sponsored by the Deputy Commissioner Operations. The Commissioner is regularly briefed on the activity of this working group.

The revision of investigation management and planning tools has included adoption of protocols to better record critical decisions. The revised tools have also addressed other issues specified in the report relating to risk management.

As noted in paragraph 6.49, the AFP is in the process of acquiring a new investigation, intelligence and incident management system. Significant improvements will be made to current case management practices and procedures.

Recommendation 6

To support timely and effective case management, the ANAO recommends that the AFP revise its practices for allocating serious tax and financial crime investigations amongst State and Territory offices.

AFP Response – The AFP agrees with Recommendation 6.

The AFP has an established record of flexibly deploying resources to meet priorities. The AFP acknowledges that in smaller AFP offices there is a reduced specialist capability for financial crime investigations. However, developing and increasing the capabilities of all AFP investigative staff in relation to Project Wickenby typology matters, regardless of the physical location of investigative staff, is a high priority for the AFP. The AFP has therefore adopted the practice of allocating Project Wickenby matters across offices, as and where appropriate.

Consistent with the recommendation, the AFP has now enhanced the flexible deployment model through the provision of improved national support and mentoring to Wickenby investigations in smaller offices. Project Wickenby investigations are allocated to smaller offices where the suspect(s) is located in that jurisdiction and/or the criminality has occurred in that jurisdiction. Support and mentoring is provided to the smaller offices through the National and Sydney Office and includes increased investigation and specialist financial investigation support, and the provision of technical advice.

PART 2

A short (one to two paragraphs) summary of AFP comments to be included in the report summary and brochure.

AFP Response - The AFP has welcomed the opportunity to contribute to the ANAO performance audit on Administration of Project Wickenby. The AFP embraces the commentary provided within the report and agrees with the recommendations arising from the audit as they relate to the AFP.

Since commencing Project Wickenby investigations, the AFP and its Taskforce partners have significantly increased their understanding of the operational complexities of Project Wickenby typology matters and their impact on investigational practices, including investigation timeframes, the recording of critical decisions, the management of investigational risk and the costing of investigations.

In relation to both Recommendations 5 and 6 the AFP has taken conscious and concrete actions to improve investigation management practices.

With regard to Recommendation 5, the AFP is in the process of acquiring a new investigation, intelligence and incident management system. Significant improvements will be made to current case management practices and procedures. The AFP has reviewed and implemented revised investigation management and planning tools for serious criminal investigations, which has included the adoption of protocols to better record critical decisions.

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