

The Auditor-General  
Audit Report No.34 2008–09  
Performance Audit

# **The Australian Taxation Office's Management of Serious Non-Compliance**

Australian National Audit Office

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of Australia 2009

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Canberra ACT  
20 May 2009

Dear Mr President  
Dear Mr Speaker

The Australian National Audit Office has undertaken a performance audit in the Australian Taxation Office in accordance with the authority contained in the *Auditor-General Act 1997*. Pursuant to Senate Standing Order 166 relating to the presentation of documents when the Senate is not sitting, I present the report of this audit and the accompanying brochure. The report is titled *The Australian Taxation Office's Management of Serious Non-Compliance*.

Following its tabling in Parliament, 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

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# Abbreviations

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ACC	Australian Crime Commission
AFP	Australian Federal Police
AGD	Attorney-General's Department
AGIS	Australian Government Investigation Standards
AGS	Australian Government Solicitor
ANAO	Australian National Audit Office
AUSTRAC	Australian Transaction Reports and Analysis Centre
BAS	Business Activity Statements
CDPP	Commonwealth Director of Public Prosecutions
CDR	Case Decision Records
Fraud Control Guidelines	<i>Commonwealth Fraud Control Guidelines 2002</i>
Commissioner	Commissioner of Taxation
ELIM	Evidence, Litigation and Intelligence Management
FMA Act	<i>Financial Management and Accountability Act 1997</i>
FPC	Fraud Prevention and Control
Fraud Practice Statement	Corporate Management Practice Statement on Fraud Control and the Prosecution Policy 2007/02
FTA	Forum on Tax Administration
GST	Goods and Services Tax

HOTSA	Health of the System Assessment
JITSIC	Joint International Tax Shelter Information Centre
OECD	Organisation for Economic Co-operation and Development
PMF	Program Management Forum
Project Wickenby	A multi-agency taskforce investigating and prosecuting internationally promoted schemes to avoid or evade Australian taxes and launder money
PSC	Program Steering Committee
PSLA	Practice Statement Law Administration
QA	Quality Assurance
QP	Quality Practice
RCAF	Regional Case Allocation Forum
RRE	Risk Rating Engine
SNC	Serious Non-Compliance business line
Tax Office	Australian Taxation Office
TEAC Communication Strategy	Tax Evasion, Avoidance and Crime Communication Strategy
TQR	Technical Quality Review



# **Summary and Recommendations**



# Summary

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## Introduction

1. The Australian Taxation Office (Tax Office) administers Australia's taxation system and in 2007–08 collected tax and excise revenues of \$278.6 billion<sup>1</sup> and made related payments of \$9.6 billion.<sup>2</sup> The Tax Office aims to achieve high levels of voluntary compliance with Australia's tax laws. The Australian tax system is based on self assessment, where the:

claims a taxpayer makes in their tax return are accepted by the Tax Office, usually without adjustment, and an assessment notice is issued. Even though they may initially accept the tax return, the return may still be subject to further review.<sup>3</sup>

2. The Australian system places responsibility on taxpayers to declare all assessable income and claim only deductions and offsets to which they are entitled. This system has inherent risks of taxpayers not complying with registration, lodgement, reporting and payment obligations. The Tax Office aims to manage these risks through its education and compliance activities. A number of taxpayers deliberately abuse the tax, excise and superannuation systems to evade their obligations or otherwise attempt to defraud the Commonwealth. The Tax Office has mechanisms in place to deter, detect and deal with non-compliant taxpayers.

3. The Tax Office defines serious non-compliance as those forms of behaviour which:

- involve disengagement, extremes of evasion, abuse of revenue systems, strong resistance to taxation obligations, or serious criminal conduct; and
- have the potential, left unchecked, to significantly undermine public confidence in the administration of the taxation laws.<sup>4</sup>

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<sup>1</sup> Australian Taxation Office, *Commissioner of Taxation Annual Report 2007–08*, p. 221.

<sup>2</sup> *ibid.*, p. iv.

<sup>3</sup> Australian Taxation Office website, *Self-assessment and the Taxpayer*, <<http://www.ato.gov.au/individuals/content.asp?doc=/content/13685.htm>> [accessed 28 November 2008].

<sup>4</sup> Internal Tax Office document.

4. The Tax Office's response to serious non-compliance is governed by a legal and policy framework for fraud (criminal matters) and serious evasion (civil matters). Investigations are undertaken for cases of fraud and audits are undertaken for cases of serious evasion. The behaviours of the taxpayer and subsequent distinction between fraud and serious evasion responses are not always clear and the Tax Office responses are not necessarily mutually exclusive. Table 1 summarises the Tax Office's compliance responses for addressing fraud and serious evasion.

**Table 1**

**Summary of the Tax Office's response to fraud and serious evasion**

Response	Fraud	Serious evasion
Proceedings	Criminal	Civil
Legislation	Crimes and Excise Acts	Tax and Superannuation Acts
Compliance activity	Investigation	Audit
Result	Criminal conviction	Tax liabilities raised and penalties applied

Source: ANAO analysis of Tax Office information.

5. In July 2003, the Tax Office created the Serious Non-Compliance business line (SNC) to focus on the more extreme aspects of evasion and fraud. This involved amalgamating some existing resources from other business lines including combining the major functions of three Tax Office units: Special Audit; Fraud Investigations Unit; and Excise Investigations Unit. SNC is responsible for:

- deterring, detecting and dealing with serious non-compliance behaviour, including fraud against the revenue system;
- deciding whether or not there is sufficient evidence that external fraud exists and for referring cases to the Commonwealth Department of Public Prosecutions (CDPP) or the Australian Government Solicitor (AGS) for possible prosecution; and

- contributing to the collection, collation and provision of certain information for the Attorney-General's Department Annual Fraud Report.<sup>5</sup>

6. SNC undertakes investigations under the *Crimes Act 1914*, the *Criminal Code 1995*, the *Excise Act 1901* and to a lesser extent offences under the *Tax Administration Act 1953* with the intention of producing a brief of evidence to be used by the CDPF to seek a criminal conviction, or used by the AGS for civil based proceedings. SNC also carries out audits under Australia's tax and superannuation laws with the intention of raising a tax liability, and where appropriate, applying tax penalties.

7. SNC consists of a number of separate operational areas, including Project Wickenby. Project Wickenby is a multi-agency taskforce investigating and prosecuting internationally promoted schemes to avoid or evade Australian taxes and launder money. Project Wickenby was not reviewed as part of this audit.

8. In 2007–08 SNC undertook 178 investigations, with 93 briefs of evidence referred to the CDPF and AGS for prosecution. There were 77 successful prosecutions in 2007–08. SNC also conducted 205 audits and raised liabilities of \$191 million.<sup>6</sup> As at June 2008, SNC employed 386 staff and was run at an annual cost of approximately \$41 million.<sup>7</sup>

9. The key risks for SNC identified in the *2008–09 Compliance Program* were refund fraud (Goods and Service Tax and income tax); secret offshore dealings; organised crime; and risks to the superannuation and excise systems.

## Audit objective and scope

### Objective

10. The objective of the audit was to assess the administrative effectiveness of the Tax Office's strategies to address serious non-compliance.

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<sup>5</sup> Australian Taxation Office, *Corporate Management Practice Statement—Fraud Control and the Prosecution Process*, 2007/02, April 2007.

<sup>6</sup> These figures exclude Project Wickenby related activities and resources.

<sup>7</sup> Internal Tax Office document.

11. In conducting the audit, the ANAO examined the Tax Office's management framework and arrangements to deter, detect and deal with fraud and serious evasion.

## Scope

12. The audit assessed the effectiveness of the Tax Office's management of the risks of fraud and serious evasion. The focus of the audit was on the SNC business line. The audit also assessed whether the Tax Office has developed a comprehensive and integrated whole of agency approach to managing identified risks relating to fraud and serious evasion. The following activities were excluded from the scope of the audit: Project Wickenby; in-house prosecutions; and internal fraud.

## Conclusion

13. Encouraging tax compliance and ensuring that non-compliance is kept to a minimum is a major and ongoing task for revenue agencies around the world.<sup>8</sup> Non-compliance in the form of fraud and serious evasion against the Commonwealth has the potential, if left unchecked, to undermine community confidence in Australia's taxation system and reduce voluntary compliance levels. As a result of organised and opportunistic attacks on Australia's taxation system, the Tax Office's response needs to be sustained and innovative. As noted by the Commissioner of Taxation, there are likely to be greater compliance risks across all market segments following the global economic crisis, as taxpayers seek to maximise income from diminishing sources.<sup>9</sup>

14. The Tax Office has developed a variety of strategies to address the risks of serious non-compliance. These strategies, and the processes underpinning them, have assisted in delivering many prosecutions and successful audit outcomes for 2007–08 as outlined in paragraph 7. Notwithstanding these successes, there is considerable scope for the Tax Office to improve the effectiveness of the arrangements to deter, detect and deal with fraud and serious evasion. To better manage the risks of SNC, it is important that the Tax

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<sup>8</sup> OECD, Forum On Tax Administration: Compliance Sub-Group, *Monitoring Taxpayers' Compliance: A Practical Guide Based on Revenue Body Experience*, June 2008, pp. 9-10.

<sup>9</sup> Commissioner of Taxation, *Playing it responsibly - The global financial crisis: an ATO perspective*, December 2008, at <<http://www.ato.gov.au/corporate/content.asp?doc=/content/00174107.htm>>.

Office: increases deterrent activities based on sound research and analysis; centrally records all fraud referrals to support intelligence led case selection; clearly links case selection to national strategic priorities; and increases management oversight of cases. The ANAO recognises that the Tax Office has taken significant steps in the last 12 months to improve the administrative effectiveness of processes and practices of SNC activities. In particular, the Tax Office has focussed on better integrating SNC activities across the office and providing for greater oversight of case selection and management. Given the long cycle time of case work, the effectiveness and appropriateness of the recent initiatives is yet to be established.

15. The Tax Office has recently established management arrangements that provide increased support for deterring, detecting and dealing with fraud and serious evasion. The introduction of a Tax Office wide Program Steering Committee and a 'business-line focused' Program Management Forum has allowed for greater alignment of corporate priorities and risks with project, program and case selection. To enable scrutiny by these new management committees, and moreover to measure the efficiency and effectiveness of approaches to combat fraud and serious evasion, it is important that the Tax Office has systems to accurately and comprehensively monitor and report on SNC activities. The reliance on inadequate historical systems to date has prevented such monitoring and reporting. New systems have been designed to help ensure greater accuracy in the monitoring of SNC activities.

16. The Tax Office has a range of activities designed to deter non-compliant behaviour. Effective deterrence is largely based on convincing those potentially non-compliant taxpayers of the chances of being caught and having sanctions applied to them, and is dependent on detection, investigation and audit capabilities. A number of deterrent activities can have an impact across a range of market segments. However, the Tax Office has only undertaken a small number of deterrent activities targeting fraud and serious evasion, and it is difficult to assess the flow on impact of broad based activities across geographical areas and market segments of taxpayers.

17. The assessment of the effectiveness of deterrent activities targeting fraud and serious evasion, such as marketing and communication, has been limited. The Tax Office was unable to clearly demonstrate whether it had undertaken sufficient deterrent activities, or is pursuing the most appropriate strategies in this regard, as it lacks compliance effectiveness measures to evaluate and monitor its fraud and serious evasion strategies. Recording and analysing the outcomes of deterrent activities, while difficult, would inform

future planning and targeting of risks. The Tax Office has started a process to develop such measures whereby the measurement of project effectiveness and risk areas will be implemented.

**18.** The Tax Office has implemented systems and processes to detect fraud and serious evasion. These systems produce over 3000 potential fraud referrals annually and enable the Tax Office to target its program of compliance activities. To manage the detection capability, the Tax Office has implemented sound cross business line relationships. From the potential fraud referrals, the Tax Office should choose programs of work and cases that target key strategic risks. SNC's ability to target key risks has historically been restricted, as inconsistent criteria have been applied in recording and documenting potential fraud referrals. This limits the ability of the intelligence functions to strategically influence case selection.

**19.** The Tax Office's systems and processes for dealing with fraud and serious evasion have assisted in delivering prosecutions and have been successful in raising tax liabilities. Despite these results, regional differences and an historical lack of case oversight has resulted in significant variation in the basis for case selection, and inconsistencies in the adoption and application of key practices and processes. To achieve greater returns, both directly and indirectly (through deterrence) from investigations and audits, it is critical that case selection is aligned to national strategic priorities, and that management oversight of individual cases is increased. The revised management model of the Program Steering Committee and Program Management Forum is likely to help in this regard, as two of its core elements involve better integration of SNC activities across the office and greater case management oversight. The full benefit realisation and appropriateness of recent initiatives is still to be determined due to the long cycle time of case work.

## **Key findings by chapter**

### **Management arrangements (Chapter 2)**

**20.** The development and implementation of sound governance arrangements helps to support the effective management of agencies' programs and service delivery. Fraud and serious evasion risks manifest themselves across numerous business lines within the Tax Office. The SNC Executive sets the strategic direction for this business line and is accountable for implementing the priorities of SNC. The Program Steering Committee (PSC), which includes cross business line representation, primarily provides an



advisory role for SNC. The Program Management Forum (PMF) was implemented to manage SNC operational performance.

21. The introduction of the PSC and PMF is designed to assist the Tax Office in providing appropriate strategic management and oversight to SNC. The PMF, along with the introduction of a new case management system, provides management information and can guide case selection to meet national priorities. The PSC facilitates communication of current risks faced by other business lines and allows the Tax Office to manage fraud and serious evasion risks with a whole of office approach. Advice received from the PSC Panel Members of other business lines indicates that the new arrangement has provided them with a greater understanding of the work that SNC undertakes and allows them to manage information flows with SNC.

22. It is a requirement of the Fraud Control Guidelines that government agencies, including the Tax Office, collect information on fraud in response to a survey and provide it to the Attorney-General's Department. The survey is currently conducted by the Australian Institute of Criminology. As indicated previously in paragraph 5, contributing to survey responses is a core function of SNC.

23. There were a number of problems with the accuracy of Tax Office responses to recent surveys. In 2005–06 and 2006–07 the Tax Office used the SNC intelligence database to respond to the survey. ANAO testing indicated an understatement of alleged incidences of fraud in the SNC intelligence database. The full extent of the understatement is unknown due to inconsistent criteria being applied in the recording and documenting of alleged incidences of fraud. A new definition of fraud contained within the 2007–08 survey and the Tax Office's interpretation of the definition resulted in different types of incidences being reported compared to previous years. This revised reporting basis resulted in far fewer reported allegations of potential fraud (498 in 2007–08 compared to over 3000 in the two previous years). Further, the reporting of 498 allegations of potential fraud was not correct as it also included all cases created within SNC on the Tax Office's case management system. The Tax Office is working with the Australian Institute of Criminology to improve the accuracy of its reporting.

24. The *Commissioner of Taxation's Annual Report 2007–08*, reported that SNC's core activities included the completion of 314 audits—of which 109 audits related to Project Wickenby. The ANAO reviewed a sample of audits from the 205 non-Wickenby audits, testing many elements of the Tax Office's

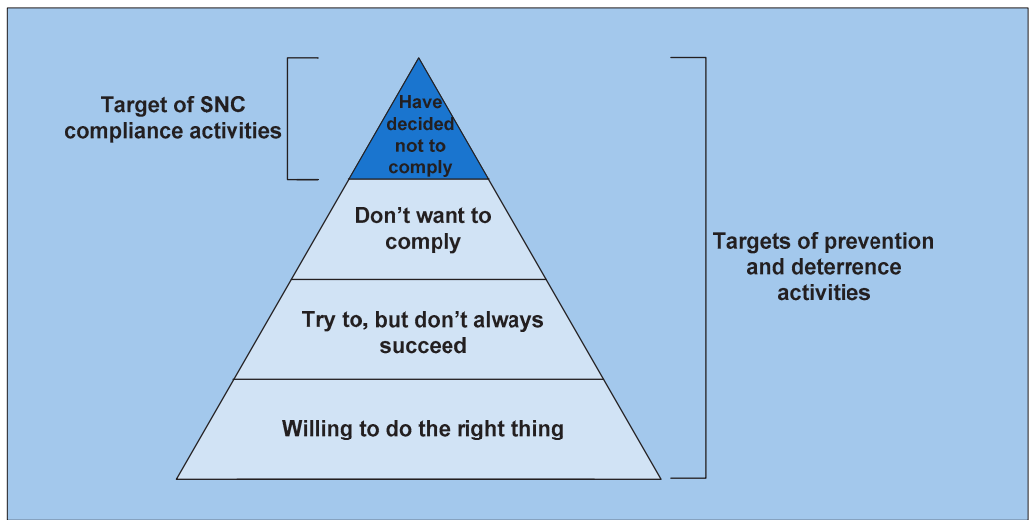
administration of SNC. With regard to reporting, the ANAO found that two of the 44 cases (five per cent) reviewed were incorrectly created and reported as audits. The ANAO notes none of these two occurrences were reported as raising a tax liability.

**Deterring Fraud and Serious Evasion (Chapter 3)**

25. The Tax Office tries to make it easy to comply with tax obligations for those taxpayers who are willing to do the right thing. A number of taxpayers deliberately evade their tax obligations, or otherwise attempt to defraud the Commonwealth through the revenue system. Compliance activities carried out by SNC are targeted at those taxpayers the Tax Office has deemed as deciding not to comply, represented by the top section of the compliance model (Figure 1). These compliance activities are used, through programs of communication and other activities, to deter potential serious evasion as well as ensure that those subject to investigation and audits are appropriately dealt with. A primary objective of SNC is enhancing community confidence in the tax system.

**Figure 1**

**Target of SNC compliance activities**



Source: ANAO analysis of Tax Office information.

26. The *Tax Evasion, Avoidance and Crime Communication Strategy* (TEAC Communication Strategy) is an important part of the framework established by the overarching Tax Office Communication Strategy. The TEAC communication strategy outlines a range of activities to deter the supply of and

demand for abusive tax practices and strengthen shared support for the integrity of the tax system. The ANAO found that only a limited range of potential activities are actually actioned pursuant to the TEAC Communication Strategy.

27. Recording and analysing outcomes of active compliance and other deterrent activities are important to inform future planning and targeting of SNC compliance risks. While the Tax Office has set a range of effectiveness measures surrounding fraud and serious evasion compliance activities, they typically focussed on direct returns from individual cases and did not inform broader objectives such as enhancing community confidence. To enable the Tax Office to assess the effectiveness of strategies over time, the ANAO considers there should be greater alignment between the Tax Office's performance effectiveness measures and the current deterrence strategies.

### **Detecting fraud and serious evasion (Chapter 4)**

28. The Tax Office has a range of systems and processes to detect fraud and serious evasion. This includes a formal system for the assessment and escalation of reported incidences of potential fraud (over 3 000 per year) that is complemented by individual relationships and networks of Tax Office staff. The Tax Office has also developed and implemented a range of computer-based systems to assist in detecting fraud and serious evasion in a real-time environment. Other compliance activities across the entire Tax Office also detect potential incidences of fraud and serious evasion.

29. SNC Intelligence is responsible for identifying and assessing serious strategic and operational fraud risks to the tax system. The area also gathers, collates and analyses intelligence from a range of external sources and other parts of the Tax Office. An inherent difficulty for SNC Intelligence is its resourcing focus towards investigations, and the subsequent lack of assistance to the audit function. This is largely due to the resource intensive initial 'processing' aspect of fraud referrals received. As a consequence, historically, the role and function of the audit capability within SNC developed with a regional focus that varied across Australia. The revised PMF arrangements seek to bring greater alignment between the regional program of work and national risk priorities.

30. Referral of information is the starting point to any investigation or audit undertaken by SNC. Information referrals form the basis of case selection, and through referrals trends and emerging issues can be identified,

assessed and treated. The Tax Office's *Corporate Management Practice Statement Fraud Control and the Prosecution Process* (Fraud Practice Statement) states that any compliance activity within the originating business line should continue once a referral is made unless SNC provides advice to the contrary. The ANAO found a high level of adherence to the Fraud Practice Statement representing a strong understanding by Tax Office staff outside SNC of their obligations and responsibilities regarding referrals of suspected incidences of fraud.

31. SNC teams in regional offices also receive referrals and information regarding serious evasion or fraud. These referrals may originate from professional relationships developed with law enforcement bodies, government agencies, or other business line staff who may be co-located. Consistent with the Tax Office's Fraud Practice Statement, regionally-based staff should also input fraud referrals into the SNC intelligence database. ANAO testing of investigations indicated a high level of regionally driven case selection without SNC Intelligence involvement, or being input into the appropriate database. There was no consistent process for managing or quantifying referrals received in the regions. This impacts on the ability of SNC Intelligence to identify trends as the SNC intelligence database is a significant source of information. There is also a risk that not all information is recorded accurately for reporting requirements.

## **Dealing with Fraud and Serious Evasion (Chapter 5)**

32. Investigations and audits are integral to the Tax Office's approach to managing the risks of fraud and serious evasion. The Tax Office Compliance Model is premised on the belief that it can influence behaviour through responses and interventions. SNC undertakes investigations and audits against perpetrators of fraud and serious evasion. The Tax Office's systems and processes for dealing with fraud and serious evasion have been successful in achieving high rates of custodial sentences and raising tax liabilities as indicated in paragraph 7.

33. Appropriate case selection is crucial to SNC meeting its objectives. Successful case selection should be aligned with national strategic priorities and assist in maintaining and enhancing community confidence. Historically, a regionally focused process allowed significant variances in case selection across Australia. Over time regions have developed particular skill sets and cases were chosen to reflect these skill sets. The Tax Office must effectively leverage from the cases that are chosen under the compliance model to ensure the greatest impact in line with its national strategic objectives.

34. To address the regionally-based focus of previous case selection, the Tax Office has revised its case approval process to greater reflect national and strategic priorities. Established in August 2007, the PMF was set up to, amongst other things, approve cases and programs following consideration at the regional level. The PMF-endorsed *National Case Selection Process* only came into operation in September 2008, so was not able to be fully assessed as part of this audit.

35. The Commissioner, by law, may only amend a taxpayer's assessment after four years where the Commissioner is of the opinion that there has been fraud or evasion. The *Taxation Authorisation Guidelines* and Tax Office practice statements require a written determination in the name of a Deputy Commissioner to be made to amend such an assessment. The ANAO found that while not affecting the legality of the assessments, the guidelines were not followed in six of the eleven cases where an opinion was required. The ANAO further found one case where the assessment was amended outside the four year elapsed time period with no opinion of fraud or evasion being made. The Tax Office advised the ANAO that it has subsequently revisited the case with no fraud and evasion opinion, and correctly reissued an amended assessment.

36. Fraud programs managed by Australian Government agencies must be carried out in accordance with the *Australian Government Investigations Standards* (AGIS). While there is no single set of internal investigation guidelines for Tax Office staff, the Tax Office has an internal work processes website that contains practices and procedures references for all operational investigations staff. The Tax Office also relies on the external training manuals, Practice Notes from the CDPP, and the AGIS as appropriate guidance. The ANAO sought to identify common practice across the regions and adherence to AGIS in selected areas. The ANAO found inconsistent practices in the use of investigation plans, evidence matrices and critical decision records. While these are not mandatory under the AGIS, they are recommended.

37. The Fraud Control Guidelines state that employees who are primarily engaged in preventing, detecting or investigating fraud are to meet the fraud control competency requirements including the completion of a *Certificate IV in Government (Investigations)*. In response to an annual Fraud Survey, the Tax Office identified 298 staff that were dedicated to fraud control yet only 198 staff had formal qualifications. The Tax Office advised that additional training would be undertaken in 2008–09 to address this issue and a new database coming online in the immediate future should be able to provide more accurate information.

38. The *Proceeds of Crime Act 2002* (POC Act) enables law enforcement authorities to confiscate the proceeds of crime. In 2006, the *Proceeds of Crime Regulations 2002* were amended to include the Tax Office as an enforcement agency for the purposes of the POC Act.<sup>10</sup> The Tax Office has yet to develop an operational proceeds of crime capability. In late 2006, internal submissions were developed with options for how the Tax Office should adapt to its new role as an enforcement agency. In late 2006, the Tax Office engaged a consultant to review POC Act implementation related issues. In May 2007, the review was supported by the SNC Executive. As at November 2008, the Tax Office was still in the process of developing the capability. The development of this capability should broaden the options available to the Tax Office in dealing with serious non-compliance.

39. The ANAO made seven recommendations aimed at improving the Tax Office's management of the risks of fraud and serious evasion.

## Summary of agency response

40. Thank you for the Australian National Audit Office report and recommendations on improvements to the Tax Office's management of Serious Non-Compliance business line (SNC). SNC's role is to investigate potential tax fraud and serious evasion behaviour. It operates under relevant civil and criminal laws and works closely with other parts of the ATO and agencies. The reality is that this is challenging and demanding work and we appreciate that the report recognises this. We also appreciate the recognition given in the report to a raft of changes that have been implemented in Serious Non-Compliance over the past year to modernise systems and processes and improve our management of this work. As recognised in the report, cases selected for review largely came from those finalised during the 2007-08 financial year and most were commenced and significantly progressed before these changes had been implemented.

41. We have agreed with six of the report's recommendations and agree in part with the other. It is encouraging that, in many instances, changes already being implemented in Serious Non-Compliance are consistent with the general tenor of the recommendations. In relation to recommendation 4 to which we agreed in part, we feel that an important context for evaluating SNC's

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<sup>10</sup> Proceeds of Crime Amendment Regulations 2006, section 4A.

activities is that they are usually a part of a broader strategy encompassing help, marketing, audits and summary prosecutions to address strategic compliance risks such as micro business compliance, employer obligation compliance, cash economy etc. SNC's role is to treat the most extreme cases on non compliance for such risks. The other activities involved in these strategies were not within the scope of this audit but they also contribute to the overall effectiveness of the approach to treating strategic compliance risks.

42. Finally we note that the review specifically excluded Project Wickenby—focussed on dealing with abusive use of tax havens—from its terms of reference. While Project Wickenby activities and resources were excluded from consideration in this audit they do represent a very substantial commitment of resources and activities of the line. We would like to take this opportunity to thank your audit team—Charles Higgins and Ian McDonald – for their constructive approach to this review.

# Recommendations

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## Recommendation No.1

### Para 2.34

To assist data collection and reporting obligations required by the Commonwealth Fraud Control Guidelines are met, the ANAO recommends that the Tax Office further improves its procedures and processes so that they support accurate recording and reporting of incidences of alleged fraud.

**Tax Office Response:** *Agreed*

## Recommendation No.2

### Para 2.43

To assist the accurate collection of audit and investigation data for reporting, monitoring and evaluation purposes the ANAO recommends that the Tax Office review and amend as necessary the procedures and processes on the creation and closing of cases on the new case management system.

**Tax Office Response:** *Agreed*

## Recommendation No.3

### Para 3.22

To improve the effectiveness of the Tax Evasion, Avoidance and Crime Communication Strategy, the ANAO recommends that the Tax Office:

- (a) assesses the impact of marketing and communication activities; and
- (b) subsequently assesses, and amend where appropriate, the Tax Evasion, Avoidance and Crime Communication Strategy.

**Tax Office Response:** *Agreed*



**Recommendation  
No.4**

**Para 3.31**

To assist in measuring the performance of the SNC business line, the ANAO recommends that the Tax Office:

- (a) designs appropriate indicators of the effectiveness of strategies to address crimes against Australia's tax administration; and
- (b) develops suitable tests to validate these indicators.

**Tax Office Response:** *Partly agreed*

**Recommendation  
No.5**

**Para 4.24**

To improve the quality of the Tax Office's referral process and information holdings, the ANAO recommends all potential fraud information referrals are registered on a single Tax Office database and are assessed by a centrally coordinated intelligence unit.

**Tax Office Response:** *Agreed*

**Recommendation  
No.6**

**Para 5.40**

To ensure appropriate authorisation when amending tax assessments, the ANAO recommends the Tax Office review and upgrade system controls that enable an amended assessment due to fraud or evasion to be issued.

**Tax Office Response:** *Agreed*

**Recommendation  
No.7**

**Para 5.49**

The ANAO recommends, that to achieve a high level of national consistency in the standard and timeliness of investigations and serious evasion audits, the Tax Office:

- (a) closely monitors the ongoing management of investigations and serious evasion audits; and
- (b) develops and implements a nation-wide approach to the management and conduct of investigations and serious evasion audits.

**Tax Office Response:** *Agreed*



# **Audit Findings and Conclusions**



# 1. Introduction

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*This chapter provides an overview of serious non-compliance, the tax system and the Australian Taxation Office. It also provides information on the conduct of the audit.*

## Serious non-compliance

**1.1** The Australian Taxation Office (Tax Office) defines serious non-compliance as those forms of behaviour which:

- involve disengagement, extremes of evasion, abuse of revenue systems, strong resistance to taxation obligations, or serious criminal conduct; and
- have the potential, left unchecked, to significantly undermine public confidence in the administration of the taxation laws.<sup>11</sup>

**1.2** The Tax Office response to serious non-compliance is governed by a legal and policy framework for fraud (criminal matters) and serious evasion (civil matters). The Tax Office's management of fraud and serious evasion is also guided by the *Commonwealth Fraud Control Guidelines 2002* (Fraud Control Guidelines), *Australian Government Investigations Standards* (AGIS) and the *Prosecution Policy of the Commonwealth*.<sup>12</sup>

**1.3** Fraud against the Commonwealth is a major concern to the Government.<sup>13</sup> The Fraud Control Guidelines provide a framework for agencies to manage both internal and external fraud. Agencies must ensure that fraud is minimised and where fraud does occur, that it is detected, effectively investigated, appropriately prosecuted and that losses are minimised. Under section 45 of the *Financial Management and Accountability Act 1997* (FMA Act), the Chief Executive of an agency must implement a fraud control plan within their agency that addresses both internal and external fraud.

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<sup>11</sup> Internal Tax Office document.

<sup>12</sup> Australian Taxation Office, *Corporate Management Practice Statement—Fraud Control and the Prosecution Process 2007/02*, April 2007, p. 2.

<sup>13</sup> Minister for Justice and Customs, *Commonwealth Fraud Control Guidelines 2002*, Attorney-General's Department, 2002, p. 6.

**1.4** The Tax Office has defined fraud as ‘dishonestly obtaining a benefit by deception or other means’.<sup>14</sup> This definition of fraud has been adopted from the Fraud Control Guidelines and Division 135 of the *Criminal Code Act 1995*. Evasion is defined by the Tax Office as being where a taxpayer deliberately refuses to comply with their tax obligations.<sup>15</sup>

## Overview of the taxation system

**1.5** The Tax Office administers Australia’s tax system and in 2007–08 collected tax and excise revenues of \$278.6 billion and made related payments of \$9.3 billion.<sup>16</sup> The Australian tax system is based on self-assessment and the Tax Office aims to achieve high levels of voluntary compliance with Australia’s tax laws. In the Australian tax system the:

claims a taxpayer makes in their tax return are accepted by the Tax Office, usually without adjustment, and an assessment notice is issued. Even though they may initially accept the tax return, the return may still be subject to further review.<sup>17</sup>

**1.6** The Tax Office is entitled by law, within a specified period of time, to review a tax return and may amend the amount of tax payable. The assessment can be generally amended within a period of up to four years after the tax became due and payable. There is no time limit to amend the assessment where the Commissioner of Taxation (Commissioner) is of the opinion there has been fraud or evasion.

## Compliance Program

**1.7** The Tax Office publishes an annual Compliance Program that outlines its approach to managing compliance with Australia’s tax and superannuation laws. The Compliance Program is based around identified key risks and outlines the range of mitigation strategies used by the Tax Office. These range from helping taxpayers to comply with their obligations through to risk reviews, audits and prosecutions. The Tax Office has ‘identified that a small

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<sup>14</sup> Australian Taxation Office, *Corporate Management Practice Statement—Fraud Control and the Prosecution Process 2007/02*, April 2007, p. 12.

<sup>15</sup> Australian Taxation Office, *2003-04 Compliance Program*, 2003, p. 40.

<sup>16</sup> Australian Taxation Office, *Commissioner of Taxation Annual Report 2007-08*, p. 221.

<sup>17</sup> Australian Taxation Office, *Self-assessment and the Taxpayer*, <<http://www.ato.gov.au/individuals/content.asp?doc=/content/13685.htm>> [accessed 28 November 2008]

number of people deliberately engage in criminal behaviour to evade their tax obligations or otherwise attempt to defraud the Commonwealth'.<sup>18</sup>

**1.8** The Tax Office has identified fraud and serious evasion as a key risk warranting specific attention. The Tax Office's *2008–09 Compliance Program* states that the Tax Office will tackle fraud and serious evasion by:

- gathering and analysing intelligence on risks and threats to the tax system, both directly and through other agencies, including the federal and state police, Australian Transaction Reports and Analysis Centre (AUSTRAC) and our overseas counterparts;
- investigating suspected cases, often jointly with other law enforcement agencies, with a view to prosecution, usually by referral to the Commonwealth Director of Public Prosecutions (CDPP);
- working in conjunction with the CDPP and the Australian Federal Police (AFP), using powers available under the Proceeds of Crime Act to confiscate assets obtained from serious abuse of the tax system;
- complementing criminal investigation work with civil audit work and the application of tax penalties; and
- publicising the outcomes of this work to raise community awareness.<sup>19</sup>

## Compliance Model

**1.9** The Compliance Model (Figure 1.1) illustrates the Tax Office's approach to understanding the factors that influence the compliance behaviour of taxpayers. The Compliance Model reflects the different attitudes of taxpayers and the Tax Office's approach to dealing with these different attitudes. It shows taxpayers at one end willing to do the right thing and at the other extreme those who have decided not to comply. The Tax Office's strategies to deal with these taxpayer groups range from making it easy to comply, to using the full force of the law. It also shows that a taxpayer's willingness to comply is affected by external factors such as socio-economic factors.

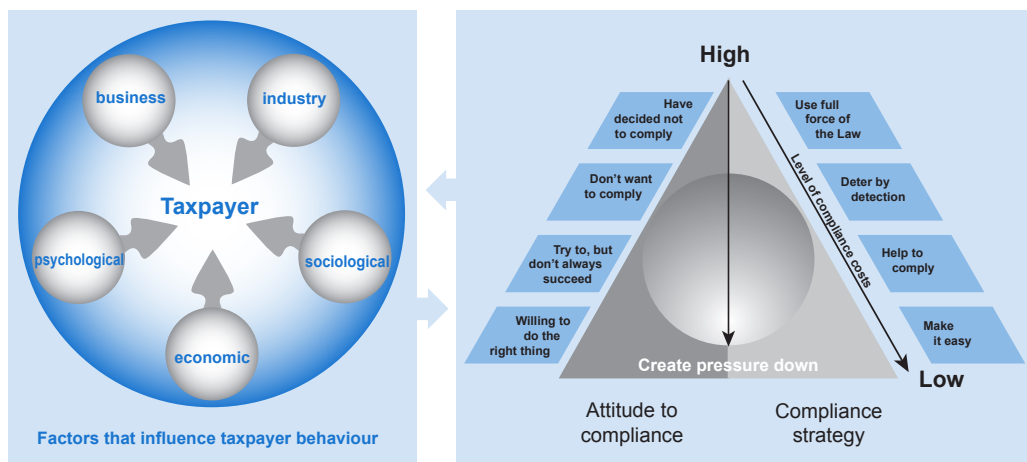
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<sup>18</sup> Australian Taxation Office, *2008–09 Compliance Program*, 2008, p. 83.

<sup>19</sup> *ibid.*, p. 85.

**Figure 1.1**

## **Tax Office Compliance Model**



Source: Australian Taxation Office, *2008-09 Compliance Program*, p. 8.

## **Taxpayers' Charter**

**1.10** The Taxpayers' Charter was introduced in 1997 and articulates taxpayers' rights and obligations under the tax system. It sets out the Tax Office's conduct when dealing with the taxpayer. It is designed to help taxpayers understand:

- their rights under the law;
- the service and other standards they can expect from the Tax Office;
- important tax obligations; and
- what can be done if they are dissatisfied with decisions, actions or service, or want to make a complaint.

**1.11** To support the self-assessment tax system adopted in Australia, taxpayers' attitudes towards the Tax Office are important in keeping compliance levels high. The way the Tax Office is viewed by the community is important because the Tax Office considers there is a direct correlation between the level of trust and respect from the community and the level of voluntary compliance. SNC activities are important to community confidence levels because of the public profile that investigations and prosecutions have within a community.



## Serious Non-Compliance business line

**1.12** In July 2003 the Tax Office created the Serious Non-Compliance business line (SNC) within the compliance sub-plan by amalgamating some existing resources from other business lines, including combining the major functions of three Tax Office units:

- Special Audit;
- Fraud Investigations Unit, a merger of Goods and Services Tax (GST) Fraud Unit and Prosecutions Investigations Unit; and
- Excise Investigations Unit.

**1.13** SNC's role is to enhance the Tax Office's capability to deter, detect and deal more effectively with: the extreme elements of tax, superannuation and excise duty evasion; clients who are disengaged from the tax system; and, clients with a strong resistance to complying with their tax obligations. The Tax Office Corporate Management Practice Statement *Fraud Control and the Prosecution Process* lists SNC responsibilities as:

- deterring, detecting and dealing with serious non-compliance behaviour, including fraud against the revenue system;
- deciding whether or not there is sufficient evidence that external fraud exists and for referring cases to the CDPP or Australian Government Solicitor (AGS) for possible prosecution; and
- contributing to the collection, collation and provision of certain information for the Attorney-General's Department Annual Fraud Report.<sup>20</sup>

**1.14** The Commissioner stated of SNC in 2006 that:

it is important to note that this mission does not give primacy to the revenue collected directly from these activities...We need to guide our activities by our primary mission of enhancing community confidence in the tax system.<sup>21</sup>

**1.15** The Tax Office has identified in its *2008–09 Compliance Program* the following specific compliance issues: refund fraud (including GST and income

<sup>20</sup> Australian Taxation Office, *Corporate Management Practice Statement—Fraud Control and the Prosecution Process 2007/02*, April 2007.

<sup>21</sup> Internal Tax Office document.

tax refund fraud); secret offshore dealings; organised crime and the tax system; and risks to the superannuation and excise systems.

**1.16** SNC undertakes investigations under the *Crimes Act 1914*, the *Criminal Code 1995*, the *Excise Act 1901* and to a lesser extent offences under the *Tax Administration Act 1953*, with the intention of producing a brief of evidence to be used by the CDPP to seek a criminal conviction or by the AGS for civil based proceedings. SNC also carries out audits under Australia’s tax and superannuation laws with the intention of raising a tax liability where there is non-compliance with those laws. Investigations are undertaken for cases of fraud and audits are undertaken for cases of serious evasion. The behaviours of the taxpayer and subsequent distinction between fraud and serious evasion responses are not always clear and the Tax Office responses are not necessarily mutually exclusive. Table 1.1 summarises the Tax Office’s response to fraud and serious evasion behaviours.

**Table 1.1**  
**Summary of the Tax Office’s response to fraud and serious evasion**

Response	Fraud	Serious evasion
Proceedings	Criminal	Civil
Legislation	Crimes and Excise Acts	Tax and Superannuation Acts
Compliance activity	Investigation	Audit
Result	Criminal conviction	Tax liabilities raised and penalties applied

Source: ANAO analysis of Tax Office information.

**1.17** In 2007–08 SNC conducted 205 audits and raised liabilities of \$191.4 million.<sup>22</sup> It undertook 178 investigations, with 93 briefs of evidence referred to the CDPP and AGS for prosecution; there were 77 successful prosecutions in 2007–08. As at June 2008 SNC employed 386<sup>23</sup> staff and was run at a cost of approximately \$41.4 million.

**1.18** SNC consists of four separate operational areas (Figure 1.2). These areas are:

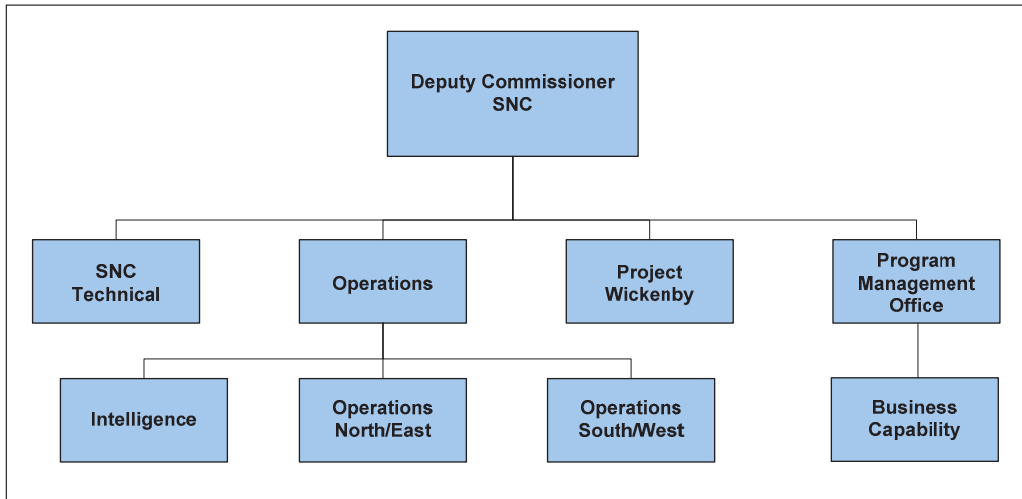
<sup>22</sup> These figures exclude matters related to Project Wickenby. The ANAO further notes these figures are not the same figures as reported in *Commissioner of Taxation Annual Report 2007-08*. For further discussion on performance reporting see paragraphs 2.36-2.42.

<sup>23</sup> An additional 200 SNC staff work in Project Wickenby.

- SNC Technical
- Operations (including investigation, audit and intelligence);
- Project Wickenby; and
- Program Management Office (including Business Capability).

**Figure 1.2**

**SNC organisational structure**



Source: ANAO analysis of Tax Office information.

**1.19** Project Wickenby is a significant cross-agency operation examining the use of international arrangements to avoid tax liabilities and the subsequent payment of tax. The Tax Office stated that Project Wickenby is a new project model that has brought together national and international agencies to collaborate in addressing the fraud and serious evasion risk. While Project Wickenby staff are within SNC and senior management have a significant role in leading and managing the project, the specific funding commitments and cross-agency focus has resulted in separate case selection, case management and intelligence functions compared to the rest of SNC. Project Wickenby was not reviewed as part of this audit.

**1.20** The secretive nature of fraud and serious evasion makes it difficult or impossible to accurately measure its size—several attempts have been made to estimate parts of the revenue lost due to tax crime. The Tax Office does not undertake measurement of the fraud and serious evasion risk itself for a range

of reasons, including ‘concerns about the accuracy of the estimates and the fact they may shed little light on the sources of and reasons for non-compliance.’<sup>24</sup> The Tax Office focus for SNC’s activity is on community confidence and influencing voluntary compliance. There have been various attempts by external agencies to place some context to the size of the potential issue to assist with the allocation of appropriate resourcing. The ANAO notes the focus of each study is slightly different and can only be an indication of the potential risk. In 2003, the Australian Bureau of Statistics estimated that activities used to deliberately conceal income or avoid paying taxes could not be more than about 2 per cent of GDP (about \$17.9 billion).<sup>25</sup> Other research claims that in 2002 it could have been as high as 14.1 per cent of GDP (about \$122.3 billion).<sup>26</sup> The *Walker Report 1995* has suggested that the likely value of crime in Australia results in money laundering in the order of \$4.5 billion.<sup>27</sup> Research conducted in 2004 estimates the value of laundered money in Australia could be as high as \$6.3 billion.<sup>28</sup> All of these studies have noted the limitations of the methods used and the limits on their accuracy.

**1.21** The Fraud Control Guidelines state that the AFP has the primary law enforcement responsibility for investigating serious or complex crime against the Commonwealth. Agencies that have satisfied the AFP and CDPP that they have the capacity and appropriate skills and resources needed to investigate criminal matters and meet the requirements of the CDPP in gathering evidence may undertake investigations of serious or complex fraud offences. The Tax Office has met these requirements and undertakes its own investigations of serious or complex fraud.

**1.22** The Tax Office states that prosecution action may not always be the most appropriate compliance strategy—hence not all cases of fraud are referred, after investigation, to the CDPP or AGS to be considered for

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<sup>24</sup> Commissioner of Taxation, ‘Sustaining good practice in tax administration’, January 2009 at <<http://www.ato.gov.au/corporate/content.asp?doc=/content/00176063.htm>> [accessed 28 November 2008].

<sup>25</sup> Australian Bureau of Statistics, *Underground economy and Australia's GDP*, ABS, Canberra, 2003, pp. 13, 18.

<sup>26</sup> Schneider, F. (2002), “*The Size and Measurement of the Hidden Economy in 110 Countries Around the World*”, National Tax Centre, ANU, Canberra, Australia, July 17, 2002, referred in, National Audit Office, *Tackling the Hidden Economy*, NAO, London, 2008, p. 35.

<sup>27</sup> AUSTRAC, John Walker Trends Analysis and the Criminal Justice Research Group, *The Extent of Money Laundering in and through Australia in 2004*, RMIT, 2004, p.11.

<sup>28</sup> *ibid.*, p.8.

prosecution action. The Tax Office may take administrative action, such as stopping the processing of potentially fraudulent returns, to mitigate the risk of fraud due to resourcing constraints or the nature of a case.

**1.23** The following risks relate to fraud and serious evasion, based on Tax Office experience.

### **Risks relating to fraud and serious evasion**

#### **Identity Crime**

- The threat in relation to identity crime comes from opportunistic individuals and organised groups exploiting the growth in online transactions to steal personal identity data. This can then be used to take over an identity and conduct fraudulent transactions with the tax system. There is also an organised global trade in stolen identities.

#### **High-volume, low-value suspect transactions**

- The Tax Office is identifying coordinated attempts at fraud using high volumes of low-value transactions through returns and activity statements. Those involved aim to slip under the radar of Tax Office risk identification systems. In response, the Tax Office is gathering intelligence with law enforcement agencies and financial institutions and refining its risk identification filters. This type of fraud often includes an element of identity crime.

#### **Credit and refund fraud**

- Credit and refund fraud is perpetrated through fraudulent registrations and claims, and the use of complex structures and transactions. Before the Tax Office issues refunds they are automatically checked against a set of criteria based on intelligence from compliance activities.

#### **Illicit tobacco growing and trading**

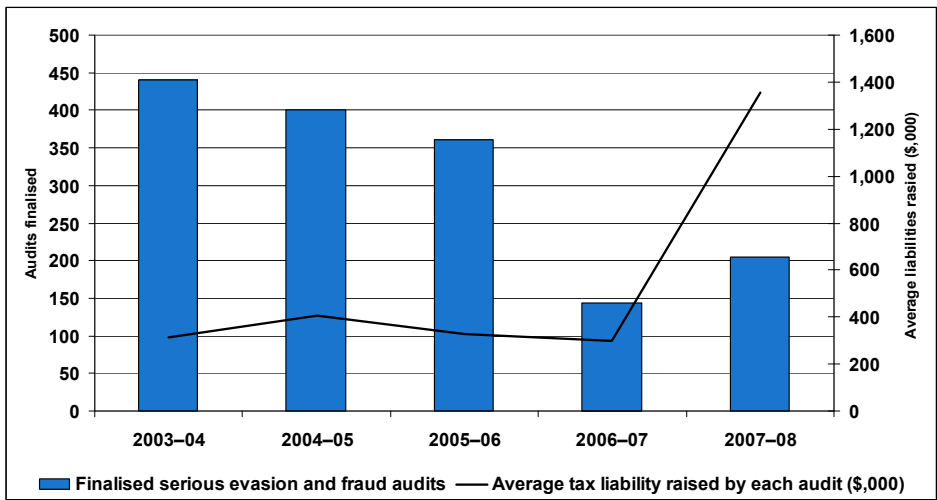
- The end of Australia's legal tobacco growing industry in 2006 has meant that the mischief involved in illicit tobacco has changed from the diversion of legally grown tobacco to illicit importation and growing. The Tax Office is monitoring this issue and undertakes enforcement action with the Australian Customs Service as required.

Source: ANAO analysis of Tax Office information.

**1.24** In responding to incidences of serious evasion, SNC has conducted fewer audits in recent years. This is in part due to a change of focus of project work and the movement of experienced staff to Project Wickenby in 2005-06. The ANAO notes the consequence of often long cycle times of audits is that the effect of decisions and work is often delayed past one or more financial years. The average liability raised by audit cases finalised increased substantially in 2007-08, as shown in Figure 1.3.

Figure 1.3

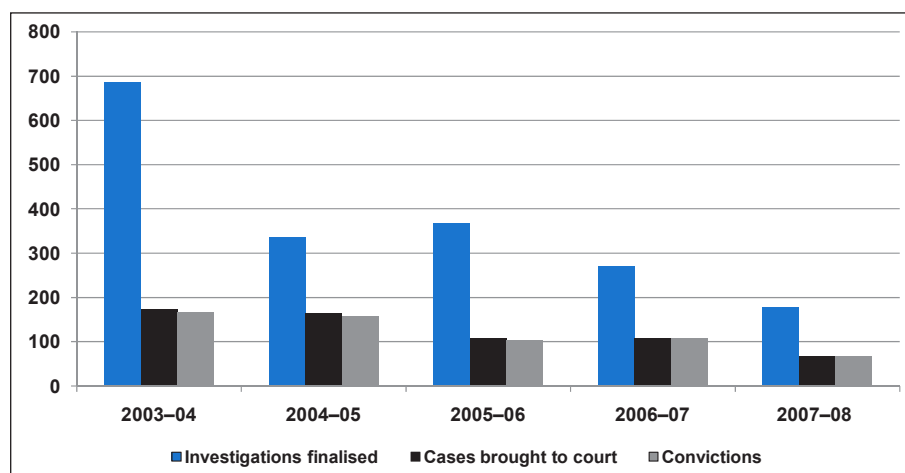
SNC audits and tax liability raised\*



\*Note: Excludes matters relating to Project Wickenby.

Source: ANAO analysis of Tax Office information.

**1.25** The number of investigations finalised by SNC has generally decreased since the business line was created, from 685 in 2003–04 to 178 in 2007–08. This is due in part to the rationalisation of the three separate investigation units when the line was created and the conclusion of a project that was conducted from 2000 to 2005 in relation to alleged fraud being perpetrated by prisoners or their associates. While always high, the rate of conviction from briefs delivered to and accepted by the CDPP and AGS increased to 100 per cent last year and over 68 per cent of convictions in 2007–08 resulted in a custodial term; a trend that has increased over the last three years. The high rate of convictions is consistent with the CDPP’s overall conviction rate of 98 per cent in 2007–08. A difficulty in assessing the performance of investigations is the long cycle times of both the investigation and the prosecution. Figure 1.4 represents the cases finalised, those brought to court and convictions achieved from 2003–04 to 2007–08 (excluding Project Wickenby matters).

**Figure 1.4****Cases finalised, brought to court and convictions achieved\***

\*Note: Excludes matters relating to Project Wickenby.

Source: ANAO analysis of Tax Office information.

## Previous reviews and audits of the Tax Office's serious non-compliance capabilities

**1.26** ANAO Audit Report No.55 2002-03, *Goods and Services Tax Fraud Prevention and Control* found the Tax Office had systems and processes in place to prevent, detect, investigate and report on GST fraud. The audit identified a number of issues in the Tax Office's administration and made eight recommendations aimed at strengthening the Tax Office's systems and processes. The ANAO Audit Report No.33 2005-06, *Administration of Petroleum and Tobacco Excise Collections: Follow-up Audit* also focused on various operational aspects of SNC, in particular, those relating to tobacco excise. The audit concluded that the Tax Office had implemented most of the 20 original recommendations and identified several areas where the administration of excise could be strengthened.

**1.27** In 2003, Mr Tom Sherman AO was engaged by the Tax Office to produce an internal report to advise on the establishment, management arrangements and governance requirements of the newly formed SNC business line. Mr Sherman's report made recommendations about:

- SNC's relationships with other business lines within the Tax Office and with other external agencies;
- training, skilling and other needs for teams within SNC; and

- SNC's work from a 'whole of Tax Office' view.

**1.28** More recently, Mr Dale Boucher was engaged by the Tax Office and finalised an internal *Report of a Review of Information Handling Practices in the Serious Non-Compliance Business Line of the Australian Taxation Office* (December 2008). At the time of this audit, the Honourable Gerald (Tony) Fitzgerald AC QC was also engaged by the Tax Office for an internal administrative review process. The ANAO liaised with the Tax Office to ensure there was minimal duplication between the audit process and the recent reviews.

## Key agency relationships and international participation

### Key agency relationships

**1.29** In order to manage the fraud and serious evasion risk, SNC has developed relationships with key agencies also involved in responding to fraud and serious evasion. A list of the key agency relationships is located in Appendix 2.

### International participation

**1.30** The Organisation for Economic Co-operation and Development (OECD) provides a forum where governments compare policy experiences, seek answers to common problems, identify good practice and coordinate domestic and international policies. The Tax Office participates in several committees and working groups, including Working Party 8 which investigates how member governments can co-operate to minimise the extent of tax evasion and avoidance.

**1.31** The Forum on Tax Administration (FTA) was created by the OECD in 2004 to encourage a dialogue between tax administrators on strategic tax administration. The FTA brings together Commissioners from 30 OECD member countries, including Australia, and key non-OECD countries. The aim of FTA is to promote a dialogue between tax administrations and to identify good tax administration practices, share information and experiences and to develop best practices for tax administration. The diverse membership provides unique opportunities for heads of revenue agencies to discuss key issues and share knowledge.

**1.32** The Joint International Tax Shelter Information Centre (JITSIC) was formed in 2004 by the revenue agencies of Australia, Canada, the United



Kingdom and the United States; Japan joined in 2007. JITSIC's purpose is to 'supplement their ongoing work in identifying and curbing tax avoidance and shelters and those who promote them and invest in them'.<sup>29</sup> This partnership allows revenue agencies to exchange information on abusive tax schemes, their promoters and investors.

**1.33** Tax Office participation in international forums assists SNC in increasing its knowledge base of emerging risks and alternative responses to perceived and emerging threats.

## Audit objective, scope and methodology

### Objective

**1.34** The objective of the audit was to assess the administrative effectiveness of the Tax Office's strategies to address serious non-compliance.

**1.35** In conducting the audit, the audit team examined the Tax Office's management framework and administrative arrangements to deter, detect and deal with fraud and serious evasion.

### Scope

**1.36** The audit reviewed the effectiveness of the Tax Office's management of the risks of fraud and serious evasion. The audit also examined whether the Tax Office has developed a comprehensive and integrated whole of agency approach to managing the risks of fraud and serious evasion. The following items were excluded from the scope of the audit: Project Wickenby; in-house prosecutions; and internal fraud.

### Audit methodology

**1.37** The audit formed an independent view about Tax Office management of fraud and serious evasion. This was achieved by interviewing staff, and examining files and other relevant documentation. A sample of referrals to SNC incorporating those accepted and rejected for review, and a sample of completed investigation and audit cases was examined. The sample assessment focused on the Tax Office's compliance with the Fraud Control

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<sup>29</sup> 'Expansion of Joint International Tax Shelter Information Centre (JITSIC)' <[www.ato.gov.au/corporate/content.asp?doc=/content/85083.htm](http://www.ato.gov.au/corporate/content.asp?doc=/content/85083.htm)>, [accessed 28 November 2008].

Guidelines and other relevant Government policies. The ANAO consulted key public and private sector stakeholders during the audit.

**1.38** The audit was undertaken in accordance with ANAO auditing standards at a cost of \$330 000.

**1.39** The ANAO would like to thank the Tax Office staff who assisted with the conduct of the audit for their time, effort and expertise. The ANAO also appreciates the co-operation and assistance provided by the public and private sector stakeholders consulted during the audit.

## 2. Management Arrangements

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*This chapter reviews the Tax Office's management framework that supports the arrangements to deter, detect and deal with fraud and serious evasion. It also examines the framework and main activities for reporting of serious non-compliance.*

### Introduction

**2.1** The development and implementation of sound governance arrangements support the effective management of agencies' program and service delivery. The principles of governance in the public sector are discussed in detail in the ANAO *Better Practice Guide, Public Sector Governance*, July 2003, which notes that:

broadly speaking, 'corporate governance' refers to the processes by which organisations are directed, controlled and held to account. It encompasses authority, accountability, stewardship, leadership, direction and control exercised in the organisation.<sup>30</sup>

**2.2** While numerous business lines across the Tax Office encounter fraud and serious evasion risks, SNC has been corporately designated the 'risk owner' for fraud and serious evasion risks. The SNC Executive sets the strategic direction for the business line and is accountable for implementing the priorities of SNC. The SNC Program Steering Committee has a leadership and governance responsibility for fraud and serious evasion risks. The SNC Program Management Forum is responsible for allocation of SNC resources to best mitigate fraud and serious evasion risks.

**2.3** To assess the effectiveness of the Tax Office's management arrangements supporting the administration of fraud and serious evasion risks, the ANAO examined key management elements:

- Tax Office fraud policy statement;
- responsibilities of key business areas and committees;
- an overview of the risk management framework; and
- performance monitoring and reporting.

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<sup>30</sup> ANAO *Better Practice Guide—Public Sector Governance*, July 2003.

## Tax Office Fraud Policy Statement

**2.4** Section 45 of the FMA Act requires a Chief Executive to implement a fraud control plan for their Agency. The Tax Office develops biannual Fraud Control Plans and have issued a *Corporate Management Practice Statement on Fraud Control and the Prosecution Policy 2007/02* (Fraud Practice Statement) that provides:

- a framework to actively manage fraud risks;
- guidance for employees so that they understand what fraud is;
- for the establishment of a framework for the development of the fraud control plan; and
- a description of the referral processes for fraud and other offences.

**2.5** The Tax Office's Fraud Practice Statement states:

In all cases, where a Tax Office employee is of the view that there is either a suspicion or a strong indication that external fraud may have been committed against the revenue system, they must make a referral to Serious Non-Compliance, at the time the view is formed, documented and supported...<sup>31</sup>

**2.6** The identification and management of fraud can be a difficult task given the requirement to establish intent. The Fraud Practice Statement is a practical guide that clearly establishes a framework for managing identified potential fraud for Tax Office employees.

## Responsibilities of key business areas and committees

### Serious Non-Compliance business line

**2.7** SNC is the risk owner of the compliance risk 'crime affecting Australia's tax administration'. This includes the following sub-risks:

- internationally facilitated income tax fraud; and
- serious fraud and evasion.

**2.8** As risk owner, the SNC Executive provides oversight for all aspects of the risks: identification, assessment and prioritisation, analysis, determining treatment strategies, planning and implementing strategies, evaluation,

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<sup>31</sup> Australian Taxation Office, *Corporate Management Practice Statement—Fraud Control and the Prosecution Policy 2007/02*, April 2007, p. 17.

monitoring and reporting. SNC also provide a service delivery role to collaboratively help risk owners in other business lines across the Tax Office manage the fraud and serious evasion risk.

## **SNC Executive**

**2.9** The SNC Executive is a management forum responsible for driving SNC business performance. The SNC Executive:

- approves and oversees the delivery of planned business performance and line governance assurance;
- endorses SNC's risk management approaches and strategies for each risk area and monitors significant risk variation;
- supports leadership for major change; and
- implements strategic directions and monitors emerging intelligence to provide early warning of required changes to settings.

**2.10** The SNC Executive consists of the Deputy Commissioner of SNC, the Strategic Adviser to the Deputy Commissioner of SNC and nine Assistant Commissioners responsible for operations, technical and program management within SNC and Project Wickenby. Others are invited to attend as appropriate. The forum meets monthly and conducts weekly phone hook-ups.

**2.11** The aim of the SNC Executive is to ensure that SNC maximises its business outcomes while building sustainable capability to position the Tax Office and enforcement partner agencies to deter, detect and deal with fraud and serious evasion matters. Associated roles include:

- ultimate accountability for delivery of the SNC delivery plan;
- management of SNC internal and external risks; and
- appropriate escalation of issues.

## **Program Steering Committee**

**2.12** The Program Steering Committee (PSC) was formed in 2007 to:

- manage relationships with business areas outside of SNC who are key stakeholders in their operational and intelligence work; and
- develop and agree the risk picture for SNC that is aligned to corporate priorities and include recommended strategic responses from SNC.

**2.13** The PSC Charter states: 'the PSC is also an important forum in making decisions to accept, reject, terminate, finalise or provide resources to new programs or emerging risks.' The ANAO notes that the PSC primarily provides an advisory role to SNC and that the SNC Executive has ultimate accountability to provide resources to new programs or emerging risks. The ANAO suggests the PSC Charter is amended to reflect the accountability arrangements.

**2.14** Membership of the PSC consists of the Assistant Commissioners from SNC along with an Assistant Commissioner from each of the key related Compliance business lines. The membership of Assistant Commissioners from other business lines helps SNC to work in partnership with stakeholders including other Tax Office business lines and their risk owners. The PSC works to enhance members' understanding of the behaviours of taxpayers at the serious end of non-compliance, and to ensure the members undertake the most appropriate treatment strategies, including coordinated cross business line approaches, to maintain community confidence and optimise voluntary compliance. The PSC is also able to provide updates on compliance work undertaken by SNC. The PSC assists SNC to act in its role of risk owner for fraud and serious evasion and meets on average every two months.

## **Program Management Forum**

**2.15** The Program Management Forum (PMF), formed in 2007, is the operational management forum implemented to manage achievement of SNC operational performance targets. Its membership consists of various Assistant Commissioners from SNC, regional directors, other directors of SNC capabilities and directors of other business lines as required. The PMF Charter was endorsed in July 2008 and lists the PMF's strategic objectives as:

- outlining and recommending to the PSC a program of work, based on strategic risks, that SNC is accountable for;
- ensuring that SNC's priorities across all activities are being monitored and managed to provide the most effective use of SNC resources;
- outlining and recommending program and project plans for all areas, to the PSC and monitor their implementation and progress; and
- ensuring a consistent national process of case reviews to achieve efficient management of programs and quality outcomes.

**2.16** The strategic objectives of the PMF do not clearly reflect the accountability arrangements for the program of work of SNC. While the SNC Executive has the ultimate accountability for the activities of SNC, the PMF Charter notes the role of the PSC is to endorse recommendations of PMF programs of work. The ANAO review of board papers showed that while the PSC does endorse bodies of work, in practice, the PSC is primarily an advisory and key stakeholder body and does not have accountability over endorsed programs of work. The ANAO suggests the PMF Charter is amended to accurately reflect the accountability arrangements.

**2.17** As of September 2008, the PMF is also the case selection authority within SNC. All cases viewed by the Regional Forums, whether accepted or rejected, should be escalated to the PMF to determine if the case is within SNC priorities and is the most effective use of SNC's resources. There is scope for regions to undertake cases without PMF approval if they are within an approved project scope—discussed further in Chapter 5. This process aims to give a strategic direction to SNC case selection that aligns with national priorities.

## **Regional Forums**

**2.18** Regional Forums select those cases for which they propose to initiate an investigation or audit. Membership of the regional forums includes key business line Directors to ensure a focus on risk, priorities and mitigation strategies. Each State has a regional forum with the exception of Tasmania which is serviced by the Victorian Forum; the Australian Capital Territory which is serviced by the New South Wales forum; and the Northern Territory which is serviced by the South Australian forum. Historically, the regions each have had a focus on particular casework due to previous experience with that risk or a perception that the risk is elevated in that region. For example, excise cases are prevalent in one region while another region might focus on illegal tax minimisation schemes.

## **Conclusion**

**2.19** The SNC Executive is the main oversight body within SNC. The PSC assists in aligning the national program of work for the business line. The PSC provides advice on a balanced approach to addressing the risk across priority areas. The PMF selects cases and programs it believes will align the actions of SNC with their strategic direction. The Regional Forums recommend cases they consider to meet the national strategic direction of SNC.

**2.20** The Tax Office has taken significant steps towards the development and implementation of sound governance arrangements to support the effective management of SNC. While the effectiveness and appropriateness of the recent initiatives is yet to be established, the introduction of the PSC and PMF is designed to assist the Tax Office in providing appropriate management oversight to SNC. The PSC facilitates communication of the current risks faced by other business lines and allows the Tax Office to manage fraud and serious evasion risks with a whole of office approach. The PMF manages operational performance targets by managing priorities, ongoing monitoring and managing work and resource allocation. Comment provided to the ANAO by PSC Panel Members in other business lines suggests that the new arrangement has given them a greater understanding of the work that SNC undertakes and allows them to manage information flows with SNC.

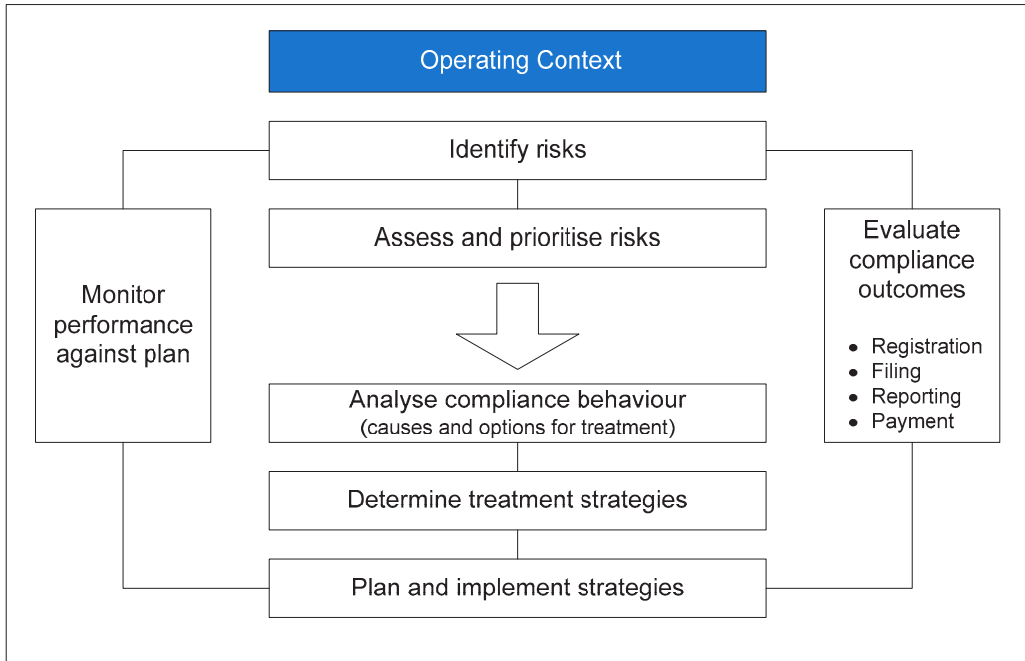
## **Risk management framework**

**2.21** To administer the tax system and effectively address business and compliance risks, the Tax Office has adopted a matrix management model. SNC's risk management framework takes place within the context of a Tax Office wide risk management framework. The model that underpins the Tax Office compliance risk model is presented in Figure 2.1. This model is consistent with Australian Standard/New Zealand Standard 4360:2004 *Risk Management* and OECD literature.<sup>32</sup>

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<sup>32</sup> OECD, *Monitoring Taxpayers' Compliance: A Practical Guide Based on Revenue Body Experience*, 2008, p. 8.



**Figure 2.1****The Tax Office's compliance risk model**

Source: Tax Office, *Risk Management: Managing the Tax Office and Managing Compliance*, 2004, p. 29.

**2.22** The model is designed to apply a systematic and disciplined approach to compliance risk management. As part of its management framework, the Tax Office classifies revenue products, market segments and special focus areas to assist with risk identification, and organisational and business planning. The Tax Office has a formal 'Health of the System Assessment' (HOTSA) process that informs the development of the Compliance Program and a range of mitigation plans. The business lines are responsible for achieving the Tax Office's outcome and output commitments to Government. The Strategic Risk Register records the Tax Office's highest priority risks; those rated as 'high' or 'severe'. It is updated monthly and informed by environmental scans, the HOTSA process, and Tax Office committees. The HOTSA process and Strategic Risk Register arrangements provide an adequate framework at a whole of Tax Office level for the assessment, prioritisation and recording of fraud and serious evasion risks. The specific application of the compliance risk model to the activities of SNC is discussed in detail in Chapters 3, 4 and 5.

## Performance reporting

**2.23** An effective performance reporting and monitoring system is a key aspect of a well-governed agency. Good governance requires that the agency has a structured and regular system of performance monitoring and review. This system should be aligned with the agency's outcomes and outputs framework, and generate information that is appropriate for both internal and external performance management needs and external reporting requirements such as the annual report.<sup>33</sup>

**2.24** SNC has specific fraud reporting obligations and corporate reporting obligations as part of the Compliance Sub-Plan. The ANAO assessed SNC's involvement in two key areas of performance reporting: the Attorney-General's fraud report, and internal activity reporting.

### Attorney-General's Fraud Report

**2.25** It is a requirement of the Fraud Control Guidelines that government agencies, including the Tax Office, collect information on fraud and provide it to the Attorney-General's Department (AGD) in response to an annual fraud survey. The fraud survey is currently managed by the Australian Institute of Criminology (AIC). Agencies have to keep information on incidences of '...suspected fraud, matters under investigation, and completed matters, and whether the fraud was proven or not, and whether the matter was dealt with by a criminal, civil or administrative remedy.'<sup>34</sup>

#### *Historical surveys*

**2.26** The AGD fraud surveys for 2005–06 and 2006–07 asked agencies to report how many alleged incidents of fraud were identified by or reported to the agency. The Tax Office's Fraud Practice Statement states:

In all cases, where a Tax Office employee is of the view that there is either a suspicion or a strong indication that external fraud may have been committed against the revenue system, they must make a referral to Serious Non-Compliance.

**2.27** The Tax Office responded that 3238 alleged incidents were identified in 2006–07 and 3139 alleged incidents were identified in 2005–06. From these

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<sup>33</sup> ANAO *Better Practice Guide—Better Practice in Annual Performance Reporting*, 2004, p. 1.

<sup>34</sup> Minister for Justice and Customs, *Commonwealth Fraud Control Guidelines 2002*, Attorney-General's Department, 2002, p 29.

alleged incidences, SNC commenced 256 investigations in 2006-07 and 301 investigations in 2005-06. These numbers were derived mainly from the SNC intelligence database; a proprietary database program used for capturing, controlling and analysing multisource data in a secure environment. SNC uses this program to record fraud referrals and to process information. ANAO testing in December 2008 of a sample of investigations showed that 20 out of 32 of the cases (62 per cent) referred to the CDPP were originally recorded on the SNC intelligence database system. The reliance on the SNC intelligence database, as a means of providing information for the AGD Fraud Survey, is likely to have resulted in an under reporting of alleged incidences of fraud .. The Tax Office noted some system limitations in answering survey questions and SNC has subsequently implemented new procedures to ensure that all new investigations are recorded on the SNC intelligence database.

**2.28** The Tax Office's Evidence, Litigation and Intelligence Management (ELIM) is a program of work designed to improve the Tax Office's evidence, litigation and intelligence management capability. In the second quarter of 2009, ELIM is scheduled to deploy a basic Intelligence Analyst Workbench to a targeted select group of analysts, including some from SNC. In parallel with ELIM's Intelligence Analyst Workbench project, SNC is also planning to move to use a new work management system. The SNC move to a new work management system should improve its ability to manage and report on intelligence activities.

### *2007-08 Survey*

**2.29** The Fraud Control Guidelines require agencies to collect and report the 'total number of alleged cases of fraud identified or reported for evaluation'. The 2007-08 survey had an attached new glossary of terms which defined an allegation as:

An accusation made by a person that an offence has or may have been committed. This does not require substantial proof of the offences or identification of suspects, however, accusations should only be included where there exists sufficient evidence to warrant an initial investigation by your agency.<sup>35</sup>

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<sup>35</sup> Australian Institute of Criminology, *Commonwealth Fraud Control Guidelines Annual Fraud Reporting Questionnaire 2007-08*, p 19.

**2.30** SNC deemed that an investigation must have started in order to meet the definition. The Tax Office in 2007–08 therefore only intended to report those investigations that were created on their case management system. While SNC recorded over 3000 information referrals on the SNC intelligence database system, only 498 alleged incidents of fraud were reported in the 2007–08 survey. The ANAO also notes the 498 counted in the survey included not only cases of fraud into which an investigation started in 2007–08, but also all cases created within SNC on the Tax Office’s case management system. The Tax Office actually started only 131 investigations in 2007–08. Table 2.1 outlines the survey responses by the Tax Office of incidences of alleged fraud reported to the AGD .

**Table 2.1**

**Incidences of alleged fraud reported to the AGD**

Year	Incidences of alleged fraud
2005–06	3 139
2006–07	3 238
2007–08	498

Source: ANAO analysis of Tax Office information.

**2.31** The changed definition contained within the 2007–08 survey, and the Tax Office’s interpretation of the new definition, resulted in different incidences being reported. If any trend analysis is undertaken from the survey the information required needs to be provided on a similar basis for each year.

**2.32** The ANAO acknowledges the difficulty the Tax Office systems have in producing accurate answers to the AGD fraud survey. The ANAO has previously identified a deficiency in the Tax Office’s ability to accurately report incidences of external fraud.<sup>36</sup> Legacy case management system enabled the Tax Office to answer most questions on the fraud control survey. The implementation of the new case management system has left SNC unable to

<sup>36</sup> ANAO Audit Report No.55 2002-03, *Goods and Services Tax Fraud Prevention and Control*, p. 49. The report recommended that the Tax Office review data collection and the integrity of data to be included in the AGD annual fraud report.

answer most of the questions. The Tax Office advised that work has been undertaken to remedy this situation.

**2.33** Further, the Tax Office advised that contact has been instigated with the AIC to clarify definitions in the AGD fraud survey, to discuss challenges in accurately completing the survey using current systems and to seek advice regarding the development of systems to respond to future surveys. The Tax Office advised that they provided a response based on previous interpretations of the survey definition to allow the AIC to complete a longitudinal analysis of their existing data. The implementation of new systems is 'likely to provide a medium term solution for this reporting requirement but this will not be in place for the 2008–09 survey.'<sup>37</sup> The Tax Office has committed to further meetings with the AIC to discuss the best way to answer future surveys.

## Recommendation No.1

**2.34** To assist data collection and reporting obligations required by the Commonwealth Fraud Control Guidelines are met, the ANAO recommends that the Tax Office further improves its procedures and processes so that they support accurate recording and reporting of incidences of alleged fraud.

### *Tax Office Response*

**2.35** Agreed. Following definitional changes by the Australian Institute of Criminology that an allegation of fraud should contain sufficient evidence to warrant an initial investigation, the Tax Office changed its reporting and now reports only the number of investigations and audits initiated by SNC. This has resulted in a dramatic reduction in incidences reported.

**2.36** The report identified that some mistakes in reporting occurred in 2005–06 and 2006–07 years. These errors should not now occur as under the new definition the numbers of cases initiated can be drawn directly from our case management system.

**2.37** The Tax Office is also implementing new systems Analyst Workbench supported by Siebel work management – which will, inter alia, improve our ability to capture, store and analyse referrals and conduct an initial assessment of allegations. This enhanced technical support will assist us in completing future surveys.

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<sup>37</sup> Internal Tax Office document.

## Activity reporting

**2.38** The Commissioner of Taxation's *Annual Report 2007–08* reported that SNC's activities included the completion of 314 audits—including 109 audits related to Project Wickenby. The ANAO reviewed a sample of audits from the 205 non-Wickenby audits and two of the 44 cases (five per cent) reviewed were incorrectly recorded as audits. There were 10 early exits (a subset of audits), while correctly being recorded as early exits, were created solely as a consequence of the implementation of the new case management system and did not have an individual file—these matters were part of a larger project. The ANAO notes none of these 12 occurrences were reported as raising a tax liability. In summary, after adjusting the original sample of 44 cases for the duplicate case records and early exits, 32 audit cases with paper files were reviewed.

**2.39** The ANAO case study of 33 investigations also identified that one investigation case, reported as a 'brief handed to the CDPP', was a case started in error. A quality review conducted by SNC in October 2008 reviewed 50 investigation cases and found seven cases (14 per cent) were selected for review but had to be removed from the sample as they were not actual cases. Cases were removed for the following reasons:

- duplications of case creation;
- created in the wrong case product;
- created at migration but not needed; and
- created at migration on a wrong tax file number.

**2.40** In summary, in both audits and investigations there were irregularities between the actual activities conducted and those that were reported internally and in the Annual Report. When the new case management system was introduced, SNC staff were provided with instructions on how to close cases that had been incorrectly started on the case management system to ensure that these were not recorded as audits or investigations. The migration errors and duplicate case records for audits may be due to the introduction and movement of cases to the new case management system in 2007–08. Notwithstanding, the ANAO notes that from 1 April 2008 to 21 November 2008, from a total of 116 newly created cases created by SNC, there were errors relating to four cases. The Tax Office advised that work is underway to rectify these reporting issues for future management reports and the Tax Office Annual Report for 2008–09.

**2.41** 'Audit cases' as reported include a wide range of activities. There is no distinction between low cost, low involvement active compliance activities (such as early exits or adjustments made to tax liabilities of the victims of identity theft) and high cost, high involvement active compliance activities. 'Audit cases' include:

- early exits (cases that are closed before the taxpayer has been notified of the audit);
- cases that are closed with no impact on the liabilities owed; and
- cases that are closed after an opinion is reached to change the liabilities owed.

**2.42** The system used to generate the figures for the Annual Report is also used by the SNC Executive for internal performance measurement and reporting. The disparity between actual activities and reported activities has prevented the Tax Office from reliably tracking and monitoring performance.

## Recommendation No.2

**2.43** To assist the accurate collection of audit and investigation data for reporting, monitoring and evaluation purposes the ANAO recommends that the Tax Office review and amend as necessary the procedures and processes on the creation and closing of cases on the new case management system.

### *Tax Office Response*

**2.44** Agreed. The Tax Office's new case management system was implemented in the Serious Non-Compliance business line in November 2006. There were some challenges in bedding down the new system resulting in a small number of duplicated cases being recorded on the system. In response to these transitional issues SNC has reviewed its practices and procedures, including developing a national case selection process.

**2.45** The national case selection strategy was introduced to ensure that all new cases entered into the case management system have the appropriate approvals and have been accurately recorded. This system centralises case creation into a small team of officers specifically trained for this role. This has increased case creation data integrity.

**2.46** The accuracy of information relating to the closing of cases has been improved by the closer monitoring of case workloads, both at regional and

national levels, and the implementation of a review of all finalised cases to ensure they are properly recorded in the case management system.

**2.47** We are also undertaking additional training to improve understanding of the procedures to properly close cases in the case management system.



# 3. Detering Fraud and Serious Evasion

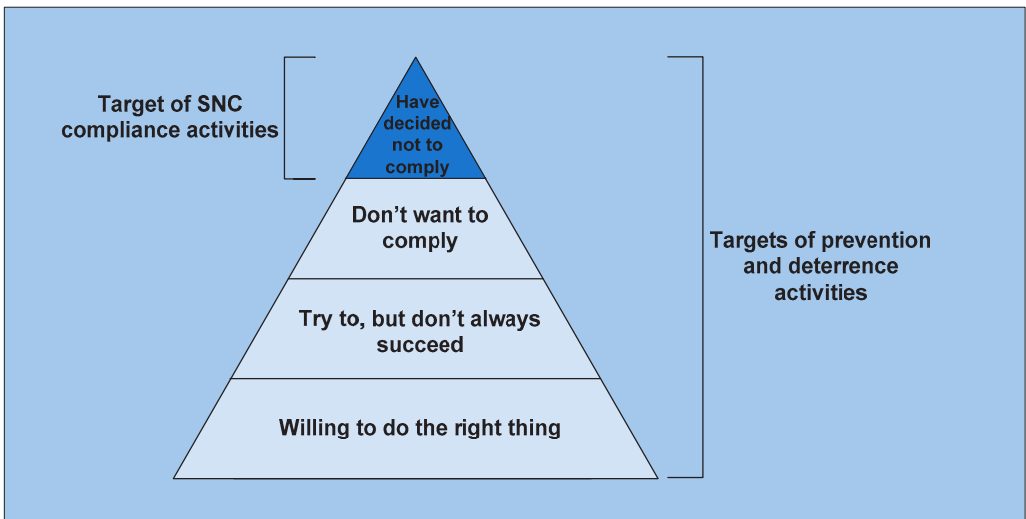
*This chapter reviews Tax Office approaches to deter fraud and serious evasion.*

## Introduction

**3.1** The Tax Office tries to make it easy to comply with tax obligations for those taxpayers who are willing to do the right thing. A number of taxpayers deliberately evade their tax obligations, or otherwise attempt to defraud the Commonwealth through the revenue system. Compliance activities carried out by SNC are targeted at those the Tax Office has identified as deciding not to comply, as represented in the top section of the compliance model (Figure 3.1). The deterrent effect however, is not targeted solely at taxpayers who have decided not to comply. Compliance activities undertaken by SNC are used, through a program of communication, to encourage voluntary compliance by all taxpayers and to deter potential fraud and tax evasion. The objective of SNC’s activities is to improve community confidence in the tax system and influence voluntary compliance.

**Figure 3.1**

### Target of SNC compliance activities



Source: ANAO analysis of Tax Office information.

**3.2** The ANAO assessed the Tax Office approach to deter fraud and serious evasion. This included reviewing:

- deterrent and prevention strategies;
- community awareness;
- marketing communication strategies; and
- measuring the deterrent effect.

## **Deterrent and prevention strategies**

**3.3** The Tax Office engages in a range of deterrent and prevention strategies that seek to provide long term support for voluntary compliance. Active compliance activities (investigations and audits), with the resultant threat of detection and risk of either criminal or civil proceedings, are the main deterrent strategies used by the Tax Office. These active compliance activities are discussed in detail in Chapter 5.

**3.4** The Tax Office has also undertaken a number of other activities to deter and prevent non-compliance. The Tax Office uses collaboration with international agencies, the private sector and Australian Government agencies to send a deterrent message about fraud and serious evasion. One example is the Operational Identity Crime Forum, set-up to coordinate and consolidate efforts by the agencies involved in addressing identity fraud. Other activities include:

- increased detection capability with specific profiling;
- targeted education campaigns;
- voluntary disclosure initiatives;
- the stopping of potentially fraudulent returns prior to release; and
- strengthening proof of identification requirements.

### ***Detection capability***

**3.5** In the *2008–09 Compliance Program*, the Tax Office outlines compliance verification activities used to detect non-compliance. These include building risk profiles and identifying risk characteristics among taxpayer groups, data matching and applying risk profiles to taxpayer groups. The increased detection capability results in a potentially stronger deterrent effect. The use of data-matching is discussed in ANAO Audit Report No.30 2007–08, *The*

*Australian Taxation Office's Use of Data Matching and Analytics in Tax Administration.*

### **Targeted education campaigns**

**3.6** The Tax Office undertakes education campaigns targeted at specific sectors (for example the construction industry or small businesses) and seeks cooperation from trade associations in industries with a high incidence of non-compliance. These campaigns include community visits, workshops, and the use of specific Internet sites to encourage taxpayers to meet their tax obligations.

### **Voluntary disclosure initiatives**

**3.7** On 18 July 2007 a voluntary disclosure scheme was offered that allowed taxpayers to declare previously hidden income from overseas sources. The scheme offered reduced penalties to taxpayers making a full and true disclosure of their tax affairs if the disclosure was made before the taxpayer was selected for an audit. This practice encourages previously non-compliant taxpayers into the formal economy. As at November 2008, there were over 850 disclosures of over \$36 million in previously undeclared taxable income.

### **Disruption activities**

**3.8** The Tax Office also engages in 'disruption' activities to stop refunds being paid to taxpayers identified as potentially having submitted fraudulent returns. Stopping refunds is a proactive mitigation strategy and by applying risk rules, refunds can only be released after a review and assessment of the returns by Tax Office staff. This relates to both income tax and GST risks. The Tax Office advised that the Risk Rating Engine associated with processing Business Activity Statements will be reviewed as part of the Easier, Cheaper and More Personalised Change Program. For further discussion on the Risk Rating Engine, see ANAO Audit Report No.35 2005–06, *The Australian Taxation Office's Administration of Activity Statement High Risk Refunds*.

### **Strengthening proof of identification requirements**

**3.9** In response to the increased incidence of identity related tax crime, the Tax Office has strengthened identity requirements to prevent registration of fake businesses and non-existent taxpayers. Tax Office staff are trained to detect fraudulent identity documents and scrutinise applications closely. The Tax Office has also produced several information products with tips and advice to taxpayers on keeping personal information safe to reduce the incidence of identity takeovers. Figure 3.2 is an example of multi-lingual poster raising awareness about tax file number security.

Figure 3.2

Example of a Tax Office poster addressing identify fraud

<h3>Keep your TFN safe</h3> <p><b>Beware of identity crime</b></p>	<p>Your tax file number (TFN) is a key part of your identity while you are in Australia.</p> <p>It is an important form of identification when you start a new job, open bank accounts and apply for government benefits. Keep it secure.</p> <p>Protect your identity by protecting all your personal details, including your TFN. Keep your passwords and TFN safe and never record or store them where they could be stolen, such as in your purse or wallet.</p>	<p>Only certain people and organisations can ask for your TFN, the most common being:</p> <ul style="list-style-type: none"><li>the Tax Office when discussing your tax records</li><li>your employer after you start work</li><li>your bank or other financial institutions</li><li>Centrelink, and</li><li>your superannuation fund.</li></ul> <p>If you think someone else has used your tax file number, or if it has been stolen, phone the Tax Office on 13 28 61.</p>
<h3>將你的稅務號碼 TFN 保管妥當</h3> <p><b>小心身份盜罪案</b></p>	<p>當你在澳洲時，你的稅務號碼(TFN)是你的身份辨識的重要部份。</p> <p>當你開始新工作，開立銀行帳及申請政府福利時，它是一種重要的身份辨識形式。你要將它保管妥當。</p> <p>繼續保護你的所有個人資料來保護你的身份，包括你的TFN。將你的密碼和TFN保管妥當，切勿放在或存放在可能會被盜的地方，例如手提袋或錢包。</p>	<p>只有某些人及組織才能詢問你的TFN。通常為：</p> <ul style="list-style-type: none"><li>稅務局一當討論你的稅務記錄時</li><li>你的僱主一當你開始工作後</li><li>你的銀行或其他財務機構</li><li>Centrelink，及</li><li>你的退休公積金基金</li></ul> <p>如果你認為有人使用你的稅務號碼，或它已被盜用，可致電13 28 61聯絡稅務局。</p>
<h3>Jagalah baik-baik TFN Anda</h3> <p><b>Waspadalah terhadap kriminal identitas</b></p>	<p>Tax file number (TFN) atau nomor pajak Anda adalah bagian yang sangat penting dari identitas Anda selama Anda berada di Australia.</p> <p>TFN Anda tersebut adalah bentuk identitas penting bagi Anda sebagai pemilik pekerjaan baru, membuka rekening bank dan menerima tunjangan-tunjangan pemerintah. Jagalah agar aman.</p> <p>Unduhlah identitas Anda dengan melindungi data-data pribadi Anda, termasuk TFN Anda. Jagalah baik-baik semua password dan TFN, serta jagalah selalu-hati menyimpannya di tempat yang mudah dicuri, seperti di dompet Anda.</p>	<p>Hanya orang-orang dan organisasi-organisasi tertentu yang dapat menanyakan TFN Anda, yang paling umum adalah:</p> <ul style="list-style-type: none"><li>Tax Office kantor pajak ketika membicarakan catatan-catatan pajak Anda</li><li>Pemberi pekerjaan Anda setelah Anda mulai bekerja</li><li>Bank atau lembaga keuangan lain</li><li>Centrelink, dan</li><li>superannuation fund (dana tabungan pensiun) Anda.</li></ul> <p>Jika Anda curiga seseorang telah menggunakan TFN Anda, atau TFN tersebut dicuri, teleponlah Tax Office di 13 28 61.</p>
<h3>여러분의 TFN을 안전하게 보관하십시오</h3> <p><b>신분 도용 범죄에 유의하십시오</b></p>	<p><b>여러분의 납세자 번호 (TFN)는 호주에 체류하는 동안 여러분의 중요한 신분증입니다.</b></p> <p>이것은 새로운 직업을 시작하고, 은행계좌를 개설하고 정부 수당을 신청할 때 사용되는 중요한 신분증입니다. 따라서 안전하게 보관하십시오.</p> <p>여러분의 TFN을 비롯한 모든 개인 신상정보를 보호함으로써, 여러분의 신분을 보호하십시오. 여러분의 TFN과 비밀번호를 안전하게 보관하십시오. 지갑이나 핸드백과 같이 도난당할 염려가 있는 곳에 절대 기록해 두거나 보관하지 마십시오.</p>	<p><b>특정 개인이나 기관만이 여러분의 TFN을 요청할 수 있습니다.</b> 그중 가장 일반적인 기관은 다음과 같습니다.</p> <ul style="list-style-type: none"><li>여러분의 새롭거나 현재 직장, 회사, 직장</li><li>새로 하업할 경우, 여러분의 고용주</li><li>여러분의 은행 및 기타 금융기관</li><li>연락처, 그리고</li><li>여러분의 연금 기관</li></ul> <p>타인이 여러분의 납세자 번호를 사용하거나, 혹은 도난당했다고 생각하신다면, 국세청 13 28 61번호로 연락하시기 바랍니다.</p>
<h3>Giữ kỹ Số Hồ Sơ Thuế của quý vị (TFN)</h3> <p><b>Coi chừng bị mạo danh</b></p>	<p><b>Số hồ sơ thuế (TFN) của quý vị là một chi-tiết quan-trọng xác định danh-tính của quý vị trong khi quý-vị ở tại nước Úc.</b></p> <p>Đây là một hình thức quan trọng của việc xác định danh-tính thì quý vị cần làm việc ở chỗ làm mới, mở các trương mục ngân hàng và nộp đơn xin những khoản trợ cấp của chính phủ. Hãy giữ kỹ con số này.</p> <p>Hãy bảo vệ danh-tính của quý vị bằng cách bảo vệ tất cả những chi-tiết cá nhân của mình, kể cả Số Hồ Sơ Thuế (TFN) của quý vị. Hãy giữ số mã mật và TFN của quý vị an toàn và đóng bao gói lưu trữ hoặc giữ con số này tại những nơi có thể bị đánh cắp, chẳng hạn như trong ví tiền hoặc trong túi của quý vị.</p> <p>Chỉ có một số người và tổ chức có thể hỏi số TFN của quý vị, thông thường là:</p> <ul style="list-style-type: none"><li>Sở Thuế và thu thuế và số sách thuế của quý vị</li><li>nhà nhân của quý vị sau khi quý vị bắt đầu việc làm</li><li>ngân hàng hoặc cơ quan tài chính khác của quý vị</li><li>Centrelink, và</li><li>quỹ hưu bổng của quý vị</li></ul> <p>Nếu quý vị nghi ngờ có người nào đã sử dụng số hồ sơ thuế của mình, hoặc số hồ sơ thuế đã bị đánh cắp, hãy gọi cho Sở Thuế qua số 13 28 61.</p>	
<p>يستطيع فقط أشخاص محددين معرفة رقم ملفك الضريبي (TFN). أكثرهم شيوعاً الآتي:</p> <ul style="list-style-type: none"><li>مكتب الضرائب عند مناقشة سجلاتك الضريبية</li><li>صاحب العمل الجديد بعد أن تبدأ العمل</li><li>البنك أو أي مؤسسة مالية أخرى خاصة بك</li><li>سكترليك</li><li>و صندوق الأمان التقاعدي الخاص بك.</li></ul> <p>إذا كنت تعتقد أن شخص آخر قام باستخدام رقم ملفك الضريبي، أو إذا تمت سرقة ملفك الضريبي، فممكن الاتصال بمكتب الضرائب على الرقم 13 28 61</p>	<p><b>في أستراليا، يُعد رقم ملفك الضريبي (TFN) جزء رئيسي من هويتك الشخصية.</b></p> <p>إنه جزء هام من التعريف عندما تبدأ وظيفة جديدة، أو تفتح حساب في البنك أو لتقديم الطلب للحصول على إعانات حكومية.</p> <p>قم بحماية هويتك عن طريق حماية كل بياناتك الشخصية. بما في ذلك رقم ملفك الضريبي (TFN). احفظ كلمات السر الخاصة بك ورقم ملفك الضريبي (TFN) في مكان آمن ولا تقوم بتسجيلها أو تخزينها في مكان يمكن سرقة ملفك منه، مثل محفظتك أو جيبك.</p>	<h3>احتفظ برقم ملفك الضريبي في مكان آمن</h3> <p><b>احذر من جريمة تزوير الهوية</b></p>

For more information on keeping your TFN secure, visit [www.ato.gov.au](http://www.ato.gov.au) or phone 13 28 61. If you do not speak English well and would like help from the Translating and Interpretation Service phone 13 14 50.



Source: Tax Office.

3.10 The disparate deterrent and prevention activities have had a range of success in deterring and preventing fraud and serious evasion. While specific activities have direct results, for example the offshore voluntary disclosure

initiative, the ANAO was unable to determine any long term systematic compliance effects because the Tax Office does not currently undertake research in this area. While most of the deterrent and prevention activities were developed with a business case, they are generally not subject to ongoing review or monitoring to assess their impact or effect. The ANAO acknowledges the difficulty in assessing the specific effect of deterrent and prevention strategies; however is supportive of increased emphasis by the Tax Office in this area.

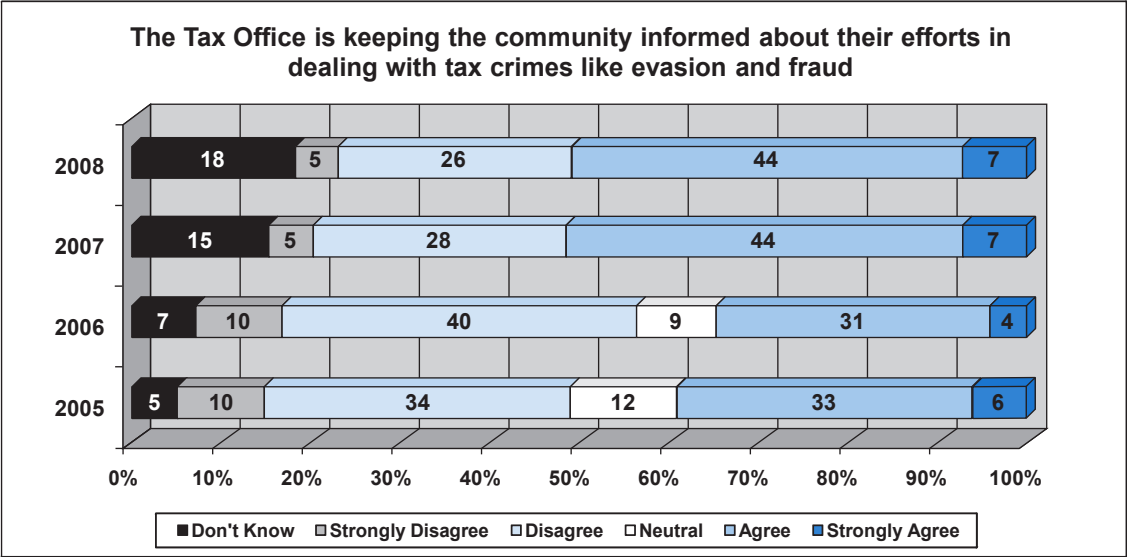
## Community awareness

**3.11** The Tax Office undertakes a Community Perceptions Survey and a Business Perceptions Survey each year. These surveys include questions on how people feel about fraud and serious evasion and how well they think the Tax Office is dealing with the problems. Other industry and community surveys have been undertaken over time to try to understand the motivation of taxpayers who have decided not to comply. The Tax Office also undertakes research with the Australian Institute of Criminology to analyse the motives of people who commit tax fraud compared to the motives of people who commit fraud unrelated to tax.

**3.12** A difficulty in drawing strong conclusions from perception surveys is establishing the existence and strength of relationships between compliance activities, changes in perceptions and subsequent increased voluntary compliance. While annual surveys provide broad benchmarks to track perceptions, the results measure perceptions and not actual compliance.

**3.13** The Tax Office's annual Community Perceptions Survey in 2007 and 2008 found 51 percent of people agreed that the Tax Office was keeping the community informed about their efforts in dealing with tax crimes like evasion and fraud. This has stabilised following an improvement over the last three surveys, where 35 per cent in 2006 and 39 per cent in 2005 believed the community was well informed (Figure 3.3).

**Figure 3.3**  
**Community Perceptions Survey**



Note: The Tax Office changed how it records results in this survey for 2007. Neutral answers were recorded as 'Don't Know' responses whereas previous surveys separated these results.

Source: ANAO analyses of Tax Office information.

**3.14** The survey also showed that most people (83 per cent) think it is important to deal strongly with deliberate evasion, but only 50 per cent of people believe this is happening. Another question revealed that only 41 per cent of the sample believes that the Tax Office is effective in dealing with people and businesses who have sought to obtain large refunds to which they were not entitled. The Tax Office’s *Tax Evasion, Avoidance and Crime Communication Strategy* (TEAC Communication Strategy) states that: ‘this gap between what people believe should be happening and what they believe is happening,’ is due to: ‘ambivalent attitudes to tax issues and Tax Office initiatives’.<sup>38</sup> The Tax Office is, however, not in a position to determine whether these levels of community attitudes are acceptable or comparable to other like revenue authorities due to a lack of international benchmarking or specific research. While survey results alone are not a definitive measure of the effect of specific deterrent activities, the continued use of the annual survey, and

<sup>38</sup> Australian Taxation Office, *Tax Evasion, Avoidance and Crime Communication Strategy*, 2008, p. 3.

potential international benchmarking, are a useful means to track acceptable or comparable levels of community perceptions.

## Marketing communication strategy

**3.15** Underpinning the Tax Office response to the various survey results is the TEAC Communication Strategy. The current version of the TEAC Communication Strategy was endorsed in November 2008, however was in draft form since July 2007, and the Tax Office advised the ANAO that the strategy has been close to final stages of development since February 2008.<sup>39</sup> The strategy aims to influence taxpayers, promoters of abusive tax arrangements, the media, and government about Tax Office activities surrounding fraud and serious evasion. The TEAC Communication Strategy is a part of the framework established by the overarching Tax Office Communication Strategy.

**3.16** The TEAC Communication Strategy outlines a range of activities to create an environment less tolerant of, and less susceptible to, tax avoidance and tax crime. Activities include:

- the use of free and paid international media to make Australia unattractive to overseas offenders;
- advertising alerts in the same media used by promoters of schemes, with an emphasis on the Internet; and
- providing intermediaries with information targeted at potential participants to help dissuade clients from seeking more aggressive arrangements and advisers.

**3.17** The assessment of the effectiveness of deterrent activities targeting fraud and serious evasion, such as marketing and communication, has been limited. Further, there was only partial implementation of various activities that were undertaken. The issuing of media releases provides an example of the difference between stated policy and actual activity.

## Media releases

**3.18** Issuing media releases is part of the broader strategy that aims to reinforce the primary importance of general deterrence. The strategy includes

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<sup>39</sup> Tax Office advice to ANAO, dated 7 February 2008.

speeches by the Commissioner, free press associated with court outcomes or marketing to specific risk groups.

**3.19** The Tax Office issues media releases stating the outcome of court cases and publishes them on its website. These media releases are designed to encourage compliance by letting taxpayers know the consequences of fraud and serious evasion. Media releases contain:

- the name, location and profession of the offender;
- the sentence received;
- the plea and the number of charges;
- the revenue product defrauded (for example GST or income tax); and
- the value of the fraud.

**3.20** In 2007–08, the Tax Office had 77 convictions recorded against fraudulent taxpayers. The Tax Office only circulated media releases for nine of the 77 cases. The TEAC Communication Strategy, as reviewed in November 2008, stated that the Tax Office will issue media releases for all convictions. This was as part of its strategy to demonstrate consequences and expand and support existing approaches. The Tax Office advised, however, that media releases are only circulated if the publicity of a case is believed to be capable of deterring others in the community from starting or continuing non-compliant behaviour—although there is no documented criteria to guide these decisions.

**3.21** Issuing media releases for every conviction may produce marginal or minimal deterrent effect. It is therefore important that the Tax Office develop criteria for selecting those convictions to be highlighted in media releases. The Tax Office advised the ANAO in February 2009 that the TEAC Communication Strategy had been amended to ‘Issue media releases for some convictions, where appropriate, and targeted according to their location and significance.’

## **Recommendation No.3**

**3.22** To improve the effectiveness of the Tax Evasion, Avoidance and Crime Communication Strategy, the ANAO recommends that the Tax Office:

- (a) assesses the impact of marketing and communication activities; and
- (b) subsequently assesses, and amend where appropriate, the Tax Evasion, Avoidance and Crime Communication Strategy.



### *Tax Office Response*

**3.23** Agreed. The Tax Evasion, Avoidance and Crime Communications Strategy is a four-year strategy with initiatives rolling out from March 2009 onwards.

**3.24** The Tax Office has conducted market research to establish base line measures to assess the effectiveness of the strategy, associated messages and targeted communications plans.

**3.25** Further evaluation will be undertaken at appropriate milestones within Tax Office priorities and budgetary restraints.

## **Measuring the deterrent effect**

**3.26** Recording and analysing the outcomes of prevention and deterrent activities is important to inform future planning and targeting of risks. Performance measurement provides one means of shifting the focus from the level of resources to the use of those resources. Performance measurement can:

- help clarify objectives and responsibilities;
- make performance transparent, allowing assessment of whether program objectives are being met; and
- encourage ongoing performance improvement.

**3.27** The Tax Office undertakes some measurement of the effects of deterrent measures. As discussed in paragraphs 3.11-3.14, annual surveys conducted on behalf of the Tax Office are used to gauge the community's perceptions of the tax system and its administration. Several questions in these surveys relate to how well fraud and serious evasion risks is being managed by the Tax Office. As these surveys are conducted regularly and the questions for the most part remain the same, trends in perceptions of taxpayers can be monitored and the possible effect of current and new deterrent activities analysed.

**3.28** The *SNC Line Delivery Plan 2008–09* states that SNC is committed to deterring, detecting and dealing with abuse of the tax system to increase voluntary compliance, maintain community confidence and ensure the tax system is fair and effective. The PMF broadly considers a range of qualitative and quantitative measures when determining priority work to be approved. There is, however, no consideration of the deterrent effect the project may have

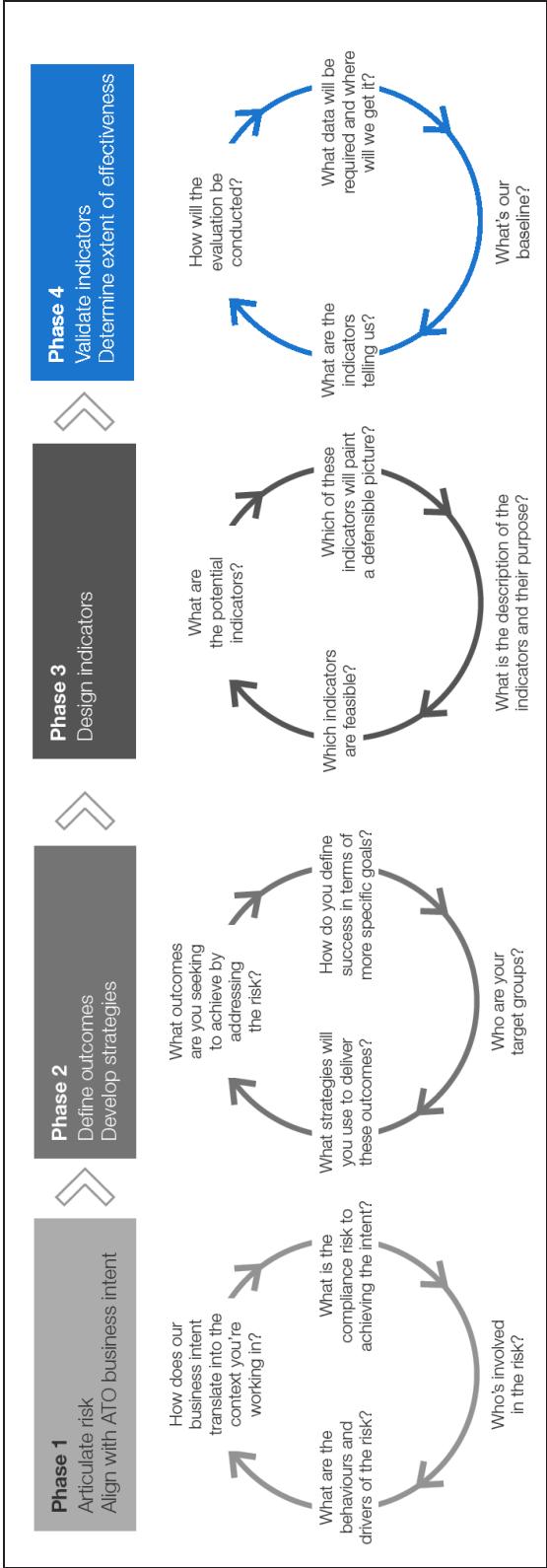
on the community. Measuring the achievements of a project is undertaken through indicators such as:

- the number of intelligence products generated and cases accepted;
- the number of investigations started and prosecutions completed;
- feedback received from stakeholders;
- the revenue protected; and
- input into committees and enhancement to intelligence holdings.

**3.29** The current indicators and measures used by SNC are primarily based on the number of active compliance activities undertaken and feedback from stakeholders and other Government agencies—they are not indicators of maintained or enhanced community confidence. The indicators and measures used by SNC to determine the effectiveness of compliance activities should be able to show if the community's confidence in the tax system is changed by these activities. The introduction of such measures would better inform future planning and targeting of risks by SNC. Suitable indicators and measures have been identified for some Tax Office projects where research is conducted on a regular basis to measure the impacts of a particular project on community confidence. Figure 3.4 shows the Tax Office's methodology for developing and measuring compliance effectiveness.

Figure 3.4

Compliance effectiveness methodology



Source: Australian Taxation Office, *Measuring Compliance Effectiveness – Our Methodology*, 2008-09, p. 8-9.

**3.30** The Tax Office's methodology for measuring compliance effectiveness suggests that indicators should provide evidence in relation to achieving compliance activities' goals. SNC's primary goal is to enhance community confidence in the tax system and influence voluntary compliance.<sup>40</sup> Without recording and analysing the outcomes of prevention and deterrent activities, SNC is restricted in its ability to inform future planning and targeting of risks. The Tax Office *Compliance Sub-Plan 2008–09* discusses the need for developing compliance effectiveness measures and identifies that compliance effectiveness will be a priority focus.

## Recommendation No.4

**3.31** To assist in measuring the performance of the SNC business line, the ANAO recommends that the Tax Office:

- (a) designs appropriate indicators of the effectiveness of strategies to address crimes against Australia's tax administration; and
- (b) develops suitable tests to validate these indicators.

### *Tax Office Response*

**3.32** Partly agree. Activities conducted by the SNC business line generally form part of a broader compliance risks mitigation strategy encompassing help, marketing, audit and investigation activities to address strategic risks such as Cash Economy.

**3.33** The Tax Office's approach is not to individually measure the effectiveness of each activity separately but to measure the effectiveness of the whole approach to addressing the strategic risk. We believe this is both more informative and also more cost effective. Therefore, we do not think it is appropriate for SNC to develop separate measures relating solely to its activities but rather its activities be evaluated as part of the overall effectiveness of the risks mitigation strategy.

**3.34** For some strategic compliance risks where SNC does have responsibility for developing and implementing the mix of activities to address the strategic compliance risk, such as income from illegal activities, SNC will develop measures of effectiveness for these risks.

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<sup>40</sup> Internal Tax Office document.

## 4. Detecting Fraud and Serious Evasion

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*This chapter reviews the Tax Office's approach to detecting fraud and serious evasion.*

### Introduction

**4.1** Effective strategies to detect fraud and serious evasion protect an agency's credibility, assets and revenue. They also assist in identifying and prosecuting perpetrators of fraud and serious evasion. Robust system controls, supported by intelligence and targeted compliance activities, underpin effective detection. Establishing a formal and reliable process for effective data collection is essential to the development of an objective intelligence product that maintains operational credibility and integrity.

**4.2** The Tax Office has a range of strategies to detect fraud and serious evasion that help it in identifying over 3000 potentially fraudulent information referrals per annum. These include the establishment of a formal system for the assessment and escalation of reported incidences of potential fraud that is complemented by individual relationships and networks. SNC Intelligence is responsible for identifying and assessing serious strategic and operational fraud risks to the tax system. The area also gathers, collates and analyses intelligence from a range of external sources and other parts of the Tax Office. The Tax Office has also developed and implemented a range of computer-based systems to assist in detecting fraud and serious evasion in a real-time environment. Other compliance activities of other business lines may also detect potential incidences of fraud and serious evasion.

**4.3** The ANAO reviewed whether the Tax Office had implemented systems and processes to detect fraud and serious evasion. This included examining:

- the intelligence capability developed within the SNC business line;
- referral, assessment and escalation processes of potential incidences of fraud and serious evasion;
- Tax Office systems to detect fraud and serious evasion; and
- cross-business line and inter-agency relationships.

## Intelligence capability

**4.4** The role of SNC Intelligence is to:

- identify and assess the serious strategic and operational fraud risks to the tax system;
- gather, collate and analyse intelligence from a range of sources;
- disseminate information, intelligence and operational matters to other areas of the Tax Office; and
- provide advice.<sup>41</sup>

**4.5** The risk identification and assessment work of SNC Intelligence should underpin SNC operations. Historically, the regionally-driven approach to case selection has prevented the integration of SNC Intelligence work into the broader activities of SNC. The Tax Office advised the ANAO that while SNC takes a risk based approach, it may not yet have a comparative analysis of risk.<sup>42</sup> The ability to have a comparative analysis of risk is partly dependant on greater integration of SNC Intelligence into the operations of SNC as a whole. Activities undertaken which contribute to the risk driven approach include:

- the development of tax crime scans—for example research papers on tax crime involving members of community groups in geographical hot spots;
- intelligence assessments following compliance activities; and
- the facilitation of an SNC strategic intelligence tax crime liaison network—a cross business service line (BSL) network whose purpose is to provide BSL strategic intelligence units with information on tax crime related issues and risks.

**4.6** An inherent difficulty for SNC Intelligence is its disproportionate focus on investigations at the expense of time spent on its audit function. This is largely due to the resource intensive initial ‘processing’ aspect of the fraud referrals received. Historically the role and function of the audit capability within SNC had developed with a regional focus that varied across Australia, and there was little assistance provided by the centrally coordinated

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<sup>41</sup> Internal Tax Office document.

<sup>42</sup> Tax Office advice to ANAO, dated 19 February 2009.

intelligence capability. Revised PMF arrangements seek to bring greater alignment between the regional program of both investigation and audit work, and the national risk priorities identified through the intelligence gathering process.

**4.7** SNC Intelligence is further constrained by the lack of inter-operability between the various databases and systems used within SNC. The Tax Office advised that the ELIM program of work, due to be implemented in 2009 as part of the Change Program, will result in amongst other things, improved analysis of complex structures, events, relationships and transactions.

**4.8** The ELIM program of work is a whole of Tax Office response to improve its capability in evidence, intelligence, and litigation management across various business lines. While the ELIM program of work is anticipated to deliver significant improvements, the current intelligence model within SNC is constrained by systems limitations and the resources needed to process potential fraud referrals.

**4.9** SNC Intelligence should be able to identify priority threats to the tax system and articulate potential treatment strategies. These strategies do not automatically equate to investigation and prosecution action. The focus on reactive referral case work does not easily allow for the detection of emerging or previously unknown fraud and serious evasion risks.

**4.10** Processing of referrals and case selection at the regional level (as explained in further detail in Chapter 5) further highlights the disjunction that has existed between the operational and intelligence areas. SNC Intelligence is now involved in case selection at the Regional Forums and PMF. The revised focus on the intelligence capability through the ELIM program of work and SNC Intelligence participation in case selection should contribute to delivering intelligence-led compliance treatments.

## **The referral and assessment of incidences of fraud and serious evasion**

**4.11** Referral of information is the starting point to any investigation or audit undertaken by SNC. Information referrals form the basis from which case selection can occur and trends and emerging issues can be identified, assessed and treated. A challenge for the Tax Office is identifying useful information from the volumes of data available and emerging from compliance activities completed. The work of SNC Intelligence often involves making connections to otherwise disparate pieces of information—what may appear to

be an innocuous event to one employee, may have significant ramifications for SNC.

**4.12** The referral process is significantly different between SNC investigations and audit. There is an established framework for potential fraud referrals (investigations) that is discussed below. There is no equivalent process for referrals for serious evasion referrals (audits). Instead serious evasion matters are escalated through information flows between SNC, other business lines, law enforcement agencies, AUSTRAC as well as SNC's own profiling, and often at a regional rather than national level. Case selection and project based audit work is discussed in further detail in Chapter 5.

### **SNC management of referrals**

**4.13** Underpinning the fraud referral process is the Tax Office's Fraud Practice Statement.<sup>43</sup> This Practice Statement was written to provide Tax Office employees with specific guidance in relation to fraud control and the prosecution process. If fraud is suspected, Tax Office employees must ensure information on the potential fraud is referred to either SNC for external fraud or to Internal Assurance for internal fraud. Internal fraud was not reviewed as part of this audit.

**4.14** For external fraud matters (fraud committed by a taxpayer, scheme promoter or another person other than a Tax Office employee), the Fraud Practice Statement includes definitions and examples of what might constitute suspected fraud and also includes a decision tree to assist with referrals. An important element of a referral is, as a general rule, that any compliance activity within the originating business line should continue unless SNC provides advice to the contrary.

**4.15** All referrals received in accordance with the Practice Statement are managed by the SNC Intelligence coordination centre and classified as information referrals. Referrals include items from a variety of Tax Office business lines, including the Tax Evasion Referral Centre which receives reports from the general public. In addition to the internally referred items, the coordination centre also receives information referrals from external parties such as:

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<sup>43</sup> Australian Taxation Office, *Corporate Management Practice Statement—Fraud Control and the Prosecution Policy 2007/02*, April 2007.



- other Australian Government agencies including ACC, Centrelink, Australian Customs Service, Department of Immigration and Citizenship, AUSTRAC and AFP;
- State-based police agencies; and
- banks and other financial institutions.

**4.16** In 2007–08 the coordination centre received over 3000 information referrals. While most of these referrals were from within the Tax Office, around 20 per cent were from external agencies. Information referrals range from incidences of suspected fraud to a bank referral of a suspect transaction. All information referrals provided to SNC Intelligence are required to be recorded on the SNC intelligence database.

**4.17** SNC Intelligence prioritises and distributes information referrals according to assessment criteria. Intelligence officers assess the risk and may, for example, take administrative action to prevent the issue of potentially fraudulent refund claims. Following the initial risk assessment and treatment, over 90 per cent of the information referrals are not referred on any further, yet form a significant element of the intelligence database. The functionality of the intelligence database allows the data to be retained, and further links with subsequent information can be made. Where the information referrals contain enough substance for further review they are distributed to SNC Operations, other business lines or to other government agencies.

### **Ongoing compliance activity following an information referral**

**4.18** The Fraud Practice Statement states that any compliance activity within the originating business line should continue unless SNC provides advice to the contrary. This is an important aspect of the Fraud Practice Statement as it identifies that a referral to SNC is not the only possible compliance treatment for cases of suspected tax evasion or fraud.

**4.19** The ANAO examined the level of adherence to this guidance by tracking compliance activity in the originating business line associated with the original information referral. The ANAO reviewed 95 information referrals and assessed the potential for further compliance activity. The ANAO found that only one referral was not progressed in accordance with the Fraud Practice Statement in the originating business line. This high level of adherence to the Fraud Practice Statement indicates a good understanding by Tax Office staff outside SNC of their obligations and responsibilities regarding referrals of suspected incidences of fraud.

## **Management of referrals by regional offices**

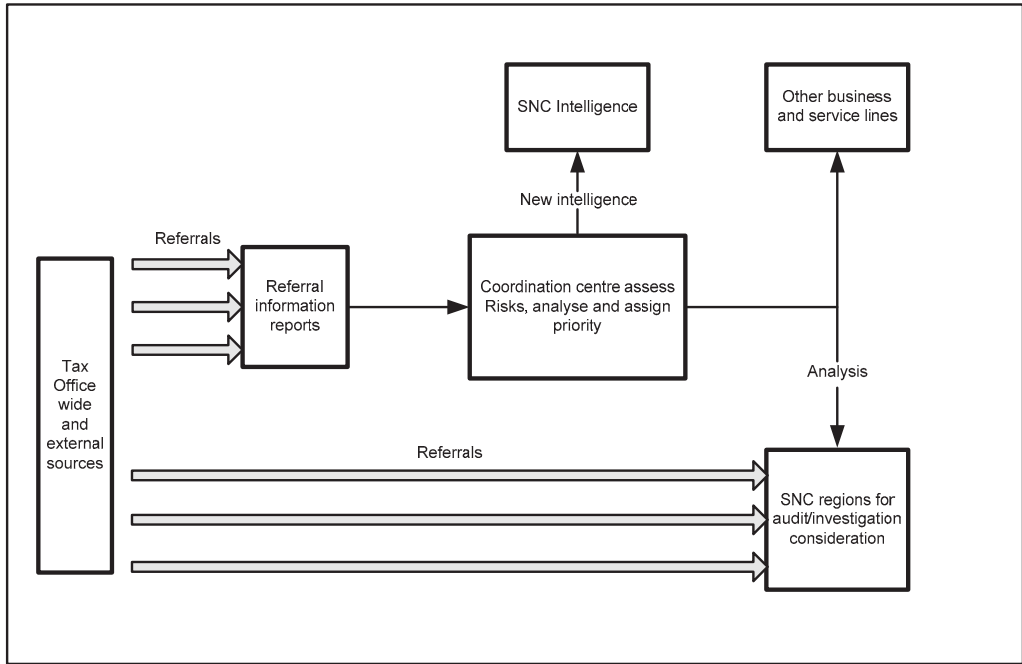
**4.20** SNC teams in regional offices also receive referrals and information regarding fraud and serious evasion. These referrals may originate from professional relationships developed with local law enforcement bodies, government agencies, or other business line staff who may be co-located. Consistent with the Tax Office's Fraud Practice Statement, regionally-based staff should input fraud referrals into the SNC intelligence database. The ANAO notes, however, that there was no consistent process for managing, or quantifying, referrals received in the regions.

**4.21** The sample of cases reviewed revealed that a significant number of cases within SNC originated from referrals managed by the regions that were not recorded in the SNC intelligence database. Within the sample cases of investigations reviewed, only 20 of the 32 cases (62 per cent) had an original referral recorded on the SNC intelligence database, indicating a level of regionally driven case selection without SNC Intelligence involvement.

**4.22** The consequence of having a regionally focussed case selection process is that considerable information is absent from the SNC intelligence database and cases actioned may not be aligned with risks identified at a nationally strategic level. In addition, there is no means of quantifying the full extent of regional referrals that do not become investigations. This impacts on allocation of resources and the ability of SNC Intelligence to identify trends and emerging risks. There is also the risk that not all information is recorded accurately for reporting requirements as discussed in Chapter 2. Figure 4.1 provides an overview of the fraud referral process, as reviewed.

Figure 4.1

SNC referral process



Source: ANAO analysis of Tax Office information.

**4.23** The recently revised case escalation model, utilising the Regional Forums and PMF, in part mitigates the risk of referrals bypassing the coordination centre as all proposed cases are required to be recorded on the SNC intelligence database. The ongoing risk is that information referrals that are not at a potential case level are not entered in the SNC intelligence database. An inherent difficulty in capturing all elements of fraud referral information in the regions is the potentially different uses of the same information. While SNC Operations may view peripheral case information as contextually useful, the same information used within the SNC intelligence database may complete a picture of more widespread behaviour or key relationships. The Tax Office advised there is ongoing system works which should lead to significantly improved levels of recording of information referrals.

## Recommendation No.5

**4.24** To improve the quality of the Tax Office's referral process and information holdings, the ANAO recommends all potential fraud information referrals are registered on a single Tax Office database and are assessed by a centrally coordinated intelligence unit.

### *Tax Office Response*

**4.25** Agreed. A single database into which all fraud information referrals are entered was introduced in October 2000. This information is assessed by the SNC Intelligence team and is used as the basis for case selection.

**4.26** In the past there have been instances where fraud referrals have circumvented this process by being relayed directly to a regional investigation team and an investigation commenced without the relevant information being entered into the fraud information referral database. These instances generally pre-dated the current processes for managing fraud referrals including the promulgation of Corporate Management Practice Statement 2007/02 that gives guidance to staff on how to recognise fraud and refer matters to SNC.

**4.27** The case selection process now in place ensures that cases cannot be commenced within a region without first being approved by the Program Management Forum and the information being recorded on the intelligence database.

**4.28** Staff will be reminded through the issuing of a Technical Alert that all information is to be entered into the database.

### **Education and awareness of Tax Office staff regarding fraud referrals**

**4.29** The Fraud Practice Statement provides specific guidance in relation to fraud referrals. In addition to this Practice Statement, the Tax Office has a fraud awareness learning package for all new starters. This package is entirely focused on internal fraud. The ANAO suggests that to raise broader awareness of all Tax Office staff, the package should be expanded to include an external fraud discussion.

**4.30** The Tax Office is working to finalise the development of the *Corporate Management Practice Instructions* that underpin and provide greater clarity and awareness of the Fraud Practice Statement. Ongoing training and instruction in relation to this material will be an effective means to better educate Tax Office staff of their responsibilities.

## Intelligence assessments

**4.31** The *SNCI–Prioritisation Model*<sup>44</sup> provides guidelines to SNC Intelligence officers on how to assess referrals using a range of internal and external systems and data sources. Referrals are given an initial priority rating based on the information at hand having regard to impact, leverage, priority, budget, duration, compliance effect and revenue at risk. Following determination of a priority rating (either 1, 2 or 3), the referrals are either:

- profiled further, including interrogation of various systems and databases, to develop matters for consideration by Regional Forums and the PMF;
- passed onto the SNC regional offices for further analysis and profiling;
- referred onto other business lines or agencies; or
- assessed as likely to be for information only and no further analysis is conducted.

**4.32** The large volume of information referrals requires a relatively streamlined process for the intelligence assessments. While the length of time and resources spent on each assessment may vary according to the potential risk, the implementation of the *SNCI–Prioritisation Model* provides the Tax Office with an adequate framework for assessing potential fraud information referrals.

## Tax Office systems to detect fraud and serious evasion

**4.33** The Tax Office has a range of systems which are deployed to assist in the mitigation of risks associated with the management of taxpayer compliance. The ANAO only reviewed those systems used by SNC, although some of these systems are managed by other business lines. As part of its specific fraud and serious evasion detection capability, the Tax Office has developed the Registration Information Matching System that checks for common data or links to identify fraudulent registrations. The Tax Office has also developed a Risk Rating Engine (RRE) to assist in detecting potential GST fraud and non-compliance in a ‘real-time environment’. The RRE profiles GST activity statements of clients registered for the GST. Before the issue of any refund. While the RRE is primarily a GST Business Line product, SNC has

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<sup>44</sup> Internal Tax Office document.

input into some of the controls and tests. The RRE was reviewed in Audit Report No.35 2005–06, *The Australian Taxation Office's Administration of Activity Statement High Risk Refunds*.

**4.34** The Tax Office also uses system checks in the processing of income tax returns. The Micro Enterprises and Individuals business line also utilises a high risk refund profile application that provides SNC with information referrals of potentially fraudulent returns. The Audit Report No.12 2007–08, *Administration of High Risk Income Tax Refunds in the Individuals and Micro Enterprises Market Segments* reviewed the effectiveness of the Tax Office's compliance approach for high risk income tax refunds in the individuals and micro enterprises market segments. In addition, SNC conduct checks on returns lodged through the e-tax system following identification of fraudulent activity.

**4.35** The Tax Office has also begun to develop systems to detect tax fraud in a 'real time environment' in response to the escalating incidences of identity crime. Identity crime includes identity theft, manipulation, and fabrication. Following an identity crime review in 2006, SNC has developed a computer-based model that uses the Tax Office's information holdings to begin to build profiles of identity crime perpetrators. This model requires continual refinement as perpetrators regularly change their modus operandi to escape detection and suspicion; the model needs to adapt and change in line with the risks. The development of an identity crime model provides potential benefit in the systematic and comprehensive analysis of historical data, evaluations of fraud investigations and intelligence assessments. Ongoing evaluation is necessary to allow SNC to determine whether the rules and tests are effective in detecting fraud and serious evasion.

## **Cross business line and cross agency relationships**

**4.36** To a significant extent, SNC relies on other business lines to determine their risks and to factor in the use of the capabilities of SNC as part of the range of responses to those risks. For this relationship to be effective SNC needs to maintain active communication and participation across different business lines. As discussed in Chapter 2, the revised arrangements have brought a renewed whole-of-Tax Office focus to SNC.

**4.37** The Tax Office also relies on other government agencies as a source of information in the detection of fraud and serious evasion. These relationships exist both at the national and regional level, with regular formal meetings and

information exchanges. The Tax Office continues to utilise relationship based approach to intelligence sharing with the other government agencies to increase its knowledge and understanding of fraud and serious evasion. While the nature and scope of these relationships varied across the regions, the Tax Office was actively engaged in utilising these relationships to achieve compliance outcomes. In recent years Project Wickenby has been a significant focus for the Tax Office and its partner agencies in the tax fraud and serious evasion environment. The formalisation and concerted focus of Project Wickenby across different government agencies provides a new model for the treatment of compliance risks which utilise a wider range of intelligence sources and compliance treatments.

## 5. Dealing with Fraud and Serious Evasion

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*This chapter assesses the Tax Office's approach to dealing with fraud and serious evasion.*

### Introduction

**5.1** Investigations and audits are integral to the Tax Office's approach to dealing with the risks of fraud and serious evasion. The Tax Office Compliance Model is guided by the premise that it can influence taxpayer behaviour through various responses and interventions. As the Tax Office explains:

The model's core principle is to make compliance (including access to entitlements and benefits) easy as possible for those who want to comply. At the other end of the spectrum, we apply the full force of the law when people wilfully seek to abuse the system.<sup>45</sup>

**5.2** The SNC Business Line undertakes investigations and audits into potential perpetrators of fraud and serious evasion. Under the Fraud Control Guidelines, the Tax Office has the authority to investigate criminal matters, gather evidence, and prepare a brief of evidence for the CDPP or AGS. Investigations and audit (Active Compliance) comprise the greatest volume of work in SNC Operations.

**5.3** The ANAO reviewed the Tax Office's case management framework for fraud and serious evasion. As part of the review a sample of 44 audit cases finalised in 2007–08 and 33 investigations referred to the CDPP or AGS in 2007–08 were reviewed. From the sample selected, only 32 investigations and 32 audits were able to be reviewed due to cases being created in error or early exits that did not have physical files. For further discussion of the SNC performance reporting see Chapter 2.

**5.4** The ANAO did not review cases relating to internal fraud. The review placed particular emphasis on case selection and allocation, and the case management processes. The ANAO also assessed the Tax Office's proceeds of crime capability.

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<sup>45</sup> Australian Taxation Office, *2008-09 Compliance Program*, p. 6.



## Case selection and allocation

**5.5** Appropriate case selection plays a critical part in SNC meeting its objectives. Successful case selection should address highly leveraged risks that in turn provide a better impact on voluntary compliance. The impact on perceptions of inappropriate case selection and the consequences this has on taxpayers is also important as noted by the Commissioner and supported by the Joint Committee of Public Accounts and Audit ‘...So there is a perception there that, if you just do randoms and you pick the wrong people, it actually reduces community confidence rather than increases it.’<sup>46</sup> In 2003 the Tax Office agreed to an internally commissioned report recommending SNC treat major threats and target the major perpetrators of those threats, and develop and implement counteraction plans which are accountable for effectiveness.

**5.6** The sample of 64 cases the ANAO reviewed involved cases originally selected in 2003 through to cases selected in late 2007. The Tax Office approach to case selection and allocation has been highly varied throughout this period as they have sought to evolve the process to ensure case selection decisions can be made according to nationally focused risk priorities. The ANAO reviewed the alignment of case selection with major threats and targets identified by the Tax Office.

**5.7** Historically, for both audit and investigations, cases were selected at a regional level with the introduction of, in 2005, approval by a Regional Case Allocation Forum (RCAF). RCAFs were set up in each region where SNC had a presence. The regionally-based SNC staff would put together a more comprehensive profile for assessment and approval following a referral. Case approval before 2005, where evident, was generally given by a team leader, which was the approved process.

**5.8** In the 12 audit cases examined by the ANAO that predated the RCAF there was documented rationale for case selection. For the 11 investigation cases that predated the RCAF process there was no documented rationale of case selection on file although cases were selected by regions in accordance with broader national projects on key risk areas.

**5.9** The ANAO also reviewed case selection through the RCAF process for 45 audits and investigations initiated from 2005. There was a staggered

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<sup>46</sup> Joint Committee of Public Accounts and Audit, *Report 410 Tax Administration*, June 2008, pp. 127-128.

adoption of the RCAF by the regions. Within the minutes of the various RCAFs, there was additional justification and rationale for cases that was not documented on individual case files. The RCAF process, however, was extremely varied across the regions in frequency of meetings and matters considered. The minutes of the various RCAFs did not reflect the full range of cases undertaken by SNC.

**5.10** The Tax Office advised that the RCAF process, as it was established, allowed the regions to undertake certain types of cases without RCAF approval. The methods of approval were:

- regional level approval—these included ‘sibling cases’ that were directly related to previously approved cases;
- cases related to nationally endorsed projects—the projects could focus on a specific geographical location, a specific market segment, or a specific product risk. The nationally endorsed projects, however, were generally high level strategic documents about identified risks—there was no specification of the major perpetrators of the risk, nor specific targeting of key leverage points. Similarly, there were no criteria to identify why particular cases were investigated in preference to others; and
- response cases—incidences when the Tax Office acted following a seizure of excisable goods by other law enforcement agencies.

**5.11** Of the sample of 64 investigation and audit cases reviewed, 41 were initiated when the RCAF process was in existence. Twenty of the 41 cases had documented case approval and rationale from the RCAF process. Six cases were approved at a regional level, and 13 cases related to national projects. A further two cases were response cases. The ANAO also identified two cases that were initially rejected by the RCAF due to resourcing, but were subsequently endorsed at the regional level—these are recorded as regional level approval. Table 5.1 provides an overview of case approval.

**Table 5.1****Case approval in SNC before July 2008**

Method of approval	Number	Percentage
Cases approved by RCAF	20	49
Regional level approval	6	15
National endorsed projects	13	32
Response cases	2	5
Total	41	100

Source: ANAO analysis of Tax Office information.

**5.12** The regionally focused process historically allowed significant variances in case selection across Australia, which did not necessarily reflect the best national cases to address strategically identified risks. Over time regions have developed particular skill sets and cases were chosen to reflect these skill sets. Given the finite resources available, the Tax Office must effectively leverage from the cases that are chosen under the compliance model.

**5.13** To address the limitations of the regionally-based focus, the Tax Office has revised its case approval process to better reflect national and strategic priorities. Established in August 2007, the PMF was set up, amongst other things, to approve projects and cases following consideration at the regional level. The PMF endorsed *National Case Selection Process* only came into operation in September 2008.

**5.14** Under the process, the revised Regional Forum (replacing the RCAF) reviews potential cases and, where appropriate, recommends them to the PMF. The PMF considers new projects in the context of existing commitments and priorities. The SNC regions can continue to initiate investigations and audits in sibling, or other cases related to existing approved compliance activities. The ANAO considers it is likely the revised case selection process will lead to a more strategically driven selection of cases. The ANAO suggests that to assist SNC case selection that aligns with corporate and strategic objectives, that SNC maintains a national focus on key risk areas and case selection.

## Ongoing case management

### Ongoing management of investigations and audits

**5.15** The work of SNC in carrying out investigations and audits is typically a lengthy and involved process. As at 30 June 2008, SNC was undertaking 564 ongoing matters across Australia. A further 250 completed investigations were with prosecutors. Of the ANAO sample of 64 cases, SNC had adopted a regional approach for the ongoing management of these cases. The management of cases is achieved through a 'call-over' process with monthly (Team Leader), quarterly (Regional Manager) and six monthly (Regional Director) reviews in addition to informal regional meetings. While this review process was not nationally endorsed until July 2008, the 'call-over' process was occurring in every region before this date. The approach to the 'call-over' process was not applied consistently across all the different regions, with the interval of call over panels varying significantly. The sample of 64 files revealed that cases often had large unexplained periods of inactivity that may have been avoided if there was closer engagement by management in reviewing the status of open cases.

**5.16** ANAO testing in December 2008 attempted to confirm the incidence of open cases subject to the call-over process for 2007–08. However, lack of documentation and irregularities in the call-over process prevented a national analysis. The sample of case files highlighted that only 46 of the 64 (72 per cent) investigations and audits were subjected to some form of the call-over process. The revised nationally endorsed call-over process has significant potential to assist in the ongoing management of cases.

**5.17** In addition to the formal case call-over process, in July 2008 SNC implemented a new time and case management tool to promote greater engagement and ongoing review by management. Investigators and auditors are required to prepare a case time plan which estimates the resources required, in hours and by officer classification, to complete each case. The case plan is entered into a database along with other data that is extracted from the case management system and the Tax Office time recording system. As a result it is now possible for case officers and management to monitor the time invested in each case and to continuously assess how the matter is progressing against the planned budget. This initiative should bring about a greater degree of discipline and transparency in the planning and execution of casework.

**5.18** The Tax Office also keeps in regular contact on a regional basis with the CDDP regarding the cases that are currently on hand. The new time and case management tool should further assist the Tax Office in tracking the progress of those investigations lodged with prosecutors.

## Active compliance

**5.19** The processes and practices for investigations and audits are significantly different and are discussed below. As noted in paragraph 5.3, from the sample selected, only 32 investigations and 32 audits were able to be reviewed. The following findings of investigations and audits are primarily based on the sample selected.

## Investigations

**5.20** Fraud programs managed by Australian Government agencies that are subject to the FMA Act, must comply with the Fraud Control Guidelines.<sup>47</sup> Some of the main requirements of the Fraud Control Guidelines are that:

- fraud investigations must be carried out in accordance with the AGIS;<sup>48</sup>
- staff involved in preventing, detecting and investigating fraud must be suitably qualified and must meet appropriate competency standards set out in the Public Sector Training Package;<sup>49</sup> and
- fraud investigators must have attained a Certificate IV in Government (Investigation).<sup>50</sup>

**5.21** There is no single set of investigation guidelines for Tax Office staff. The Tax Office has an internal work processes website that contains practice and procedure references for all operational investigations staff. The Tax Office also relies on the Certificate IV training manuals, Practice Notes from the CDDP, and AGIS as appropriate guidance. The ANAO reviewed operational

<sup>47</sup> Regulation 19 of the FMA Act allows the Minister for Home Affairs to issue guidelines (called *Fraud Control Guidelines*) about the control of fraud.

<sup>48</sup> The AGIS replaced the Commonwealth Fraud Investigations Standards Package in September 2003. All Australian Government agencies required to comply with the Commonwealth Fraud Control Guidelines must also comply with the minimum standards for investigations set out in AGIS.

<sup>49</sup> The Public Sector Training Package is a collection of nationally agreed skills, or competency standards, required to carry out public service work effectively. The competency standards are packaged into nationally recognised qualifications which range from entry-level to senior management.

<sup>50</sup> Attorney General's Department, *Commonwealth Fraud Control Guidelines 2002*, AGD, 2002, Canberra.

arrangement to identify common practices across regions and adherence to AGIS in selected aspects of operations.

### *Case investigation plan*

**5.22** A case investigation plan outlines what tasks need to be undertaken, who should do them and when they are to be completed. The ANAO found that 24 of the 32 (75 per cent) sample cases included a case investigation plan. The ANAO has previously examined the Tax Office's adoption of case investigation plans in ANAO Audit Report No.55 2002–03, *Goods and Services Tax Fraud Prevention and Control*, and reported that:

15 of the 22 sample cases accepted for investigation included an investigation plan. Fraud Investigations management advised that the use of investigation case plans is viewed as an area for improvement.

**5.23** While SNC is a combination of different investigation arms within the Tax Office (including the GST Fraud Unit), there are very similar rates of adoption of case investigations plans across the two periods (2002–03—68 per cent and 2008–09—75 per cent). The ANAO notes that many cases involving excise matters are initiated as a response to the activities of other agencies which explains the lack of case investigation plans. The ANAO suggests the SNC Executive continue to closely monitor this aspect of investigations. The Tax Office advised that SNC has recently undertaken an assurance process which has validated that all correctly created open cases have a current investigation plan. The Tax Office further advised that a new process has been implemented to help ensure all new and current cases contain a case investigation plan.

### *Evidence gathering*

**5.24** The function of an evidence matrix is to: facilitate orderly planning of an investigation; to provide a means of clearly identifying the objectives of an investigation; specifying what evidence is required to prove the offence; and, outlining avenues of inquiry. An evidence matrix is not mandatory under AGIS, however, its advantages include the facilitation of planning, and setting the direction and focus of the investigation. The ANAO found that 20 of the 32 (63 per cent) sample cases included an evidence matrix. Regional differences were a significant factor influencing whether cases contained evidence matrices. The ANAO encourages the use of these matrices in complex cases. The Tax Office advised that it considers evidence matrices to be best practice and they will be encouraged for all complex cases in the future.

### *Critical decisions*

**5.25** The AGIS state that 'All critical decisions made during the investigation should be documented in the investigation file.' These include those decisions that lead to a significant change in direction or approach. The Tax Office uses case decision records (CRDs) as a means of recording critical decisions. The ANAO found that 29 of the 32 (90 per cent) sample cases included case decision records. Of the 29 investigations that had CDRs, there was a wide range of content in the CDRs with no uniform principle being applied as to what type of decision warrants a CDR. Different approaches in the regions were again a significant factor on whether CDRs were used, and the content of the particular record. The ANAO encourages the adoption of a uniform national approach on appropriate content for CRDs to achieve adherence to the AGIS.

### *Staff qualifications*

**5.26** The Fraud Control Guidelines state that employees who are primarily engaged in preventing, detecting or investigating fraud are to meet the required fraud control competency requirements including the *Certificate IV in Government (Investigations)*. In response to the 2007–08 *Australian Institute of Criminology Annual Reporting Questionnaire*, the Tax Office identified 298 staff that were dedicated to fraud control yet only 198 staff had formal qualifications. The Tax Office advised that they were running additional training in 2008–09 to address this issue, but also noted the database used to identify how many staff required training was incorrect due to errors in data entry. The Tax Office advised a new database currently being introduced should be able to provide more accurate information.

### *Timeliness of investigations*

**5.27** Some investigations will take longer to complete than others, depending on their seriousness or complexity. While SNC management reports regard the age of all open cases, the ANAO identified discrepancies with some of the dates. The data is based on when a case is created and does not account for various milestones of an investigation. Due to inaccurate data in the reports, it is not possible for the Tax Office to determine the time taken to complete all ongoing investigations within SNC.

**5.28** The ANAO sample included 27 cases where the elapsed time information was available. On average, it took two years to complete an investigation from initiation to referral to the CDPP or AGS, with nine cases taking over three years to complete. The ANAO notes that one region had four

of the cases that took over three years. The files reviewed showed there were often long unexplained periods of inactivity. The consequence of the delay in case progression can affect community perceptions of the Tax Office and possible sentencing decisions by the Courts and the impact of the general deterrence is reduced. The following comments were taken from a transcript of proceedings recently made by a Justice in the Victorian County Court, in a case where Tax Office timeliness was a consideration:

...what concerns me is what weight should I give to general principles of deterrence...the ability of the court to give the message that if you defraud the revenue of a country, it is a serious offence that will warrant stern punishment; but when those in charge of the revenue of the country do nothing about it, just fail to act, general deterrence, it seems to me, seems to be somewhat weakened in the individual case.

**5.29** The Tax Office advised that a revision to milestones, including distinguishing between a referral to the CDPP and AGS and actual case closure, is designed to enable closer monitoring and review. The monitoring of these milestones by case officers and team leaders should improve case management. The SNC's new time and case management tool that incorporates time allocations and case updates should also allow management to more closely monitor case progression against planned milestones and hours budgeted for each case. The ANAO notes timeliness could be significantly improved if consistent practices and procedures were used in the regions.

### *Quality assurance*

**5.30** The Tax Office conducts Quality Assurance Reviews (QARs) of investigations as a way of assessing their own performance. The Tax Office internal QARs are complemented by a biennial review by the AFP of one selected investigation case. The QAR process grades the investigations against a variety of criteria, primarily based on AGIS. The QAR process identifies weaknesses in the systems and deficiencies of investigations, and makes recommendations regarding further improvement. An inherent difficulty, amplified with investigations, is that the QAR process generally occurs after the case is finalised, which may be after any court proceedings.<sup>51</sup> As a

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<sup>51</sup> The QAR process reviews all closed cases and includes a number of cases that do not go through the court process (for example, 'no further actions' and warning letters).



consequence, the cycle times for the more complex investigations results in the assessment of work completed years earlier.

**5.31** The Tax Office QAR failure rate of cases has consistently been at a high level, with similar reasons for failure being given across the years. The QAR process has highlighted issues such as time management of cases, lack of rigour around case selection, and a lack of involvement by team leaders, which are similar issues to those identified by the ANAO. The ANAO notes that a high failure rate in the QAR process has not prevented successful prosecution outcomes. The results do, however, indicate there is significant scope for improvement in case management of investigations. Table 5.2 provides an overview of cases reviewed and failure rates over the last three QAR processes. While the Tax Office has attempted to rectify identified issues, any specific training undertaken will not be immediately evident through improved QAR results due to the long cycle times.

**Table 5.2**

**Quality Assurance review results**

	February 2007	October 2007	October 2008
Case review period	January to June 2006	January to June 2007	July 2007 to June 2008
Cases reviewed	37	23	43*
Cases failed	16	5	21
Failure rate	43%	21%	49%

\*Note: One case was assessed as 'unable to rate' due to lack of appropriate evidence on file.

Source: ANAO analysis on Tax Office information.

**5.32** The QAR process reviews cases on a national basis to ensure consistency of investigations. The Tax Office has attempted to weight the sample of cases selected so there is proportionate representation across the regions. Due to various management decisions to alter the selection of cases, certain anomalies have risen that have compromised the intent of a weighted sample. These anomalies include a period of six months where no cases were subject to review, and a significant imbalance in regions subjected to QAR compared to investigations completed in that region. The ANAO notes that the Tax Office has moved to an annual QAR to align the review process with reporting periods. The ANAO suggests that the Tax Office continues to closely monitor those cases selected for QAR to ensure consistency in national coverage.

## Audits

**5.33** When a case is approved for audit, case officers and team leaders are required to follow the case management process outlined in the Tax Office's procedural guidelines. The ANAO assessed the sample cases against key criteria.

### *Case planning and decision recording*

**5.34** Effective case planning requires important decisions taken during the course of an audit to be recorded. An audit plan outlines what tasks need to be completed, who should do them and when they are to be completed. The ANAO found that 30 of the 32 files reviewed included audit plans.

**5.35** Case decision records outline major decisions made during an audit including change of scope or line of inquiry. Only 13 of the 32 files had case decision records and there were no significant regional differences in the adoption of case decision records. The revised case call-over process, the use of the case management system and a newly implemented time management database should assist SNC to record case decisions in a timely manner.

### *Fraud or Evasion submission*

**5.36** Section 170 of the *Income Tax Assessment Act 1936* sets limits on the period in which the Commissioner may amend an assessment. Dependant on certain conditions, generally the period permitted is either two or four years after the Commissioner gives notice of the assessment to the taxpayer. There is no restriction on the time period within which the Commissioner can amend an assessment where the Commissioner is of the opinion that there has been fraud or evasion. *Practice Statement Law Administration 2008/06 – Fraud or Evasion* (PSLA 2008/06) states that 'To make an amended assessment under this provision the Commissioner must form an opinion to this effect and form it validly'.

**5.37** The *Taxation Authorisation Guidelines* and PSLA 2008/06 provide taxation officers with guidance on the exercise of this power. In summary, the guidelines authorise an appropriate officer to make a determination or form an opinion, in the name of a Deputy Commissioner, that a taxpayer has been involved in fraud or evasion or has intentionally disregarded the tax law.

**5.38** Within the sample of 32 cases reviewed there were 11 cases where an amendment was made more than four years after the Commissioner gave notice of the original assessment, and required a fraud or evasion opinion. There was significant variation in how different teams (even within the same

region) approached the fraud and evasion opinion. The ANAO found four examples where the opinion was made in accordance with the guidance. There were six examples that, while still legally valid, were not made in accordance with the guidance due to deficiency in form or substance. There was one case where no opinion was made. The Tax Office advised the ANAO that it has subsequently revisited the case with no fraud and evasion opinion, and correctly reissued an amended assessment.

**5.39** The legislative framework for the amendment of taxpayer assessments beyond four years is based on equity and fairness considerations. Adherence to this framework assists the Tax Office achieve its mission of maintaining and enhancing community confidence.

## Recommendation No.6

**5.40** To ensure appropriate authorisation when amending tax assessments, the ANAO recommends the Tax Office review and upgrade system controls that enable an amended assessment due to fraud or evasion to be issued.

### *Tax Office Response*

**5.41** Agreed. The review identified that SNC staff, on six occasions, did not fully document a fraud and evasion opinion ie that the determination was made in the name of the Deputy Commissioner. It also identified that on one occasion no determination was made and the Tax Office has since reissued an amended assessment.

**5.42** To address this issue, SNC has developed a template to standardise the approach to be taken in the future. The use of this form will be incorporated into our procedures (under development) for dealing with fraud and evasion matters. These include the requirement for submissions and the template to be reviewed by team leaders and the SNC Quality Panel. Staff will be reminded of these procedures through the issuing of a Technical Alert.

### *Audit report*

**5.43** At the conclusion of an audit the Tax Office prepares a 'final audit report'. This summary document includes the facts, audit issues, reasons for decisions, and other pertinent aspects of the audit process. All 32 of the finalised audit files reviewed included a final audit report.

### *Quality management and assurance*

**5.44** The Tax Office has instituted a number of processes to help ensure appropriate quality technical decisions are made consistently across the office.

The SNC Business Line has instituted a two stage process—a quality panel to provide technical guidance and assurance to auditors before communication of outcomes with the taxpayer; and a system of peer-review before signing off an audit. This two stage process is complementary to the Tax Office wide Technical Quality Review (TQR).

**5.45** The Tax Office has a broader quality assurance process as outlined in *Practice Statement Law Administration 2001/11* (PSLA 2001/11). PSLA 2001/11 describes the processes to be followed in conducting periodic technical quality reviews of written interpretative decisions, and reporting the results. As part of the process each business line is required to report on the quality of its written interpretative decision making. To do this each line conducts a TQR that is conducted biannually on a sample of cases.

**5.46** The ANAO sample of audit cases included 13 cases that had been subject to the quality assurance or TQR processes. Only the audit cases subject to the TQR process are graded and of the nine cases subject to TQR, only one failed. Given the significant regional variations in approaches to similar issues, it is likely that the revised two stage process initiated at the case management level will provide greater assurance over the audit process.

**5.47** A review of the sample of cases selected for the TQR revealed that the sample is not weighted for the different regions. The ANAO testing highlighted significant imbalance amongst regions subjected to TQR compared to audits completed in that region. The ANAO suggests the Tax Office consider the region in which the audit is undertaken as criterion on selecting cases for TQR.

## **Conclusion**

**5.48** The ANAO review of investigations and audits highlighted an historical lack of management oversight and review of case progression which resulted in significant variances in regional practices and interpretation and adoption of the various standards and guidelines governing SNC activities. There was also an absence of documentation of key decisions in some investigation cases. While the Tax Office is successful in achieving a high rate of successful prosecutions, there is significant scope for improvement in the management and efficiency of investigations. SNC has recently initiated a range of tools including a time and case management tool that should facilitate greater management oversight of investigations and audits. The system is designed to allow appropriate management input at key stages of an

investigation or audit that will assist in completion of high quality and timely investigations.

## Recommendation No.7

**5.49** The ANAO recommends, that to achieve a high level of national consistency in the standard and timeliness of investigations and serious evasion audits, the Tax Office:

- (a) closely monitors the ongoing management of investigations and serious evasion audits; and
- (b) develops and implements a nation-wide approach to the management and conduct of investigations and serious evasion audits.

### *Tax Office Response*

**5.50** Agreed. As the ANAO noted in the report, SNC has introduced a range of initiatives during the past 15 months but also noted that it is too early to review their impact. We will continue to support them.

**5.51** They include:

- Formalisation of a “case call over” process requiring regular reviews of all matters, monthly (case officer and team leader), quarterly (case officer, team leader and Regional Manager) and six monthly (case officer, team leader, Regional Manager and Regional Director).
- Implementation of a direct hours case planning and monitoring approach. All cases undertaken by SNC now require a plan setting out the budgeted hours for the key phases of the audit or investigation. Actual hours are monitored against plan. It is expected this approach will result in a significant increased focus on the timeliness of our work.
- Introduction of a peer review of all cases prior to finalisation.
- Formation of a Quality Panel to consider all technical decisions.

**5.52** As part of a Tax Office-wide process SNC will also implement the new Integrated Quality Framework which will lead to further improved oversight of casework and the ongoing identification of best practice.

## Proceeds of crime capability

**5.53** The *Proceeds of Crime Act 2002* (POC Act) enables law enforcement authorities to trace and confiscate the proceeds of crime. The POC Act sets out

the processes by which confiscation can occur; and the ways in which Commonwealth law enforcement agencies can obtain information.<sup>52</sup>

**5.54** In 2006, the Proceeds of Crime Amendment Regulations 2006 (No.4) specified the Tax Office as an enforcement agency for the purposes of the POC Act.<sup>53</sup> The Commissioner of Taxation is empowered to authorise officers to undertake a variety of investigation steps for the purposes of POC Act action, in order for the CDDP to seek restraint and confiscation of the proceeds of crime. The proceeds of crime capability provides an opportunity to protect the revenue, in cases of tax fraud, early in the investigatory process. However, it is the AFP that currently continues to pursue POC Act investigations in tax related matters.

**5.55** The Tax Office has yet to develop a proceeds of crime capability. In late 2006, internal submissions were developed with options for how the Tax Office should adapt to its new role as an enforcement agency. In late 2006, the Tax Office engaged a consultant to review POC Act implementation related issues. In May 2007, the review findings were supported by the SNC Executive including the recommendation that:

The Tax Office accepts that POCA has a significant place in its armoury in promoting compliance and of meeting the objects of the (POCA) Act, in the limited classes of cases where it will be available, including where tax remedies may not be effective.

**5.56** As at May 2009, the Tax Office was still in the process of developing the capability. The development of this capability would enhance the current activity of the Tax Office.

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<sup>52</sup> *Proceeds of Crime Act 2002*, Section 6.

<sup>53</sup> *Proceeds of Crime Amendment Regulations 2006*, Section 4A.

5.57 The Commissioner of Taxation *Annual Report 2007–08* states that action in tax related matters has resulted in amounts of revenue restrained, confiscated and recovered under the POC Act. These amounts to date have been achieved by other enforcement agencies under the POC Act. The ANAO suggests that in future years the Tax Office acknowledges the relevant enforcement agency under the POC Act to aid transparency and understanding of co-ordinated activities.

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Ian McPhee

Auditor-General

Canberra ACT

20 May 2009





# Appendices



## Appendix 1: Tax Office response



Australian Government  
Australian Taxation Office

SECOND COMMISSIONER OF TAXATION

Mr Ian McPhee  
Auditor-General  
Australian National Audit Office  
GPO Box 707  
BARTON ACT 2600

Dear Mr McPhee,

### **ANAO audit: the Australian Taxation Office's management of serious non-compliance**

Thank you for the Australian National Audit Office report and recommendations on improvements to the Tax Office's management of Serious Non-Compliance business line (SNC).

SNC's role is to investigate potential tax fraud and serious evasion behaviour. It operates under relevant civil and criminal laws and works closely with other parts of the ATO and agencies. The reality is that this is challenging and demanding work and we appreciate that the report recognises this.

We also appreciate the recognition given in the report to a raft of changes that have been implemented in Serious Non-Compliance over the past year to modernise systems and processes and improve our management of this work. As recognised in the report, cases selected for review largely came from those finalised during the 2007-08 financial year and most were commenced and significantly progressed before these changes had been implemented.

As the attachment shows we have agreed with six of the report's recommendations and agree in part with the other. It is encouraging that, in many instances, changes already being implemented in Serious Non-Compliance are consistent with the general tenor of the recommendations.

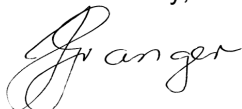
In relation to recommendation 4 to which we agreed in part, we feel that an important context for evaluating SNC's activities is that they are usually a part of a broader strategy encompassing help, marketing, audits and summary prosecutions to address strategic compliance risks such as micro business compliance, employer obligation compliance, cash economy etc. SNC's role is to treat the most extreme cases on non compliance for such risks. The other activities involved in these strategies were not within the scope of this audit but they also contribute to the overall effectiveness of the approach to treating strategic compliance risks.

Finally we note that the review specifically excluded Project Wickenby - focussed on dealing with abusive use of tax havens - from its terms of reference. While Project Wickenby activities and resources were excluded from consideration in this audit they do represent a very substantial commitment of resources and activities of the line.

We would like to take this opportunity to thank your audit team – Charles Higgins and Ian McDonald - for their constructive approach to this review.

Should you have any questions concerning our response, please contact Mr Michael Cranston, Deputy Commissioner, Serious Non-Compliance, on (02) 9374 1428.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'J Granger', with a stylized, cursive script.

Jennie Granger  
Second Commissioner Compliance  
30 April 2009

## Attachment

### Recommendation No.1 Para 2.34

To assist data collection and reporting obligations required by the Commonwealth Fraud Control Guidelines are met, the ANAO recommends that the Tax Office further improves its procedures and processes so that they support accurate recording and reporting of incidences of alleged fraud.

#### Response:

Agree.

Following definitional changes by the Australian Institute of Criminology that an allegation of fraud should contain sufficient evidence to warrant an initial investigation, the Tax Office changed its reporting and now reports only the number of investigations and audits initiated by SNC. This has resulted in a dramatic reduction in incidences reported.

The report identified that some mistakes in reporting occurred in 2005-06 and 2006-07 years. These errors should not now occur as under the new definition the numbers of cases initiated can be drawn directly from our case management system.

The Tax Office is also implementing new systems – Analyst Workbench supported by Siebel work management - which will, inter alia, improve our ability to capture, store and analyse referrals and conduct an initial assessment of allegations. This enhanced technical support will assist us in completing future surveys.

### Recommendation No.2 Para 2.41

To assist the accurate collection of audit and investigation data for reporting, monitoring and evaluation purposes the ANAO recommends that the Tax Office review and amend as necessary the procedures and processes on the creation and closing of cases on the new case management system.

#### Response:

Agree.

The Tax Office's new case management system was implemented in the Serious Non-Compliance business line in November 2006. There were some challenges in bedding down the new system resulting in a small number of duplicated cases being recorded on the system. In response to these transitional issues SNC has reviewed its practices and procedures, including developing a national case selection process.

The national case selection strategy was introduced to ensure that all new cases entered into the case management system have the appropriate approvals and have been accurately recorded. This system centralises case creation into a small team of officers specifically trained for this role. This has increased case creation data integrity.

The accuracy of information relating to the closing of cases has been improved by the closer monitoring of case workloads, both at regional and national levels, and the implementation of a review of all finalised cases to ensure they are properly recorded in the case management system.

We are also undertaking additional training to improve understanding of the procedures to properly close cases in the case management system.

#### **Recommendation No.3 Para 3.22**

To improve the effectiveness of the Tax Evasion, Avoidance and Crime Communication Strategy, the ANAO recommends that the Tax Office:

- (a) assesses the impact of marketing and communication activities; and
- (b) subsequently assesses, and amend where appropriate, the Tax Evasion, Avoidance and Crime Communication Strategy.

#### **Response:**

Agree.

*The Tax Evasion, Avoidance and Crime Communications Strategy* is a four-year strategy with initiatives rolling out from March 2009 onwards.

The Tax Office has conducted market research to establish base line measures to assess the effectiveness of the strategy, associated messages and targeted communications plans.

Further evaluation will be undertaken at appropriate milestones within Tax Office priorities and budgetary restraints.

#### **Recommendation No.4 Para 3.29**

To assist in measuring the performance of the SNC business line, the ANAO recommends that the Tax Office:

- (a) designs appropriate indicators of the effectiveness of strategies to address crimes against Australia's tax administration; and
- (b) develops suitable tests to validate these indicators.

#### **Response**

Partly agree.

Activities conducted by the SNC business line generally form part of a broader compliance risks mitigation strategy encompassing help, marketing, audit and investigation activities to address strategic risks such as Cash economy.

The Tax Office's approach is not to individually measure the effectiveness of each activity separately but to measure the effectiveness of the whole approach to

addressing the strategic risk. We believe this is both more informative and also more cost effective. Therefore, we do not think it is appropriate for SNC to develop separate measures relating solely to its activities but rather its activities be evaluated as part of the overall effectiveness of the risks mitigation strategy.

For some strategic compliance risks where SNC does have responsibility for developing and implementing the mix of activities to address the strategic compliance risk, such as income from illegal activities, SNC will develop measures of effectiveness for these risks.

#### **Recommendation No.5 Para 4.24**

To improve the quality of the Tax Office's referral process and information holdings, the ANAO recommends all potential fraud information referrals are registered on a single Tax Office database and are assessed by a centrally coordinated intelligence unit.

#### **Response:**

Agree.

A single database into which all fraud information referrals are entered was introduced in October 2000. This information is assessed by the SNC Intelligence team and is used as the basis for case selection.

In the past there have been instances where fraud referrals have circumvented this process by being relayed directly to a regional investigation team and an investigation commenced without the relevant information being entered into the fraud information referral database. These instances generally pre-dated the current processes for managing fraud referrals including the promulgation of Corporate Management Practice Statement 2007/02 that gives guidance to staff on how to recognise fraud and refer matters to SNC.

The case selection process now in place ensures that cases cannot be commenced within a region without first being approved by the Program Management Forum and the information being recorded on the intelligence database.

Staff will be reminded through the issuing of a Technical Alert that all information is to be entered into the database.

#### **Recommendation No.6 Para 5.40**

To ensure appropriate authorisation when amending tax assessments, the ANAO recommends the Tax Office review and upgrade system controls that enable an amended assessment due to fraud or evasion to be issued.

#### **Response:**

Agree.

The review identified that SNC staff, on six occasions, did not fully document a fraud

and evasion opinion ie that the determination was made in the name of the Deputy Commissioner. It also identified that on one occasion no determination was made and the Tax Office has since reissued an amended assessment.

To address this issue, SNC has developed a template to standardise the approach to be taken in the future. The use of this form will be incorporated into our procedures (under development) for dealing with fraud and evasion matters. These include the requirement for submissions and the template to be reviewed by team leaders and the SNC Quality Panel. Staff will be reminded of these procedures through the issuing of a Technical Alert.

#### **Recommendation No.7 Para 5.48**

The ANAO recommends, that to achieve a high level of national consistency in the standard and timeliness of investigations and serious evasion audits, the Tax Office:

- (a) closely monitors the ongoing management of investigations and audits; and
- (b) develops and implements a nation-wide approach to the management and conduct of investigations and serious evasion audits.

#### **Response:**

Agree.

As the ANAO noted in the report, SNC has introduced a range of initiatives during the past 15 months but also noted that it is too early to review their impact. We will continue to support them.

They include:

- Formalisation of a “case call over” process requiring regular reviews of all matters, monthly (case officer and team leader), quarterly (case officer, team leader and Regional Manager) and six monthly (case officer, team leader, Regional Manager and Regional Director).
- Implementation of a direct hours case planning and monitoring approach. All cases undertaken by SNC now require a plan setting out the budgeted hours for the key phases of the audit or investigation. Actual hours are monitored against plan. It is expected this approach will result in a significant increased focus on the timeliness of our work.
- Introduction of a peer review of all cases prior to finalisation.
- Formation of a Quality Panel to consider all technical decisions.

As part of a Tax Office-wide process SNC will also implement the new Integrated Quality Framework which will lead to further improved oversight of casework and the ongoing identification of best practice.



## Appendix 2: Key agencies

### *Australian Crime Commission*

1. The Australian Crime Commission (ACC) is a Commonwealth statutory body working nationally with other federal, state and territory agencies to counter serious and organised crime. It aims to bring together all arms of intelligence gathering and law enforcement to unify the efforts against serious and organised criminal activity. It undertakes joint investigations and provides information to SNC. SNC staff are seconded to the ACC and work closely with them to investigate fraud and serious evasion.

### *Australian Federal Police*

2. The AFP investigates serious or complex crime against the Commonwealth's interest—this includes the ability to conduct tax-related investigations on its own initiative. The AFP helps Australian Government agencies, including the Tax Office, in their investigations by providing forensic and technical assistance and executing search warrants. SNC works with the AFP which provides support via a number of means including Proceeds of Crime action, support for joint operations, and execution of Crimes Act warrants. The AFP also has dedicated liaison officers who assist by providing advice to SNC staff in relation to criminal matters. As part of this cooperative relationship, SNC provides personnel for joint operations and facilitates the sharing of intelligence. Under the Fraud Control Guidelines, the AFP is also responsible for:

- providing case management reports on investigations it undertakes;
- conducting quality assurance reviews of agencies' investigations;
- maintaining and reviewing Commonwealth investigation standards; and
- providing a fraud control liaison and dissemination function.

### *Australian Government Solicitor*

3. The AGS mandate is to support the Attorney-General in his role as First Law Officer of the Commonwealth. This is achieved by providing quality legal services to the Australian Government and its departments and agencies. AGS undertakes some civil related proceedings for excise related matters on behalf of the Tax Office.

### *Australian Transaction Reports and Analysis Centre*

4. AUSTRAC is Australia's anti-money laundering and counter-terrorism financing regulator and specialist financial intelligence unit. The Tax Office has access to the AUSTRAC database on suspect transactions and other financial information. SNC acts as the liaison point within the Tax Office for information moving between the two agencies.

### *Commonwealth Director of Public Prosecutions*

5. The CDPP prosecutes offences against Commonwealth law and conducts related criminal assets recovery. All prosecutions and related decisions are based on the *Prosecution Policy of the Commonwealth*. The Tax Office has an in-house prosecutions unit, which handles uncontested non-lodgement matters and other non fraud related matters by agreement with the CDPP. The CDPP prosecutes fraud cases on behalf of the Commonwealth (including the Tax Office).

### *State police forces*

6. State police forces provide SNC with important information and assist in compliance activities. State police forces assist in the Tax Office by providing referrals and general intelligence. The Tax Office also works on joint taskforces with State police forces relating to specific shared risks and considers such taskforces a model for future arrangements with law enforcement agencies.

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The Australian Taxation Office

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