

## **ATO Rules for the Rich**

### **References**

September 2018

**1.** Ernst & Young (Australia) Global Tax Alert 31 July 2013

*Australia and Switzerland sign revised income tax treaty:*

<http://www.ey.com/gl/en/services/tax/international-tax/alert--australia-and-switzerland-sign-revised-income-tax-treaty> Copy of the unsigned Convention 2013.

<https://static.treasury.gov.au/uploads/sites/1/2017/06/SwissDTA.pdf>

**Note:** Nineteen months later the two countries on 3 March 2015 signed a joint declaration to introduce automatic exchange of bank and other financial institution account information.

<http://www.ey.com/gl/en/services/tax/international-tax/alert--australia-and-switzerland-agree-to-automatically-exchange-financial-institution-account-information>

The 2013 Convention was now being given real time administrative effect.

(Bundle Page 14)

**2.** 'ATO amnesty: Rich urged to come forward on stashed Swiss millions'

Australian Financial Review 14 November 2013 by Nassim Khadem

<http://www.afr.com/leadership/careers/ato-amnestyrich-urged-to-come-forward-on-stashed-swiss-millions-20131114-jz0kf>

Exerts read

Rich Australians owing hundreds of millions of dollars of tax revenue hidden in Swiss bank accounts could be offered amnesty if they come forward and confess old sins. The Australian Taxation Office is urging second- and third-generation wealthy clients to come forward and make "voluntary disclosures" about offshore income or assets, to avoid getting hit with bigger fines, or even jail, down the track.

ATO deputy commissioner **Michael Cranston, who looks after the high-wealth individuals** unit, says tax commissioner Chris Jordan may consider offering a sort of amnesty to people who come forward.

Over the past four years, the ATO has had almost 150 voluntary disclosures about money held offshore by highly wealthy people (the ATO defines them as someone controlling over \$30 million in net assets). As a result, almost \$200 million in tax has been paid back.

Typically, as **long as the individual has not been deliberately fraudulent**...

**For voluntary disclosures, the ATO will generally go back through tax returns over a four-year period and interest penalties get reduced...**

The head of Arnold Bloch Leibler's tax practice, Mark Leibler, who has advised many of the BRW Rich 200, says the cumulative amount outstanding could be in the "billions

of dollars".

Leibler says the mentality was different decades ago: tax evasion was more common because people did not understand the risks.

Clayton Utz tax partner Niv Tadmor says in the majority of cases he has dealt with, hidden money has been an inherited problem.

Leibler says he's advised a number of his wealthy clients to come clean. "The difference in the ATO's approach is substantial," he says. "If you come forward you'll get treated very generously. And if you don't, and the Tax Office finds out about it through audit activity, you'll be treated very harshly in terms of penalties, and the years they go back."

(Bundle Page 18)

**3.** *ATO Office Minute 20 March 2014*

Michael Cranston to Chris Jordan Commissioner regarding Project Do It

(See below ref 5)

Obtained under Freedom of Information

(Bundle Page 29 Paragraph 2)

**4.** *Former ATO deputy commissioner Michael Cranston to face trial in early 2019*

Australian Financial Review 9 March 2018

<http://www.afr.com/business/legal/former-ato-deputy-commissioner-michael-cranston-to-face-trial-in-early-2019-20180308-h0x8p3>

**5.** *INTERNAL ATO OFFICE MINUTE 20 MARCH 2014* (See full Minute at end of this document)

Australian Government: Australian Taxation Office

OFFICE MINUTE

To: Chris Jordan, Commissioner

From Michael Cranston, Deputy Commissioner, Private Groups and High Wealth Individuals

Extract

**Rationale for Project DO IT**

3. There are a number of drivers in support of *Project DO It* taking place notably:

- *The changing international tax environment* - an increase in exchange agreements, automatic exchange of information elimination of tax havens and shifts driven by the G20 are expected to create an incentive for eligible taxpayers' to disclose (a last chance to come forward).
- *Effective use of resources* - we can focus our compliance activity on promoters and taxpayers that do not come forward .....
- *Increased tax revenue* :- additional tax revenue will be collected both from .....
- *Additional intelligence* - .....

**6.** *ATO Annual Report 2015-16 Volume 01 Document 4 Page 32*

"By 30 June 2016, Project DO IT, our offshore income and asset disclosure initiative, had resulted in around \$6.5 billion in assets declared and around \$676 million in omitted income disclosed, raising over \$265 million in liabilities and over \$260 million in collections..."

**7.** INSIGHTS PUBLICATION

Arnold Bloch Leibler

*New Offshore Voluntary Disclosure Initiative launched, 'Project DO IT'*

27 March 2014

(Exerts)

The Australian Taxation Office ('ATO') today announced the launch of a new Offshore Voluntary Disclosure Initiative ('OVDI'). Arnold Bloch Leibler worked closely with the ATO on the framework of the OVDI with Mark Leibler AC, Senior Partner, extensively consulted by the ATO in the design of the OVDI.

As we reported previously in our bulletins dated 19 August 2013 and 21 October 2013, it is clear that the ATO and Government are rapidly cracking down on international tax avoidance and evasion. Importantly, more jurisdictions that were previously considered 'secrecy jurisdictions' or 'tax havens' are participating in vast information exchange arrangements including the automatic exchange of information amongst tax authorities. It is only a matter of time before these arrangements are used by the ATO to uncover previously hidden assets and undisclosed income

Bundle Page 34

**8.** *ATO seeks billions in amnesty for rich*

Australian Financial Review. 20 January 2014.

<http://www.afr.com/news/politics/national/atoseeks-billions-in-amnesty-for-rich-20140119-iy8ld>

**9.** Speech by Mr Mark Leibler 14 March 2018

[http://www.abl.com.au/MediaLibraries/ABL/ABL/Insights%20and%20News/PERSPECTIVES\\_ON\\_TAX\\_ADMINISTRATION\\_BY\\_MARK\\_LEIBLER-\(FOR-DISTRIBUTION\).pdf](http://www.abl.com.au/MediaLibraries/ABL/ABL/Insights%20and%20News/PERSPECTIVES_ON_TAX_ADMINISTRATION_BY_MARK_LEIBLER-(FOR-DISTRIBUTION).pdf)

(source doc 1)

**10.** *Former ATO deputy commissioner Michael Cranston to face trial in early 2019*

Australian Financial Review 8 March 2018

<http://www.afr.com/business/legal/former-ato-deputy-commissioner-michael-cranston-to-face-trial-in-early-2019-20180308-h0x8p3>

"Mr Cranston is not accused of being a co-conspirator to the alleged fraud but is facing charges of having sought to obtain information in his capacity as an ATO officer with the intention of "dishonestly obtaining a benefit for another person, Adam Cranston"

**11.** *ATO tax amnesty nets billions, but hunt for rich with secret Swiss accounts continues*

Sydney Morning Herald 9 Dec 2014 :

<https://www.smh.com.au/business/ato-tax-amnesty-nets-billions-but-hunt-for-rich-with-secret-swiss-accounts-continues-20141209-1237mb.html>

Mr Cranston confirmed that most of the people who had come forward (under Project Do It) were the children and grandchildren of rich migrants families. They had been left to clean up tax messes inherited from their migrant parents and grandparents, who upon migrating to Australia in the 1950s and 1960s, had stashed money away in secret Swiss bank accounts - a practice that was

common at the time.

(Bundle Page 68)

**12.** *BCI Finances Pty Limited (in liq) v Binetter (No 4) [2016] FCA 1351*  
Date of Judgment 18 November 2016

(Bundle Page 1)

**13.** *Nudie clan's \$130m mistake: the split that doomed the Binetter family*  
Australian Financial Review 30 November 2016  
<http://www.afr.com/news/policy/tax/nudie-clans-130m-mistake-the-split-that-doomed-the-binetter-family-20161123-gsw2s3>

**14.** Business Law Committee Member Profiles 2013 - Law Society of NSW

<https://www.lawsociety.com.au/cs/groups/public/documents/internetcontent/759406.pdf>

**MICHAEL BINETTER.** Michael specialises in revenue laws, commercial transactions, property and superannuation law. ... **Andersen Legal**, the legal arm of Arthur Andersen and for 12 years the senior taxation partner at Dunhill. Madden Butler. Michael is the Chairman of the Taxation Advisory Committee of the Law Society ...

NSW Law Society Profile: **MICHAEL BINETTER**

Michael specialises in revenue laws, commercial transactions, property and superannuation law. He is a founding solicitor-director of the boutique specialist taxation legal practice, Binetter Vale Lawyers. In the period prior to establishing Binetter Vale Lawyers, he was, among other things, a taxation partner at Andersen Legal, the legal arm of Arthur Andersen and for 12 years the senior taxation partner at Dunhill Madden Butler. Michael is the Chairman of the Taxation Advisory Committee of the Law Society of NSW for specialist accreditation in Business and Personal Tax, being a founding member of the committee. Michael is also a member of the taxation committee of the Law Council of Australia. In 1994 and 1995, Michael was Chair of that committee

**15.** Board Tax consultancy; Chap 2. Boards progress- Board of Taxation  
<http://taxboard.gov.au/consultation/identifying-inoperative-provisions/a-report-to-the-treasurer/chapter-2-boards-progress/> (see attachment Chapter 2\_..."

" 2.1 A Working Group of the Board was established in 2003 to consider possible rationalisation of the income tax legislation. From 2004, this Working Group managed the project on identifying the inoperative provisions of the 1936 and 1997 Income Tax Assessment Acts. It comprises Mr Chris Jordan AO (Chairman), Mr Peter Quiggin, and Mr Richard Warburton AO, and is assisted by the Board's Secretariat.

**Consultancies undertaken by Atax and SoftLaw**

2.10 Consistent with Mr Reid's advice, in January 2005 the Board engaged Atax<sup>4</sup> to advise whether there would be any unintended consequences if the candidate inoperative provisions identified by Mr Reid were repealed.

FN4 The Atax team was led by Professor Robert Deutsch and also comprised Mr Maurice Cashmere, Mr Kalmen Datt, Mr Garry Payne, the late Mr John Raneri, and Mr Michael Binetter as a consultant to Atax'↵

(7. Binetter Docs/3)

**16.** Board of Taxation – Annual Report 2013.

[https://cdn.tspace.gov.au/uploads/sites/70/2015/08/AR\\_2012-2013.pdf](https://cdn.tspace.gov.au/uploads/sites/70/2015/08/AR_2012-2013.pdf).

To oversee stage two of the consolidation post-implementation review, the Board appointed a working group of its members comprising Mr Keith James (Chair), Mrs Teresa Dyson, Mr Chris Jordan AO (until his appointment as Commissioner of Taxation in 2013) and Mr Curt Rendall."

...

**Chair — Mr Chris Jordan AO (until his appointment as Commissioner of Taxation in January 2013)**

Mr Jordan was previously Chair of KPMG New South Wales and Partner in Charge of the New South Wales Tax and Legal Division of KPMG. He is the former Chair of the New Tax System Advisory Board and was also the State Chair of the New South Wales Division of the Taxation Institute of Australia. He was appointed by the NSW Government to the Games Advisory Committee of the Sydney 2009 World Masters Games.

Until his appointment as Commissioner of Taxation in January 2013, Mr Jordan has been a member of the Board since its inception in September 2000. He was Deputy Chair from January 2005, was appointed to the position of Chair in June 2011 and retired from this position in December 2012 following his appointment as Commissioner of Taxation.

Mr Jordan has been an ex officio member of the Board since January 2013.

...

Assistance for the Board's post-implementation review of Division 7A of Part III of the *Income Tax Assessment Act 1936* is being provided by:

- an Expert Panel comprising Mr Noel Beharis, Mr Michael Binetter, Mr Fletch Heinemann, Mr Alexis Kokkinos, Mr Mark Molesworth and Mr Michael Parker;"

(7. Binetter docs/2)

# Courts may test tax haven users

By PAUL CLEARY

CANBERRA: A Federal parliamentary inquiry into tax havens has recommended that the Tax Office mount a test case against a big Australian company to establish that the \$6 billion locked away in tax havens is there primarily for tax avoidance.

This was the major, and by far the most controversial, recommendation in the final report of the inquiry into international profit-shifting by the House of Representatives Standing Committee on Finance and Public Administration.

It could mean that some of Australia's best-known companies, such as News Ltd, Bond Corp and Pioneer Concrete, would be taken to court over their use of tax havens.

The Tax Office has never used its anti-avoidance (Part 4A) powers to establish that tax havens are used for tax avoidance.

These companies were given special reference in the committee's report, and were the subject of evidence given in a public hearing. The report found that \$6 billion was tied up in tax havens and that the top 14 companies earned \$1.2 billion in profits in havens last financial year.

Indeed, tax havens are so big now that the amount locked away, escaping tax, is larger than the July 1 tax cuts.

The committee recommended a long list of reforms to the Tax Office which it believed would enable it to crack down on the use of tax havens.

It also recommended an "urgent" review of the Income Tax Assessment Act with a view to reducing its complexity.

The committee chairman, Mr



Stephen Martin, said the inquiry had been labelled by some sections of the business community as a witch-hunt, but he described its task in other terms.

"Perhaps it might be called a treasure hunt — a hunt for the dollars lost to Australian revenue by the operation of tax havens."

The report quoted from a submission by a well-known Melbourne tax lawyer, Mr Mark Leibler, who had made a strong attack on the inquiry, including calling it a witch-hunt.

"I would be the last to deny that there are occasions when the use of tax havens is associated with tax avoidance or even tax evasion," Mr Leibler said.

The report was in some ways academic, given the fact that the Government has legislation in the pipeline which will prevent tax avoidance by use of tax havens, the so-called tax accruals legislation.

However, the committee made a number of recommendations which would limit the means available to use tax havens.

The real merit of the report lies in its recommending that new ways of assessing companies be implemented. It called for the Tax Office to test whether it had legal backing to use "functional analysis" to assess companies.



# Tax inquiry asks names of 'dubious' charities

By ENRICA LONGO,  
Sydney  
and MARGARET SIMONS

A federal parliamentary inquiry was told yesterday that the United Israel Appeal charity had been described by the Australian tax office as "dubious".

The deputy of the finance and public administration committee, Mr Ian Wilson, called on the tax office yesterday to hand over an unedited version of an internal document which names a number of charities the office had dubbed "dubious".

An edited version of the document, without names, has already been released under freedom of information legislation.

The acting commissioner of taxation, Mr Brian Nolan, said the office would have difficulty in confirming that the United Israel Appeal was named in the document because of secrecy provisions in the tax act.

Mr Wilson said that he doubted whether the provisions applied to those named in the document, since they were not taxpayers.

The United Israel Appeal is a charity that collects money in Australia for Israel.

The parliamentary committee is investigating tax avoidance through international profit-shift-

ing schemes. It is focusing on avoidance schemes that exploit low rates of tax levied on foreign investment.

The tax office told the committee that it had examined 2400 Australian trusts with foreign beneficiaries, and found that just under half warranted investigation for possible tax-evasion schemes.

The tax office said it was concerned that such trusts might be used to evade tax through sham transactions in which the income distributed to foreign beneficiaries was "loaned back" to the Australian entity, with interest paid being claimed as a tax deduction.

The submission read: "We take evasion through schemes of this type seriously and we are working closely with the director of public prosecutions and the Australian Federal Police with a view to instigating a number of prosecutions in this area."

Earlier, a Melbourne academic, Ms Barbara Smith, referred in her testimony to the document and claimed it had named 12 charities. She said she believed the United Israel Appeal was one of the charities named as being dubious.

Ms Smith had earlier made allegations before the committee that

there were four main types of schemes that sought to exploit the lower rates of tax applicable to overseas investment.

One of the schemes she outlined involved non-resident charities being made the beneficiaries of an Australian-based trust fund. A tax deduction was then claimed by the trust fund for the money given to the charity, and the money was sent offshore. Most was then placed in an offshore bank account controlled by the Australian entity.

Mr Wilson asked the tax office representatives why a loophole in the law that allowed the schemes to operate had not been closed. He said that, at present, what would be defined as a charity overseas might not be defined as such in Australia.

Ms Smith said before the parliamentary committee that tax-avoidance schemes exploiting the low tax rates on overseas investment were still being promoted.

In its submission, the tax office said the amount of revenue being lost through the schemes identified by Ms Smith was between \$100 million and \$250 million, nowhere near the \$1.2 billion Ms Smith had estimated, or the \$1.8 billion figure quoted in a tax office memo.

(Barbara Smith File b)

# Inquiry to probe Tax Office role on offshore schemes

By Michael Gordon and Paul Daley

THE operations and effectiveness of the Australian Tax Office will be the focus of a year-long inquiry by one of the Federal Parliament's most powerful committees.

The inquiry by the Public Accounts Committee is expected to probe allegations that the Tax Office has not been adequate in dealing with offshore tax evasion and avoidance schemes.

The committee decided in principle to go ahead with the probe this week and is expected to finalise its terms of reference over the next fortnight.

The inquiry is expected to cover the effectiveness of foreign tax treaties and the response of the Tax Office to findings by other parliamentary committees on tax evasion and avoidance.

These would include the finding of the Martin committee earlier this year that specific measures were needed to tackle abuse of withholding tax provisions through non-resident beneficiaries.

One member of the Public Accounts Committee, Mr Ken Aldred (Liberal, Vic), said a report on the business and tax dealings of Mr Kerry Packer, which was published recently in "The Sunday Age", had been among the documents submitted to the committee during the proposal for the investigation.

The Sunday Age detailed an agreement between Mr Packer and the Tax Office involving the use of overseas tax havens by Mr Packer's Consolidated Press Holdings.

Mr Aldred has told Parliament \$1 billion a year is being evaded or avoided under

schemes taking advantage of withholding tax.

Mr Aldred last month described the schemes—dubbed "out of harbor" by Mrs Barbara Smith of the Philip Institute of Technology—as a matter of continuing disgrace. Under some of the schemes, Australian residents move money offshore then reinvest it in Australia, paying withholding tax rather than much higher marginal tax rates.

Mr Aldred has also been critical of the use of Mr Mark Leibler, a senior partner in the Melbourne law firm of Arnold Bloch Leibler, on the Tax Commissioner's advisory panel and two other tax advisory bodies. Mr Aldred told Parliament Mr Leibler's presence on the bodies put him in a position of acute conflict of interest and potentially compromised the integrity of the Tax Office.

Several aspects of the Tax Office's operations were also canvassed during a Senate estimates committee hearing on Friday, where Senator Bronwyn Bishop (Liberal, NSW) expressed concern that the office did not consider itself bound by Administrative Appeal Tribunal decisions.

Senator Bishop said appeal tribunals with no judicial function had become the means for people to seek redress from Tax Office actions.

"And yet we are still in a situation where the Tax Office says: 'We will only be bound by judicial findings,'" Senator Bishop said.

"Now if you're rich and you've got the time, that's terrific. If you're poor, that's a huge imposition and the way things are reported, people's reputations are damaged."

Remembering that the Tax Commissioner and the Tax Office itself did not have a much

better reputation than tax collectors in biblical times, Senator Bishop told officials: "The bottom line is when you make a decision to appeal, you've got to have no constraints as to money. You've got access to a bottomless pit. You can have the best lawyers, as many adjournments as you like. You've got no constraints on you whatsoever."

When an official responded that the Tax Office was restrained by the public interest, Senator Bishop retorted: "Well, you'd be amazed that sometimes the public doesn't think the public interest is what you've got at heart."

Senator Bishop asked officials if it was correct that the Tax Office was conducting a feasibility study to build or take over and convert a training centre 30-60 minutes driving time from Canberra with four-star accommodation, swimming pool, sauna and dining facilities.

She was told the story was greatly exaggerated, but an officer was examining options for training facilities.

"I imagine that a four-star option would be very quickly seen to be not cost effective," an official replied. "Looking at these sorts of things is a normal on-going review to see how we can do things more cheaply."

The chairman of the public accounts committee, Mr Gary Punch (Labor, NSW), said the inquiry would not canvass party political issues such as the goods and services tax or the capital gains tax.

"What we're interested in is the overall effectiveness of the Tax Office in going about its duties just as, in other inquiries on other elements of the bureaucracy, we look at their effectiveness in performing their duties," he said.

(Barbara Smith File a)

# Charges 'outrageous'

MARK Leibler, a leading Melbourne solicitor, yesterday rejected claims he had incorrectly claimed tax lecturer Barabara Smith had failed to supply specific information to the Tax Office.

Mr Leibler also rejected claims by Ms Smith that the Second Commissioner of Taxation, Brian Nolan, had also been incorrect in making the same statement.

Mr Leibler is an adviser to the Commissioner of Taxation, Trevor Boucher, and is a member of a number of tax advisory committees.

In his submission to the Parliamentary committee inquiring into Ms Smith's

claims of massive tax rorts and in a Melbourne radio interview, Mr Leibler said Ms Smith had not provided details of "specific information relating to specific individuals involved in specific schemes" to the Tax Office.


"I stand by every word I said," Mr Leibler said.

"There were some outrageous allegations made by this woman which are totally unsustainable.

"The Tax Office and I happen to be in agreement on that.

"I would say on any objective analysis, they don't stand up to scrutiny."

Mr Leibler said that in his



MR LEIBLER

submission he had nominated particular dates at which he claimed Ms Smith had not provided specific evidence.

He said he had been told that by Mr Nolan "directly".

(Barbara Smith file c)

## 21 ATO sues Israeli banks over back-to-back loan schemes

The Australian 22 November 2016

<https://www.theaustralian.com.au/business/companies/ato-sues-israeli-banks-over-backto-back-loan-schemes/news-story/7d62b00267f61a5e03518dd1e2598c67>

## 22 Follow the Yellow Brick Road

The Final Report on An Efficiency Audit Of The Australian Taxation Office;  
International Profit Sharing 1991 Stephen Martin MO Chairman

[https://www.aph.gov.au/Parliamentary\\_Business/Committees/House\\_of\\_Representatives\\_Committees?url=reports/1991/1991\\_pp61.pdf](https://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=reports/1991/1991_pp61.pdf)

(Docs J&J1)



### **23** *Offshore Compliance Initiative*

The United States Department of Justice

<https://www.justice.gov/tax/offshore-compliance-initiative>

Some examples of prosecutions

March 21, 2014

Former President of Russian Steel Producer's US Subsidiary Indicted for Hiding Assets in Secret Swiss Bank Accounts

March 18, 2014

California Attorney Sentenced to Prison in Scheme to Hide Millions in Secret Swiss Accounts at UBS AG and PICTET & CIE

March 12, 2014

Swiss Banker Pleads Guilty to Conspiring with U.S. Tax Evaders, Other Swiss Bankers and Bank Management

November 5, 2013

Comments on Program for Non-Prosecution Agreements or Non-Target Letters for Swiss Banks

November 4, 2013

Los Angeles Businessman Pleads Guilty to Conspiring to Defraud the United States by Concealing Israeli Bank Accounts

October 18, 2013

Additional Charges Brought Against Tax Preparers Previously Charged with Helping Clients Hide Millions in Offshore Israeli Banks

August 29, 2013

California Businessman Pleads Guilty to Conspiracy to Conceal Israeli Bank Accounts

July 17, 2013

California Businessman Pleads Guilty to Concealing Foreign Bank Account at Israeli Bank on His Tax Return

July 1, 2013

Maryland Businessman Pleads Guilty to Concealing Foreign Bank Account at Israel-Based Bank on His Tax Return

June 28, 2013

Former Swiss Banker Pleads Guilty to Failure to Report Foreign Bank Account

April 12, 2013

California Businesswoman Agrees to Plead Guilty to Conspiracy to Conceal Israeli Bank Accounts

April 12, 2013

Arizona Businessmen and California Attorney Convicted for Hiding Millions in Secret Foreign Bank Accounts at UBS AG and Pictet & CIE

March 4, 2013

Swiss Bank Sentenced in Manhattan Federal Court for Conspiring to Evade Taxes

January 30, 2013

California Man Pleads Guilty to Failure to Report Foreign Bank Accounts at UBS

January 8, 2013

South Florida Woman Pleads Guilty to Failing to Disclose Income from Swiss Bank Accounts and Agrees to \$21 Million Penalty

January 3, 2013

Swiss Bank Pleads Guilty in New York City Federal Court to Conspiracy to Evade Taxes

### **24.** *California Attorney Sentenced to Prison in Scheme to Hide Millions in Secret Swiss Accounts at UBS AG and Pictet & Cie*

United States Department of Justice News. 18 March 2014

<https://www.justice.gov/opa/pr/california-attorney-sentenced-prison-scheme-hide-millions-secret-swiss-accounts-ubs-ag-and>

### **25.** *The Offshore Voluntary Disclosure Program (OVDP) is closing*

Internal Revenue Service. July 2014

<https://www.irs.gov/individuals/international-taxpayers/offshore-voluntary-disclosure-program-frequently-asked-questions-and-answers-2012-revised> -

**26** Amount 'lost' under *Project Do It* if IRS method had been used.

If the IRS amnesty calculation had been applied under *Project Do It* to the \$A6.5 billion of previously secret money 26

- Taxes, and penalties on 8 years would have been - \$511million.
- Miscellaneous penalties of 27.5% would have added - \$1.8billion

Meaning a total of \$2.3 billion taxes would have been raised

Calculation as follows

					(USA IRS FAQ Q8 - https://www.irs.gov/individuals/international- taxpayers/offshore-voluntary-disclosure-program- frequently-asked-questions-and-answers-2012-revised)	
					27.5% penalty on \$6.5b assets	Total
<b>USA IRA MODEL (8 years, 20% penalties, 27.5% asset penalty)</b>						
Without Project Do It - assume average of 15 years of evasion						
	Income	Tax	Penalties	Interest		
Eight years ago	\$169,000,000	\$53,235,000	\$10,647,000			
Seven years ago	\$169,000,000	\$53,235,000	\$10,647,000			
Six years ago	\$169,000,000	\$53,235,000	\$10,647,000			
Five years ago	\$169,000,000	\$53,235,000	\$10,647,000			
Four years ago	\$169,000,000	\$53,235,000	\$10,647,000			
Three years ago	\$169,000,000	\$53,235,000	\$10,647,000			
Two years ago	\$169,000,000	\$53,235,000	\$10,647,000			
One year ago	\$169,000,000	\$53,235,000	\$10,647,000		\$1,787,500,000	<b>\$2,298,556,000</b>
<b>Tax collection given up by Project Do It</b>						<b>\$2,033,541,822</b>

**27.** *Tax dodging Sydney fashion family jailed*

Sydney Morning Herald 7 October 2005

<https://www.smh.com.au/national/tax-dodging-sydney-fashion-family-jailed-20051007-gdm7lw.html>

**28** *R v Ida Ronen, Nitzan Ronen, Izhar Ronen [2006] NSWCCA 123 at [3], [5], [13]*  
Exerts from the judgment

"3 HOWIE J: After a lengthy trial before Whealy J (the Judge) and a jury, Ida Ronen and her two sons, Nitzan Ronen and Izhar Ronen, were convicted of two offences contrary to the Crimes Act 1914 (Cth) (the Act) arising from a conspiracy between them to defraud the Commonwealth of taxation revenue. They were sentenced to terms of imprisonment on 7 October 2005; [2005] NSWSC 991. By notices dated 26 October 2005 the Commonwealth Director of Public Prosecutions has appealed against what is asserted to be the inadequacy of the sentences imposed. The Ronens have sought leave to appeal against the sentences and for convenience I shall refer to them as the applicants.

5 Mrs Ronen also pleaded guilty at the commencement of the sentencing proceedings to an offence contrary to s 31 of the Financial Transaction Reports Act 1988 (Cth). That offence alleged that between 7 and 10 April 2000 she was knowingly concerned in conducting 11 cash transactions each of less than \$10,000 in value which were

structured so as to avoid reporting requirements under that Act. The maximum penalty for that offence is relevantly five years imprisonment.

13 The additional offence to which Mrs Ronen pleaded guilty related to the amount of \$99,395 sent to a bank in Israel to accounts of which she was the beneficiary. This was cash taken from the retail shops and had not been declared as income. On 7 April 2000 the money was collected by a chartered accountant on Mrs Ronen's behalf and banked into a number of different banks by way of amounts structured so as to avoid the reporting conditions under the relevant legislation. The Judge held that this was part and parcel of the conspiracy in which the applicants were involved."

**29** *Federal Bureau of Investigation Press Release*

21 December 2009

<https://archives.fbi.gov/archives/losangeles/press-releases/2009/la122109.htm>

(Exerts)



## **New York Rabbi Sentenced to Two Years in Federal Prison in Scheme to Defraud Federal Tax Authorities**

LOS ANGELES—The Grand Rabbi of Spinka, a religious group within Orthodox Judaism, was sentenced this morning to two years in federal prison for orchestrating a tax evasion scheme that prosecutors called “an astonishingly complex and sinister enterprise.”

Grand Rabbi Naftali Tzi Weisz, 61, of Brooklyn, New York, pleaded guilty last summer to a criminal conspiracy charge in which he admitting working with others to obstruct the Internal Revenue Service by soliciting charitable donations to Spinka-related organizations with secret promises to refund donors the vast majority of the money they “donated.”

Weisz was sentenced by United States District Judge John F. Walter, who echoed findings in a presentence report that the refunding and laundering of charitable contributions is a routine and generational practice among certain Hasidic sects that has resulted in hundreds of millions of dollars of unreported income.

Following Weisz's sentencing, Judge Walter sentenced the final defendant involved in the scheme to defraud the Internal Revenue Service when he ordered that Yaacov Zeivald, 45, of Valley Village, California, go to prison for four months for participating in the underground money transfer system that allowed some of the donors to be reimbursed for their “donations.”...

...Weisz, several associates and five charitable organizations associated with Spinka were indicted by a federal grand jury two years ago in a scheme in which Weisz and his assistant solicited millions of dollars of contributions to the Spinka organizations by promising to secretly refund up to 95 percent of he contributions. In this manner, the contributors could claim as tax deductions the full amounts of their contributions, while actually having contributed as little as 5 percent of the amount they would declare on their federal income tax returns....

...A second method used to reimburse contributors was wire transfers from Spinka-controlled entities into accounts secretly held at a bank in Israel. The accounts were established with the assistance of an international accounts manager at the bank, Joseph Roth, 68, of Tel Aviv, who received a 14-month prison sentence after pleading guilty to helping contributors in the United States obtain loans from the Los Angeles branch of the Israeli bank, loans that were secured by the funds in the secret bank accounts in Israel, so the contributors could have the use of the funds in the United States....

... “This was not a case about religion, tradition, or charitable giving. This was simply a case about greed,” said Leslie P. DeMarco, Special Agent in Charge of IRS - Criminal Investigation's Los Angeles Field Office. “Grand Rabbi Naftali Weisz exploited his position in the community, knowingly using the Spinka charitable organizations for the benefit of greedy donors.

Today's sentencings close this aspect of the investigation. The donors, who were refunded up to 95 percent of the contributions they made to the Spinka charities but falsely claimed a charitable contribution deduction for the entire donation, are put on notice that they, too, have committed a crime, and that crime is tax fraud.”



INTERNAL

OFFICE MINUTE

20 MARCH 2014

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SEGMENT

FORMAT

ISSUE DATE

CLASSIFICATION



Australian Government  
Australian Taxation Office

# OFFICE MINUTE

FILE REF: [FILE NO.]

TO: Chris Jordan, Commissioner

THROUGH Neil Olesen, Second Commissioner, Compliance

COPIES TO: Greg Williams, Deputy Commissioner, Serious Non Compliance

YOUR REFERENCE:

FROM: Michael Cranston, Deputy Commissioner, Private Groups and High Wealth Individuals (PGH)

BUSINESS LINE: PGH

SECTION:

CONTACT OFFICER: Michael Cranston

CONTACT PHONE: Extn 41428

ISSUE DATE: 20 March 2014

RESPONSE DATE:

SUBJECT: *Project DO IT* – Offshore Voluntary Disclosure Initiative 2014

### Recommendation:

That you approve the proposed *Project DO IT* initiative in the terms as set out in this minute.

APPROVED / NOT APPROVED / PLEASE DISCUSS (delete as appropriate)

Commissioner



2413114

**Advice or Issue**

1. This minute provides key details of the proposed Offshore Voluntary Disclosure Initiative (OVDI), known as '*Project DO IT: Disclose offshore income today*' which is to be announced by you.
2. It is anticipated that the announcement will be later this month, and *Project DO IT* will be open for voluntary disclosures until 19 December 2014.

**Rationale for *Project DO IT***

3. There are a number of drivers in support of *Project DO IT* taking place at the present time, notably:
  - **The changing international tax environment** – an increase in tax information exchange agreements, automatic exchange of information standard on banking data, elimination of tax havens and shifts driven by the G20 to promote global transparency are expected to create an incentive for eligible taxpayers to come forward and disclose (a last chance to come forward).
  - **Effective use of resources** – we can focus our compliance activities on promoters and taxpayers that do not come forward or are currently under audit or criminal investigation. It is also reasonable and appropriate to take this approach because without the disclosure in most cases it would have been extremely difficult and resource intensive to identify structures, obtain relevant evidence and link them back to the taxpayer with sufficient certainty to sustain tax assessments and undertake debt recovery. Further, new international agreements will only apply to income years after the commencement of the agreement and may have little use in terms of treating historical tax evasion.
  - **Increased tax revenue** – it is anticipated that significant additional tax revenue will be collected both from disclosures made during *Project DO IT* and in the future as taxpayers re-engage with the Australian tax system.
  - **Additional intelligence** – information provided in the disclosures about arrangements, promoters and advisors will assist future compliance strategies targeting taxpayers and/or intermediaries.
  - **Enhanced community confidence** – together with other ATO initiatives relating to offshore compliance, *Project DO IT* demonstrates we can effectively manage offshore compliance risks, and promotes future voluntary compliance by taxpayers currently outside of the Australian tax system.

**Outline of the Project**

4. Under *Project DO IT*, taxpayers will be encouraged to re-engage with the Australian tax system by disclosing omitted income or overclaimed deductions relating to their offshore activities. **Eligible taxpayers** who make disclosures under *Project DO IT* will:
  - only be assessed for applicable (open) periods of review (generally only the last 4 years)
  - be liable for a shortfall penalty of 10% (low-level disclosures will attract minimal or no penalties)
  - be liable for full shortfall interest charges (SIC replaced GIC in relation to amended assessments after 1 July 2005)

- not be entitled to utilise any losses that arose in years for which they are not being assessed
  - be able to seek assurance regarding the ATO's tax treatment of repatriated offshore assets
  - be able to enter into a settlement deed to obtain additional certainty (where circumstances call for additional surety)
  - not be investigated or referred for criminal investigation by the ATO on the basis of their disclosures.
5. **Why these features?** To get the right balance between encouraging taxpayers (last chance) to come forward, administration simplicity (four year statutory period of amendment) and fairness (four years back taxes and penalties and fully participating in the tax systems now and in the future).
6. The limited periods of amendment, assurances about our approach to repatriation of assets and assurances in relation to no further investigation or referral are anticipated to provide a greater incentive for wealthy Australians to participate than under previous OVDIs.
7. Taxpayers will be **excluded** from obtaining the benefits of *Project DO IT* if:
- they are under audit or have received a formal information gathering notice in relation to foreign income, capital gains or losses
  - they derived or acquired their foreign income or assets from serious criminal offences unrelated to tax
  - they have been involved in marketing, promoting or otherwise encouraging others to enter into tax evasion schemes
  - they are under investigation (or were previously investigated and convicted) by the ATO, the Australian Federal Police or Australian Crime Commission in relation to taxation, fraud or money laundering related offences
  - they have not complied with their specific obligations from a previous OVDI process they were involved in.
8. The ATO previously undertook an OVDI from July 2007 until July 2010, which raised over \$200 million in tax revenue from more than 8,000 taxpayers. The majority of disclosures related to professionals and/or high salary/wage earners with passive offshore income stream, generally from non-secrecy jurisdictions. The expected outcomes and benefits from *Project DO IT* at the strategic level include significant amount of tax revenue (in excess of \$500 million as advised through external consultation) and measurable increase in revenue and compliance going forward.
9. *Project DO IT* has been developed and is consistent with OECD principles and approaches to voluntary disclosure programs. A number of other countries have undertaken successful OVDIs including Canada, UK and USA and OVDIs remain in operation in a number of countries. For example the USA voluntary disclosure program has raised US \$5.5 billion since 2011. In summary there has been significant international precedent and utilisation of these types of initiatives with consistent features.

**Media and communication strategy**

10. A range of media, internal and external communication activities are planned. The key messages that will form the basis of the media release and communications are:

- Now is the time to address your offshore income. Come forward to the ATO and get back into the Australian tax system before it's too late.
- Ask a respected advisor for a second opinion about your current financial holdings; this is your last chance to get back into the system with reduced penalties.
- Hiding your assets and income offshore is pointless; the 'tax haven' is dying. With increasing international treaties and agreements, you can no longer hide behind borders.
- If you don't act quickly and decisively, you'll be caught and severely penalised.

11. A media strategy has been developed (refer to Attachment A) along with Q&As to address issues likely to be raised by journalists. Media coverage in January 2014 regarding a potential OVDI announcement was generally positive, with a number of key tax advisors publicly stating their support for the initiative in articles that appeared in the *Australian Financial Review* on 20 and 21 January 2014. Negative coverage focussed on the perceived benefits the initiative would provide to some, to the detriment of the general public, and whether the initiative is necessary or likely to be successful. *The Guardian* on 21 January 2014 contained the headline 'Not enough money for welfare? Then why the amnesty for the richest tax avoiders, Australia?'

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**Post announcement**

18. A dedicated team within PGH Brisbane has been established to process disclosures and provide support for taxpayers seeking information about the initiative. Further technical and operational support will be provided by SNC and PGH.
- Taxpayers can approach the ATO anonymously to discuss their eligibility for this opportunity by contacting the *Project DO IT* team on 1300 132 346 or by email at [projectdoit@ato.gov.au](mailto:projectdoit@ato.gov.au)
19. Priority is being given to developing a robust effectiveness measurement strategy and process once *Project DO IT* becomes operational.

20. There will be a significant focus on capturing intelligence which will feed into our compliance program.

**Recommendation**

It is recommended that on balance you approve the proposed *Project DO IT* in the terms set out in this minute.

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Michael Cranston  
Deputy Commissioner

Attachments:   A – Media Strategy  
                      B – AGS advice  
                      C – Concept Brief

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