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ATO Rules for the Rich

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The story of *Project Do It*

Project Do It could be viewed as arguably the greatest tax scandal in Australia's history. It was initiated and organised by the Australian Taxation Office.

Project Do It gave massive tax advantages to Australian high- wealth individuals who had hidden money in secret overseas (mostly Swiss) bank accounts. They were tax evaders. Yet these people were about to be caught when the ATO stepped in to 'protect' them under the *Project Do It* tax amnesty.

The loss of tax revenue was likely in the order of $2.2 billion, maybe more.

The top ATO tax official who organised *Project Do It*, Deputy-Commissioner Michael Cranston is now facing charges in an unrelated alleged $160 million tax fraud involving his son.

This report calls for the highest level of independent investigation into the ATO to determine whether the ATO operates within the law and whether the ATO suffers from systemic internal corruption. *Project Do It* is the starting point for that investigation.

Basic facts

- In July 2013, the Swiss and Australian governments signed an agreement in which Switzerland agreed to release details of Australians with secret Swiss bank accounts.
- In November 2013, the ATO announced a generous tax amnesty for people with secret overseas bank accounts.
- By 2015–16 some $6.5 billion of hidden money in secret overseas bank accounts was declared under the amnesty.
- $260 million of tax was raised under the amnesty.
- Without the amnesty, the tax raised would have been somewhere between $1.2 billion and $4.3 billion.
- If the US Internal Revenue Service's (IRS) amnesty standards had been applied, the tax raised would have been around $2.3 billion.
- The ATO was well aware of illegal overseas tax evasion:
    - In 2005 a woman was convicted in NSW for illicit offshore tax evasion.
    - In 2009 the US FBI and IRS convicted a group for fake charity and offshore back-to-back loans tax evasion. The IRS and ATO share such information.
    - In 2016 an Australian ATO-funded court ruling proved that high-wealth individuals have for a long time been moving money overseas, with the money then going to secret overseas bank accounts and finally being 'loaned' back to the same individuals in Australia. In other words, that such individuals had allegedly been involved in illegal money laundering.
    - Since the late 1980s the ATO had been well aware of these alleged 'tax scams.
- Nonetheless, the ATO proceeded with *Project Do It.* The ATO promised to (and did) protect tax evaders from big tax bills and from facing ATO investigation/prosecution for fraud or evasion.
- In the USA, the Internal Revenue Service has jailed many people for this type of 'charity' tax scam. Yet the ATO does not appear to have prosecuted or jailed one person for similar scams.
- There are major questions that have to be answered—not only about Project *Do It,* but about the very integrity and legality of the operations of the ATO as well.

Content

1. Why this paper

Self-Employed Australia has long argued that self-employed, small business people are routinely treated badly by the Australian Taxation Office.
http://www.selfemployedaustralia.com.au/Current-Issues/Taxation/index.html
When we say 'badly' we mean that there is significant evidence of the ATO manipulating (even arguably, breaking) the law, bullying and creating false allegations of debt and fraud against self-employed people.
http://www.selfemployedaustralia.com.au/Downloads/Taxation/SEA-Submission-Treasury-Tax-3-Transparency-Bill-February-2018.pdf The evidence is compelling: the ATO mistreats self-employed people because the self-employed are vulnerable and unable to defend themselves.

Our campaigning culminated in our cooperation with a joint Fairfax/ABC investigation resulting in the airing of the *Four Corners* show, 'Mongrel Bunch of Bastards' http://www.abc.net.au/4corners/mongrel-bunch-of-bastards/9635026 on 9 April 2018.

In this research paper we look at the treatment of high-wealth individuals by the Australian Taxation Office. Specifically, we case study an ATO tax amnesty 'deal' called *Project Do It* provided to Australian high-wealth individuals who, by their very involvement in *Project Do It,* identified themselves as tax evaders. Those high-wealth tax evaders were afforded massive lenience (even privilege) at great cost to the Australian public.

The comparison between the ATO's treatment of

- self-employed, small business people and
- the tax evader beneficiaries of *Project Do It*

is stark and breathtaking.

We ask: how is it that self-employed, small business people and ordinary individuals can be treated so badly by the ATO while high-wealth individuals who have self-identified as tax evaders (some of whom may have possibly been involved in criminal activity) could be treated with such leniency, even privilege? There is something seriously wrong inside the ATO, we suggest, that is hidden under a cloak of secrecy.

This paper draws entirely on information in the public domain. What we have done is put together a factual jigsaw puzzle of evidence which, in the end, reveals a startling picture. Some of the jigsaw puzzle pieces date back to the 1980s. Significant parts were revealed in 2005 in Australia, in 2009 in the USA in major convictions and then in Australia in November 2016 in a Federal Court judgment. Finally, a significant speech in March 2018 (which included some interesting revelations) prompted our detailed investigation.

2. Project Do It: Overview

On 30 July 2013 1. the Swiss and Australian governments signed a new tax treaty. The effect of this was that the Swiss government would release to the Australian government details of Swiss bank accounts held by Australians.

This meant that the days of Australians hiding money in Swiss bank accounts were over. It was then only a matter of time before any Australians fraudulently hiding money in Switzerland (that is, having money in Switzerland without reporting this in their tax returns) would be caught. Under standard ATO tax rules, such people would face back tax bills on a scale large enough to possibly even bankrupt them. They would also face potential jail time for tax fraud.

However, three months later, on 14 November 2013, the Australian Taxation Office effectively announced through the media an amnesty for high-wealth individuals who had hidden money in overseas bank accounts. 2. The amnesty called *Project Do It* meant that anyone, including high-wealth people (that is, anyone worth more than $30 million) could declare their secret overseas money and be treated exceptionally lightly by the ATO. The amnesty went into effect on 27 March 2014, which gave declaring individuals just over eight months to organise and prepare (from 27 March 2014 to 19 December 2014). The amnesty closed on 19 December 2014. 3

That such an amnesty was announced just three months after the Swiss–Australian tax treaty is more than curious. When the secret tax evasion arrangements of some high-wealth individuals were about to be exposed the ATO provided to those tax evaders an extraordinarily generous ‘out’. Why? It’s even more curious that media reports accurately described the amnesty arrangements some four months before the ATO formally announced the arrangements. What does this say of the operations of the ATO?

<u>The cost</u>
In its 2015-16 Annual Report, the ATO stated that *Project Do It* had resulted in an additional $260 million in tax being collected from high-wealth individuals who had hidden overseas money. 4 This was promoted as a great success.

But if the ATO rules that apply to every other Australian—particularly self-employed, small business people—had been applied to these high-wealth individuals, the additional tax revenue should have been much higher.

The lost tax revenue is estimated at somewhere between $1.2 billion and $4.3 billion. The calculations and details are listed below (see section 4).

If the standards used in USA tax amnesties had been applied in Australia, the lost revenue is in the order of $2 billion. See also below for calculations (section 11).

None of the high-wealth individual tax evaders involved in *Project Do It* have been charged with, or jailed for, tax fraud. Their identities have been kept secret by the ATO. The ATO is required to keep individuals' tax identities secret. But the flip-side is that secrecy provisions can actually provide an excuse for covering up corruption if corruption occurs within the ATO. Is there corruption associated with *Project Do It*? We don't know! That's why an independent investigation is needed.

This research and report paper looks at *Project Do It* and

- How it was put into place;
- Who put it in place;
- The reasons or excuses used as justification;
- The significant cost in terms of lost tax revenue;
- What subsequent events reveal;
- Compares it to similar programs in the USA;
- Considers what should have been done.

All information comes from sources in the public domain.

3. *Project Do It*: Basic Facts

Project Do It

- Was 'flagged' through newspaper articles from 14 November 2013.
- Formally operated from 27 March 2014 to 19 December 2014. 3
- Applied to high-wealth individuals who had undeclared assets and income offshore (mostly in Swiss bank accounts it is understood).

The ATO publicly declared that if high-wealth individuals admitted to undeclared overseas income, it would only:

- go back four (4) years on those people's tax
- impose 10 per cent tax penalties
- apply approximately 4.5 per cent interest on penalties.

The high wealth individuals who 'owned up' and benefited from *Project Do It* were people who had potentially and allegedly committed fraud by not declaring income on international related income (for example, interest in foreign bank accounts, or deductions claimed for money paid to secret offshore accounts). Further, what shall be discussed below is that these people—or at least some of them it can be assumed—were illegally shifting 'black' money overseas and returning that money to themselves by way of false 'loans'.

By comparison, in cases where self-employed, small business people have allegedly committed fraud by not declaring income, the ATO:

- goes back as many years as it wants

- imposes up to 90 per cent penalties
- applies around 9 per cent interest.

Furthermore, in cases where self-employed, small business people have not committed fraud, who have declared all their income but may have a difference or dispute over the interpretation or application of tax law and the ATO falsely accuses them of fraud, the ATO:

- goes back as many years as it wants
- imposes up to 90 per cent penalties
- applies around 9 per cent interest on penalties

At Self-Employed Australia we have worked on many cases with self-employed people caught up in this second scenario. We have documented their cases and have fought for justice for them. A number of these cases were featured in the *Four Corners/Fairfax* exposé. We know the cases intimately and we know the harsh, bureaucratic harassment and bullying of these people by the ATO—bullying that does not stop.

The comparison between the ATO's treatment of these honest, self-employed people we have assisted and the high-wealth tax cheats favoured under the ATO's *Project Do It* is breathtaking!

The publicly available facts we present in this research paper show that *Project Do It* was:

- Designed and organised by then ATO Deputy-Commissioner Mr Michael Cranston (now facing charges that he allegedly provided confidential ATO information concerning his son, who is facing charges that he, the son, allegedly defrauded the ATO of $163 million). [4]
- Authorised by ATO Commissioner Mr Chris Jordan on 28 March 2014. [5]

Since the closure of *Project Do It* on 19 December 2014 these privileged arrangements which were made available to a select group of unknown high-wealth tax evaders, as far as is publicly known, have <u>not</u> been made available to other Australian's—be they other high-wealth individuals or average or low-income Australians.

That is, *Project Do It* benefitted a comparatively small number of very wealthy people who were admitted tax evaders. The general terms of *Project Do It* are known. To whom *Project Do It* was applied is not known. Further, it is not known what investigations and due diligence were undertaken by the ATO concerning potential criminal, money-laundering activities of the individuals. Such information has been kept secret by the ATO. But the broad outline of the 'deal' is known.

4. Cost to Australians

According to the ATO's Annual Report for 2015–16: [6]

> "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."

In other words, a discrete group of high-wealth individuals had allegedly committed fraud by not declaring

- $6.5 billion in assets and
- unknown amounts of income from the $6.5 billion

This latter figure is unknown because the ATO has kept the details secret, including the periods of time in which the assets and income had been undeclared. However, as discussed below, there are indicators that much of the undeclared monies had been undeclared for several decades.

As a result of *Project Do It* the ATO brought in additional tax of

- $260 million

But, the question must be asked, if these high-wealth individuals who had allegedly committed fraud by not declaring their income and assets had been required to pay tax in the same way that every other Australian is treated by the ATO, how much money should have been raised? Consequently, what were the losses to Australians of this closed 'deal' done between these high-wealth tax evaders and the ATO?

The calculation is as follows.

			Lost tax
Additional tax raised by Project Do it		$260 million	
Additional tax that would have been raised if the assets/income had been undeclared for (numbers are rounded)	10 years	$1.5 billion	$1.2 billion
	15 years	$2.8 billion	$2.5 billion
	20 years	$4.6 billion	$4.3 billion

The *Project Do It* calculation is based on the formula of:

- going back four (4) years on those people's tax
- imposing 10 per cent tax penalties
- applying 5 per cent interest

as stated in the *Project Do It* documentation.

The additional tax that would have been paid is based on the ATO standards that apply to self-employed, small business people and other individual Australians, namely:

- going back as many years as it wants
- imposing up to 90 per cent penalties
- applying around 9 per cent interest

The 10-year comparison is below.
The full comparative table is at **Appendix A-**

Back of the envelope tax calculator

How much annual income evaded?	$169,000,000	(ATO Annual Report FY16 reports $676m in omitted income, divide over four years)

Under *Project Do It*

	Income	Tax	Penalties	Interest	Total
Four years ago	$169,000,000	$53,235,000	$5,323,500	$12,619,723	
Three years ago	$169,000,000	$53,235,000	$5,323,500	$9,230,284	
Two years ago	$169,000,000	$53,235,000	$5,323,500	$6,002,246	
One year ago	$169,000,000	$53,235,000	$5,323,500	$2,927,925	**$265,014,178**

TEN YEARS

Without *Project Do It* - assume an average of 10 years of evasion

	Income	Tax	Penalties	Interest	Total
Ten years ago	$169,000,000	$53,235,000	$39,926,250	$97,901,009	
Nine years ago	$169,000,000	$53,235,000	$47,911,500	$88,800,701	
Eight years ago	$169,000,000	$53,235,000	$47,911,500	$75,714,679	
Seven years ago	$169,000,000	$53,235,000	$47,911,500	$63,585,454	
Six years ago	$169,000,000	$53,235,000	$47,911,500	$52,339,917	
Five years ago	$169,000,000	$53,235,000	$47,911,500	$41,910,710	
Four years ago	$169,000,000	$53,235,000	$47,911,500	$32,235,775	
Three years ago	$169,000,000	$53,235,000	$47,911,500	$23,257,919	
Two years ago	$169,000,000	$53,235,000	$47,911,500	$14,924,432	
One year ago	$169,000,000	$53,235,000	$47,911,500	$7,186,725	**$1,501,337,071**

Tax collection given up by *Project Do It*	**$1,236,322,893**
Percentage tax collection given up by *Project Do It*	**79 per cent**

Why the big differences?

The billion dollar loss occurred because the high-wealth individuals:

- Only had to pay tax on four years instead of the full period of time in which they did not declare their assets/income.
- Had a small penalty imposed.
- Paid a low rate of interest on penalties

As stated, the losses to Australia can reasonably be calculated to have been somewhere between $1.2 billion and $4.3 billion. Yet the $260 million said to have raised was promoted as a great tax collection victory. **Appendix A**

In addition, if the *Project Do It* amnesty had been benchmarked against the tax amnesty standards used in the United States of America, an additional $2 billion should have been raised (see section 11 below).

Instead of a tax collection victory, the lost tax revenue makes *Project Do It* look like the happy ending down a 'Yellow Brick Road' journey of tax evasion for these high-wealth individuals.

5. How *Project Do It* was put into place

Project Do It was designed by the ATO in conjunction with the legal firm Arnold Bloch Leibler (ABL).

In their 'Insights Publication' release of 27 March 2014 **7.** ABL stated:

> "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."

Two months before the March announcement, in an article in the *Australian Financial Review* of 20 January 2014, **8.** Mr Leibler foreshadowed the scheme inferring that he already had knowledge of the ATO announcement when he said:

> …"Ever since then [a previous 2010 scheme] I have been in dialogue with senior tax officials on the possibility of a further initiative that would limit income assessment to a finite number of previous years. It's my understanding that, in principle, the ATO has agreed to do something and that an announcement will be made soon."

6. Why *Project Do It* was put into place

That *Project Do It* provided significant advantage to high-wealth individuals who self-declared as tax evaders is obvious in the light of the lost tax income analysis provided above.

- The savings in non-payment of tax by the individuals was in the billions of dollars.
- The individuals avoided criminal investigation and prosecution for potential alleged fraud.
- The individuals' names were kept secret, thereby avoiding public embarrassment.
- The individuals continued to have the use of assets and income allegedly illegally accumulated before the four-year cut-off under *Project Do It*.

Why this extraordinarily privileged treatment should be afforded to these high-wealth tax evaders is not fully clear.

For example, the details of these individuals' secret monies were to be revealed to the Australian government by the Swiss government. As Arnold Bloch Leibler said, "It is *only a matter of time* before these arrangements are used by the ATO to uncover previously hidden assets and undisclosed income." ('Insights Publication' release of 27 March 2014) **7.** That is, the overseas tax evasion 'gig' was up, according to Arnold Bloch Leibler.

Where, then, was the logic in the ATO's providing considerable leniency to admitted high-wealth tax evaders? To reiterate, it's now known that only $260 million was raised. Our analysis (**Appendix A**) shows that somewhere between $1.5 billion and $4.6

billion should have been raised. Such potential tax raisings should have been anticipated by the ATO, even on a 'back of envelope' basis. Surely it would have been obvious to the ATO that there was great value in putting resources into a dedicated investigation and prosecution team. An amnesty was not needed. The ATO simply needed to do its enforcement job!

The reasons given for the *Project Do It* are interesting. These were explained in an Office Minute to Tax Commissioner Chris Jordan from Deputy-Commissioner High Wealth Individuals, Michael Cranston on 20 March 2014 5
The justifications for Project Do It were stated as follows:

1. "…an increase in tax information exchange agreements …are expected to create an incentive for eligible taxpayers to come forward." That is, that such individuals are likely to be caught so they will want to get off lightly.
2. "…it would have been extremely difficult and resource intensive … [to] undertake debt recovery." That is, the ATO was apparently doubtful of its ability to catch the tax evaders even though the Swiss government was going to reveal all.
3. Additional revenue will be raised in the future once the tax evaders are back in the system.
4. Additional intelligence on tax promoters will be obtained.
5. Increased community confidence.

However, these reasons do not make sense.

1. Who cares if the tax evaders voluntarily came forward? They were about to be exposed anyway.
2. Surely the billions of dollars to be raised warranted an ATO audit effort, as the long-term tax evaders would have been sitting ducks with the Swiss bank account information exposed!
3. Additional future revenue was to be raised anyway—so why the amnesty?
4. Surely intelligence on tax promoters would be forthcoming without the amnesty.
5. Community confidence in the ATO would be decreased if high-wealth tax evaders were to be seen to 'get off lightly'.

The reasons given read more like promotional 'spin' than sound logic.

Other reasons were promoted. One main justification was that the money overseas was money deposited in Switzerland by World War II refugees and that the money remained in Switzerland because these refugees were fearful of or didn't know how to send the money to Australia given our complex tax laws. Further, that the money currently in Switzerland was effectively owned or controlled by the second and third generations of the war refugees. In addition, the children and grandchildren of the refugees needed an opportunity to clean up the situation.

Mr Leibler explained this in a speech to the Tax Institute on 23 March 2018. 9.
He said:

> My firm, Arnold Bloch Leibler, was established more than 60 years ago to advise migrants, many of them refugees, who had fled war-torn Europe. Many of these people had been reluctant or unable to bring all their money with them and, over time, they found themselves in a fearful bind. They wanted to bring the money they'd left behind back to Australia but couldn't because of the potential tax problems that would arise.

Then Deputy-Commissioner Michael Cranston 10 offered the identical explanation as Mr Leibler in December 2014 where it was reported that

> 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. 11.

What supposedly is be inferred from this common ATO (Cranston)–Mr Leibler explanation was (and is) that the people eligible for the *Project Do It* generosity were really people who were somehow victims of circumstance and who were now trying to do the right thing. One assumes that sympathy should have been felt for them. That is, these grandparent refugees left money where they thought it would be safe in Switzerland, that the money had sat in Switzerland, and that it had presumably remained untouched and unused by the Australian owners for up to 60 years. And that under *Project Do It* the money could now safely return to Australia. In other words, *Project Do It* was doing a service to Australia and to the high-wealth individuals who were really just victims of circumstance and misunderstanding.

Assuming this is the inference that we are supposed to make, a few comments can be made. Certainly in cases where there were high-wealth individuals who had large sums of money sitting in overseas bank accounts as a consequence of World War II, then making it easy for this money to be repatriated to Australia makes sense. But, given that *Project Do It* resulted in the exposure of some $6.5 billion of undeclared assets in overseas accounts, the refugees who deposited the money overseas in the 1950s must have been exceedingly wealthy at the time. Further, if the refugees had not been that wealthy and the monies deposited were (say) modest, the growth of their Swiss bank accounts into $6.5 billion over time was spectacular to say the least.

Or, there may be other explanations.

7 Black Money Siphoned Overseas and Returned to Australia by way of Fraudulent Loans

The evidence is solid that the ATO knew that high-wealth individuals were sending ‘black’ money (that is undeclared income) overseas. For example, in 2005 the ATO had a successful prosecution on this issue.

Ida Ronen: summary

Ida Ronen ran a Sydney-based fashion business, Dolina, selling through David Jones and Myer. In 2005 she, along with her two sons, were convicted and jailed for tax evasion. Over a decade they had taken some $15 to $17 million of cash out of their businesses, depositing the money in overseas bank accounts. The ATO prosecuted the case. 27

In a subsequent, follow-up court case 28 Mrs Ronen pleaded guilty to an additional offence under the *Financial Transaction Reports Act 1988* (Cth). The evidence was that in April 2000 she conducted 11 cash transactions each less than $10,000 so that she could avoid the reporting requirements under that Act.

Mrs Ronen had sent $99,395 to overseas bank accounts that she controlled. She did this by taking cash taken from the retail shops and giving the cash to an accountant who deposited the money by way of international transfer into different overseas bank accounts.

The ATO therefore knew how high-wealth Australian individuals siphoned monies on which tax should have been paid but was not, out of Australia to overseas bank accounts (Switzerland for example).

Binetter: summary

A significant Federal Court case and judgment **12** in November 2016 revealed more of the detail. In this judgment how the siphoning occurred is not set out (although the Court found that it was inferred the monies were sent overseas without tax being paid on them). The money was eventually deposited into secret overseas bank accounts. The court judgment referred to this as 'black' money. Justice Gleeson wrote at [881]:

> "I also find that one purpose of the scheme, as initially devised, was to enable Erwin and Emil Binetter to obtain the benefit of their funds offshore without paying income tax in Australia on those funds. The evidence supports a conclusion that the funds were accumulated offshore by Erwin and Emil Binetter and there was no sensible reason for them to establish the scheme unless those funds were, as Gary Binetter called them, "black money". Michael Binetter told Mr Gicelter that the funds were taken out of Australia by Erwin and Emil Binetter. I infer that the funds were not after tax earnings." **12.**

The Binetter case is discussed more fully below (section 8)

Speaking generally, once in the overseas bank accounts the money was returned to Australia by way of false 'loans' to the very people who siphoned the money overseas (possibly through false charitable funds in the light of US evidence). The tax scam/fraud then involved the high-wealth individuals paying false 'interest' to their 'false' loan account (being themselves) and where they then claimed the 'interest' as a tax deduction. This was tax fraud of the highest order and criminal in nature (involving, as it did, both false claims for tax deductions and money laundering).

For example, it could work like this. If 'Tom,' say a successful shoe retailer:

- Made a 'donation' to a false charitable fund overseas of $100,000 where the false charity takes a cut and remits the balance to Tom's account in Switzerland.
- He might pay 2 per cent to a lawyer to organize the 'donation'(minus $2000).
- $98,000 would end up in his secret Swiss bank account.
- Using a lawyer, Tom would then 'lend' the money back to himself paying a foreign banker 2 per cent to organize the false loan, leaving him with $96,040 (minus $1960).
- With the money back in Australia, Tom would be able to use the money in his business to make more money.
- Tom then pays interest on his $98,000 'loan' to his secret Swiss bank account (say at 7 per cent = $6,860). The $6,680 has suddenly become tax-free.
- Tom does another false 'loan' from his Swiss bank account back to himself of $6,547 being $6,680 - $133 foreign banker fee.

As a result, Tom has

- $96,000 net ($100,000 minus lawyer and foreign banker fees)
- This $96,000 is (fraudulently) tax-free.
- If Tom had had to pay tax on this $100,000, it could have been (say) $35,000 or more, leaving him with only $65,000.

Tom now has $96,000 instead of $65,000 and is 'washing' an additional $6,680 a year in false interest. There may then be some unavoidable taxes (for example, 10 per cent interest withholding tax) but these are small in comparison to what should have been paid.

By repeating this black money–false charities–false loans–false interest scam over, say, ten years, it can be seen that Tom very quickly becomes a multi-millionaire. Tom has an unfair advantage over other Australians who do not cheat, and so can grow his wealth substantially. People would marvel at his success. The Binetter case revealed this fraudulent system.

8. Binetter Case

The Binetter family is wealthy. The family initially consisted of two brothers—Erwin and Emil Binetter—who came to Australia from Eastern Europe in the 1950s. The brothers ran a successful shoe manufacturing business until 1990 when they shifted into property development.

According to a 2016 *Australian Financial Review* article, [13] the 2016 Federal Court judgment [12] detailed evidence that from the 1950s to 1988 the Binetters were depositing untaxed income into overseas bank accounts and using this as back-to-back loans to their Binetter family companies. The amounts circulated through the overseas bank accounts amounted to some $75 million.

The family came to consist of brothers Erwin and Emil and their respective children, Gary Ronald, Peter Michael, and Andrew.

Of some significant interest to this research paper is Michael Binetter who was a high-profile tax lawyer in New South Wales.

- In November 2016, Justice Gleeson in her judgment said that, "Michael Binetter participated in the breaches of duty by Erwin, Emil and Andrew .... I have previously found that he had knowledge at all relevant times of the terms of the transactions ...." That is, that Michael was involved in the tax evasion.
- In 2013 Michael was the Chairman of the Taxation Advisory Committee of the Law Society of NSW and a member of the taxation committee of the Law Council of Australia. [14]
- Earlier, in 2005, Michael Binetter was part of a consultancy (Atax) engaged by the Board of Taxation to give high-level advice on drafting a law that would target tax scheme promoters. [15] At the time Mr Chris Jordan (now Commissioner of Taxation) was Chair of the Board of Taxation.
- Again, in 2013, Michael Binetter provided 'assistance' to the Board of Taxation on aspects of the Income Tax Act. [16] At the time Mr Chris Jordan (now Commissioner of Taxation) was Chair of the Board of Taxation. The

Board of Taxation provides high level advice to both the government and ATO on tax policy.

There is no suggestion that the current Commissioner of Taxation, Mr Chris Jordan, was at all involved in any way in any of the Binetter clan's affairs. But what presumably can be safely assumed is that Mr Jordan was somewhat familiar with and knowledgeable of Michael Binetter given the small world of tax advisors and tax lawyers in Sydney and Australia.

The *AFR* 13 article explains that:

- In 2006 the ATO began an audit of the Binetter family's business affairs.
- The two founding brothers, Erwin and Emil, passed away in 2009 and 2014 leaving the family fortune and businesses to the five sons.
- In 2010 the ATO issued tax assessments against the family which, by 2015, had grown to $104.9 million in tax debts.

At some point there was a significant falling-out between members of the family. Faced with the unpaid $104.9 million tax claim, the ATO moved and appointed a liquidator of the family companies. The liquidator brought an action against the Binetters in the Federal Court that resulted in the 2016 judgment by her Honour Justice Gleeson. 12

The family feud spilt over into the Federal Court with the wife of one of the sons giving evidence against the family. She stated that Ronald Binetter had meetings overseas where she was present that involved organizing back-to-back loans of Binetter 'black' money.

The *AFR* article 13 stated (excerpts):

> "… Justice Gleeson's judgment says that for decades, Erwin and Emil had been sending "black money" – earnings that have not been taxed – to bank accounts in Switzerland. This money was then used as security deposits for "back to back loans" made to Binetter family companies by Bank Hapoalim and Israeli Discount Bank (IDB).
>
> The Binetter companies would claim the interest payments as a tax deduction, but Justice Gleeson found the loan documents were a sham.
>
> In May 2006, (Michael) Binetter was helping out the ATO, as a consultant on the National Tax Liaison Group's Promoter Penalty Co-Design subcommittee, drafting a law that would target tax scheme promoters ....

The 2016 Federal Court judgment 12 stated:

> 219. On the basis of Ms Huber's evidence, I find that the offshore deposits were proceeds of monies originally taken out of Australia by Erwin and Emil Binetter to one or more locations outside Australia.

9. Pulling the *Project Do It* threads together

When the series of events in the development of *Project Do It* are combined with the knowledge obtained through the 2005 Ronen and 2016 Binetter cases, *Project Do It* takes on an interesting complexion.

2005–06: The ATO has clear knowledge of the methods by which high-wealth individuals transfer 'black' money into overseas bank accounts

2006: The ATO had begun auditing the Binetter family businesses.

2010: The ATO issued multi-million dollar assessments against the Binetter family businesses.

2005 to 2013: Tax lawyer Michael Binetter, found in 2016 to have been involved in tax fraud in the Federal Court, had been advising the Board of Taxation.

July 2013: The Swiss government agrees to release details of Swiss bank accounts. This meant that Australians who held secret untaxed money in Switzerland would be found out, subject to investigation, have high tax debts imposed and face potential prosecution for fraud.

November 2013: The ATO through the media announced *Project Do It* as special, privileged treatment for high-wealth tax evaders who 'put up their hands'.

2013–14: Then Deputy-Commissioner Michael Cranston was the lead ATO officer who put forward *Project Do It.*

2014 and 2018: The justifications for *Project Do It* given by the ATO included the suggestion that, after WWII, refugees had 'innocently' hidden money in Switzerland and that this money could now be repatriated to Australia.

June 2016: The ATO assessed that $260 million had been collected through *Project Do It*. Our alternative assessment shows that somewhere between $1.5 billion and $4.6 billion could have, or should have, been collected if normal ATO enforcement processes had been applied.

2016: The Binetter Federal Court case reveals that at least one high-wealth family had for decades been siphoning 'black' money (income on which tax was not paid) out of Australia and returning that money to themselves through false loans.

What can be concluded from this series of historical events is that:

- The Binetter and Ronen families profiled as probable, maybe 'typical', high-wealth individuals who had money in Swiss bank accounts. These were exactly the type of people targeted for major leniency under *Project Do It.*
- The ATO obtained convictions against the Ronen family in 2005.
- The ATO issued assessments against the Binetter family some three years before *Project Do It* and had ongoing action against the Binetter family while *Project Do It* was being developed and implemented.

Surely the senior ATO personnel who devised *Project Do It* must have been aware of the Binetter and Ronen cases? Surely those personnel must have been aware of the strong likelihood that other high-wealth individuals had replicated the Binetter/Ronen tax fraud arrangements?

Surely once the ATO's systems for auditing and litigating against the Binetters/Ronens had been bedded-down, the ATO would then have been in a position to apply those systems to other similar cases (as an ATO audit 'product')?

Given our significant skepticism, even disbelief, in the ATO's claimed advantages to justify *Project Do It*, when combined with the revelations about the Binetter/Ronen family tax scams, there are solid grounds to question just what went on with *Project Do It.*

- Why initiate *Project Do It* when the high-wealth tax evaders were about to be caught?
- Why initiate *Project Do It* when, inside the ATO, there was clear knowledge of the ATO's successful convictions of Ida Ronen for sending tax evasion proceeds offshore in 2005 and the Binetter case that must have included knowledge of likely false loans?
- Surely, inside the ATO there must have been strong suspicion that other high-wealth tax evaders were replicating the Binetter/Ronen tax scams?
- Were all high-wealth tax individuals who benefitted from *Project Do It* fully investigated and found not to have been involved in Binetter/Ronen-like tax scams?

And, given the foregoing, when we compare *Project Do It* with the way the ATO treats self-employed small business people in Australia, the difference in treatment can only be described as outrageous. It's why we have termed this research paper *ATO Rules for the Rich.*

10. Historical allegations of washing of money overseas

What makes *Project Do It* even more concerning and questionable is that the allegations of offshore washing of money were nothing new, dating back to at least 1989, that is, almost 30 years.

In June 1989 the 'Martin' Federal Parliamentary Tax Committee expressed concern about overseas tax havens. The *Sydney Morning Herald* stated: [17]

> "A Federal parliamentary inquiry into tax havens has recommend 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."

The Committee's investigations were attacked and referred to as a 'witch-hunt' by sections of the legal tax community.

But in 1990 the allegations became more specific and identified money washing.

> "A federal parliamentary inquiry was told yesterday that the [Israeli] charity had been described by the Australian tax office as 'dubious'." [18]

And the ATO was concerned.

> "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." 19

An academic, Barbara Smith of the Philip Institute of Technology, was also specific in evidence before a 1991 Federal Parliament Public Accounts Committee that:

> "….Australian residents move money offshore, then reinvest it in Australia, paying withholding tax rather than much higher marginal tax rates." 19

At the time, Barbara Smith's allegations and analysis had already been rejected by legal advisers to the ATO who said:

> "…Mrs Smith had not provided details of specific information …" and "There were some outrageous allegations made by this woman which are totally unsustainable." 20

However Barbara Smith's evidence has proven highly accurate some twenty-five years later in the Ronen and Binetter cases at least.

And following the Binetter judgment 12 of 18 November 2016, the ATO-funded liquidators of Binetter sued two big Israeli banks accusing them of providing 'knowing assistance' to the Binetter family in their tax avoidance scam. 21

Certainly, the Martin Committee Report, 22 formally titled *'Follow the Yellow Brick Road'*, identified back-to-back loans as being characteristic of tax cheating. Recommendation 9 stated:

> "In the withholding tax area, the payment of interest income to non-residents is a primary characteristic of the tax avoidance arrangements which have been described to the Committee, including non-resident beneficiary schemes and back to back loan arrangements".

The Committee received a number of allegations of Binetter-style tax cheating but no hard evidence. Recommendation 14 said:

> "The Committee did not receive any substantial evidence that tax avoidance schemes involving trust distributions to overseas charities are being perpetrated in Australia on a significant scale."

However, Recommendation 14 also recognised the concern in the ATO

> "Nevertheless, it is evident that within the ATO there are some concerns about the potential for tax avoidance in the area of trust distributions to overseas charities."

But, even without the hard evidence needed to prosecute anyone, the Committee's conclusion was that significant tax cheating was occurring. In his opening remarks to the report, Chair Stephen Martin MP said:

> With the tabling of its third report on this subject area, the Committee is in a position to conclude that, for some, the road of international profit shifting truly is paved with gold.

This historical context raises further concerns about *Project Do It*.

- By 2005, at minimum, the ATO should have been closely watching high-wealth individuals as a result of the Ronen case.

- Unless ATO corporate memory was in the dementia category, which is implausible, in 2013 the ATO should have been extremely alert to the significant probability of high-wealth individuals being involved in tax avoidance through false charities and back-to-back loans. The Martin Report clearly identified that this was on the ATO's radar.
- The evidence is that the ATO was acting on its concerns. Investigation of the Binetter family on the very issues of international profit shifting began in 2006, with tax assessments of $10.9 million being issued in 2010 (growing to $104.9 by 2015).
- Whilst the allegations made in 1990 about false charities were not proven, re-examining the historical allegations about false charities should have occurred at least around the times, when in the US the FBI and IRS obtained multiple convictions and long prison sentences for the 'washing' of black money through charities and back-to-back loans via international banks (see section 11 below).
- That means, the only aspect of the scam that has yet to be proven before a court in Australia is the illicit use of charitable donations.

With this knowledge and activity inside the ATO, why move with the *Project Do It* tax amnesty some three months after the Swiss government agreed to release information on secret banks accounts? This Swiss banking information would almost certainly have revealed other Ronen-Binetter-type tax cheating.

And the questioning over *Project Do It* must surely increase when the Australian *Project Do It* approach is compared to that of the Internal Revenue Service (IRS) in the USA.

11. The comparative approach of the USA

The United States has long conducted a sustained and aggressive campaign against tax avoidance cheats using foreign bank accounts. The Department of Justice maintains a website [23] recording successful prosecutions back as early as 2009. The website reveals just how advanced the USA was (and is) in detecting these sorts of tax cheats. In the period around *Project Do It* the US successfully prosecuted at least 15 individuals for tax fraud related to overseas bank accounts. They continue the prosecutions to this day.

The Spinka Case of 2009 is one of the more high-profile cases and involved the use of fake charities to launder black money. A Federal Bureau of Investigation release of 21 December 2009 explains the case and conviction. [29]

That FBI release details that the Grand Rabbi of Spinka, a religious group, was sentenced to two years jail for organizing a tax evasion scheme that obstructed

> "…the Internal Revenue Service by soliciting charitable donations to Spinka-related organisations with secret promises to refund the vast majority of the money they 'donated',

and that

> "…the refunding and laundering of charitable donations is a routine and generational practice …that has resulted in hundreds of millions of dollars of unreported income…"

further that one of the methods of reimbursing 'donors'

> "…was wire transfers from Spinka-controlled entities into accounts secretly held at a bank in Israel."

The money was then returned by

> "…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."

The outcome is that the Spinka case proved beyond reasonable doubt that fake charities were being used to launder black money into overseas bank accounts with the money being 'loaned' back to the contributors.

Here is another example from 2014: 24

> *"California Attorney Sentenced to Prison in Scheme to Hide Millions in Secret Swiss Accounts at UBS AG and Pictet & Cie*
> California attorney Christopher M. Rusch was sentenced to serve 10 months in prison for helping his clients Stephen M. Kerr and Michael Quiel, both businessmen from Phoenix, hide millions of dollars in secret offshore bank accounts at UBS AG and Pictet & Cie in Switzerland, the Justice Department and the Internal Revenue Service (IRS) announced today. …
>
> According to the evidence presented at trial, Kerr and Quiel, with the assistance of Rusch and others, including Swiss nationals, established nominee foreign entities and corresponding bank accounts in Switzerland to conceal Kerr and Quiel's ownership and control of stock and income they deposited in these accounts. … Rusch further testified that, at Kerr and Quiel's direction, he transferred some of the money in the secret accounts back to the United States through Rusch's Interest on Lawyer's Trust Account before dispersing the money for Kerr and Quiel's benefit, including the purchase of a multi-million dollar golf course in Erie, Colo."

It is not credible to believe that the ATO was not aware of the IRS's prosecution successes. Surely the ATO would be sharing information, learning from the IRS and be in the same position of being able to prosecute high-wealth tax evaders? The Spinka case provided solid evidence in 2009 that fake charities were being used to launder black money internationally. It provided substance to the concerns of the Martin Committee in Australia in 1990.

The success of the ATO's Binetter prosecution demonstrates that the ATO has capacity in this area. So why announce the massively generous amnesty deal of *Project Do It* when the ATO was about to have access to Swiss bank account information that would surely have opened up the prospect of further, major Binetter/Ronen-like prosecutions?

And the scale of the *Project Do It* generosity to the Australian high-wealth tax evaders is better understood when it is compared with voluntary disclosure amnesty programs in the USA.

Voluntary disclosure programs make sense. They enable the cleaning up of illegal tax

activity at significantly reduced expense to the taxing authorities. But the generosity of voluntarily disclosure must be balanced to ensure that tax cheats still suffer additional tax cost well above that of the tax cost to honest people. If there is not additional cost to the tax evaders, then tax cheating becomes mighty profitable and is encouraged through failure of the tax authorities.

The USA IRS has long offered amnesties to tax cheats who voluntarily came forward—but not with the levels of generosity of *Project Do It*. The IRS Offshore Voluntary Disclosure Programs [25] began in 2009 and were revised in 2011, 2012 and 2014, but were very different in their tax cheat 'generosity' when compared with Australia's *Project Do It.* In fact the US amnesties were comparatively severe.

The US amnesties:

- went back eight years
- imposed 20 per cent penalties on those eight years of taxes
- applied miscellaneous penalties of 27.5 per cent of the offshore balance

By comparison, Australia's *Project Do It:*

- went back only four years
- imposed 10 per cent penalties on the four years of taxes
- applied approximately 4.5 per cent interest on penalties

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

- Taxes and penalties on eight years would have been $511 million.
- Miscellaneous penalties of 27.5 per cent would have added $1.8 billion

This means that a total of $2.3 billion in taxes and penalties would have been raised.

Project Do It resulted in $260 million being collected.
Comparing the *Project Do It* method to the IRS method the ATO gave up $2 billion.

What, then, does all the foregoing indicate about the operations of the ATO?

12. Conclusion

The ATO often generates considerable publicity by arguing that it is clamping down on tax rorting by the wealthy. But the *Project Do It* situation raises questions as to the truth and reliability of this publicity.

The raw facts of the *Project Do It* situation are compelling:

- The ATO had historical knowledge of allegations of monies being deposited in secret bank accounts overseas via false charities and being loaned back to the individuals who controlled the money. This is 'black economy' activity of the highest order.
- The ATO was investigating at least one instance of where this was occurring—the Binetter family—and one instance of convictions –The Ronens- and must presumably have had high-level knowledge of the black

economy processes in play.

- The ATO must surely have been well aware of and known about the investigations, prosecutions and convictions by the US IRS of this black economy activity.
- The agreement of the Swiss government to release full details of Australians with secret Swiss bank accounts would surely have warranted the ATO establishing a high-powered, well-resourced investigation team to make use of that Swiss information. This is what most Australians presumably would have expected to have happened.

Yet

- On the most flimsy, almost banal of excuses, the ATO chose not to undertake such investigations. Instead, the ATO provided an amnesty of hugely generous proportions to high-wealth individuals, many of whom could have been involved in major criminal money-laundering activity. The lost tax revenue is counted in the billions of dollars.

And

- *Project Do It* was initiated and organized by the most senior of ATO officials, including Deputy Commissioner for high wealth individuals, Mr Michael Cranston., a man now facing charges himself, that he allegedly provided confidential ATO information concerning his son, who is facing charges that he, the son, allegedly defrauded the ATO of $163 million) 4

For these reasons we say that *Project Do It* is arguably the greatest tax scandal in Australia's history made worse by the fact that it was initiated and organised by the Australian Taxation Office.

We say *Project Do It* should be a trigger for a wide-ranging investigation into the ATO, conducted by a body separate to, and entirely independent of, the ATO, even independent of the Federal bureaucracy itself.

Project Do It has a 'smell' about it. It raises the prospect of the ATO being involved in huge favouritism towards select high-wealth individuals in Australia. The comparison with the way the ATO mistreats self-employed, small business people and individuals in general is stark.

The question must be asked. Is the ATO corrupt? Only a full independent inquiry that delves deep into the operations of the ATO can answer that question.