

## update

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## Customs & trade law: Lessons from the Wheatley case ...

... for those who believe they can “beat the system”

The recent jailing of well-known music entrepreneur Glenn Wheatley for tax fraud has provided some important lessons to those who believe that they can “beat the system”.

County Court Judge Tim Wood jailed Wheatley for 2½ years after he admitted defrauding the Commonwealth of \$318,092 in unpaid tax and avoiding tax liabilities by using Swiss-based offshore accounts. Wheatley will spend 15 months in jail with a further 15 months suspended. Wheatley has lodged an appeal against his conviction.

The case against Wheatley was part of the Australian Tax Office’s ‘Operation Wickenby’.

Federal Justice and Customs Minister David Johnston said “Today’s sentence should serve as a strong warning that tax evasion and money laundering through off-shore structures is a serious offence and one that will not be tolerated in Australia”.

A key lesson from the Wheatley case is that government regulators such as the Australian Tax Office, Australian Customs Service, Australian Federal Police and state and territory police have the resources and systems to successfully track money movements in and out of personal and business bank accounts.

The ABC quoted Senator Johnston saying also that “It sends a clear message to people – particularly with overseas bank accounts that they do not declare or seek to use to bring illicit money back into Australia avoiding tax – that they will not succeed”.

AUSTRAC (Australian Transaction Reports and Analysis Centre) played a key role in helping investigators follow the money trail in the Wheatley case. AUSTRAC – Australia’s anti-money laundering regulator – was established in 1988.

This organisation works closely with other revenue and law enforcement agencies in Australia and more than 46 other countries to collect and exchange information and financial intelligence data on money laundering and criminal activities. It helps identify participants and promoters of tax minimisation and evasion schemes, monitors money movement in and out of Australia, identifies potential high risk transactions and investigates unusual transactions.

The ability of the AUSTRAC system to investigate and detect offshore fraud and illegal transactions not only has assisted the Tax Commissioner Michael D’Ascenzo and his team to pursue tax evaders, it has also assisted other regulators such as the Australian Customs Service to pursue those who seek to avoid or minimise the payment of duties and taxes.

For example, Customs has an increased focus on Customs duty evasion involving offshore fraud and Customs’ duty minimisation. This is also not surprising, given that Customs has estimated that there is currently an underpayment of revenue of Customs Duty and GST of over \$40 million. The 2006–2007 Customs audit program has dramatically increased the number of import audits, export audits and benchmark audits occurring.

With the assistance of AUSTRAC, the ability of Customs to detect illegal or improper transaction has greatly improved. Importers should be aware that the documents that they lodged with Customs when entering goods for home consumption or when sending goods overseas can be matched against payments to overseas suppliers, agents, shippers and the parties’ bank accounts both in Australia and overseas.

Some other lessons from the Wheatley case include:

1. By co-operating with the authorities (as Wheatley did) his maximum sentence of 30 months with a 15 month parole period was a better result than if he had not co-operated. Judge Wood stated that the sentence would have been higher (a maximum of 45 months with a non parole period of 20 months) had he not co-operated with the authorities.
2. Offenders should not assume that any deal that they do with a regulator will be automatically accepted by the Director of Public Prosecution. Initially, Wheatley was promised that in return for his co-operation the DPP would not ask for a custodial sentence. Subsequently, however, the DPP sought and obtained a substantial custodial sentence.
3. It is no defence to argue reliance on so-called “professionals” for advice on how to minimise tax or duty. In this particular case, Wheatley relied on a lawyer to set up a sophisticated paper trail that purported to be “a negotiation” between a bogus offshore entity and Wheatley for fees that would be paid for non-existent overseas services in relation to a boxing fight.

The so called “respectable solicitor” is said to have “courted” Wheatley into joining the tax scheme, and Wheatley has stated “I had the impression that he had done this before and there was something in place to facilitate this”. Nonetheless, Wheatley was the one to suffer the consequences of his actions.

## Conclusion

This case has demonstrated that:

- Regulators now have the means to track the money trail for those involved in dubious tax or duty avoidance schemes
- Co-operation with the authorities can help to reduce the severity of any penalties that may be imposed
- Jail time is a real possibility for those who get caught-even if they fully co-operate with the authorities
- Relying on so-called professionals to arrange your professional affairs is no excuse. The beneficiaries of tax or duty avoidance schemes will ultimately bear responsibility for any evasion of tax liabilities.

## For more information

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