



**ASIC**

Australian Securities & Investments Commission



**Australian Government**

**Australian Taxation Office**

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE AUSTRALIAN SECURITIES AND  
INVESTMENTS COMMISSION  
AND  
THE AUSTRALIAN TAXATION OFFICE**

**ATO MOU Reference  
No. 07.005**

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION  
AND  
THE AUSTRALIAN TAXATION OFFICE**

**1. BACKGROUND**

- 1.1 The purpose of this Memorandum of Understanding (MOU) is to express the understanding between the Australian Securities and Investments Commission (ASIC) and the Australian Taxation Office (ATO) of the working relationship between the two agencies. It replaces an earlier MOU dated 18 December 2003.
- 1.2 This MOU will guide collaboration, cooperation and mutual assistance in respect of the statutory functions of each agency. In addition to the matters covered by this MOU, ASIC and the ATO acknowledge that from time to time they may enter into specific arrangements for cooperation. Such arrangements may be bilateral or multilateral and include sharing information, staff secondments, mutual training arrangements, such as the Heads of Commonwealth Operational Law Enforcement Agencies (HOCOLEA) capabilities project, and joint task forces. Such arrangements do not include liaison arrangements, as set out in paragraph 5 of this MOU.
- 1.3 This MOU does not replace any existing agreements or arrangements other than the MOU of 18 December 2003.
- 1.4 This MOU is not intended to create legally binding obligations on either agency.
- 1.5 There are no funding arrangements or costs involved with this MOU.

**2. PURPOSE**

- 2.1 This MOU sets out the principles that underpin the relationship between ASIC and the ATO and is to be applied with that aim in mind.
- 2.2 ASIC and the ATO will work together to pursue common interests and demonstrate their commitment to a whole of government approach to protecting and promoting public confidence in the integrity of the financial system.
- 2.3 ASIC and the ATO recognise the need for the fullest collaboration and cooperation between the two agencies at all levels to discharge their respective functions and to achieve their statutory purposes, to the extent permitted by law. ASIC and the ATO also acknowledge that timeliness and accountability strengthen the effective discharge of their respective roles and responsibilities.
- 2.4 ASIC and the ATO recognise that proper and appropriate communication and liaison at all levels is essential to an effective working relationship. This MOU sets out the framework for liaison arrangements between ASIC and the ATO.

- 2.5 When a matter is not dealt with explicitly in this MOU, it is expected that both ASIC and the ATO will discuss the matter and resolve it quickly in accordance with the principles established by this MOU.

### **3. ASIC**

- 3.1 ASIC is a regulatory and law enforcement agency charged with promoting market integrity and consumer protection across the financial services sector existing under the *Australian Securities and Investments Commission Act 2001* (Cth) (ASIC Act). It is responsible for the administration and enforcement of the *Corporations Act 2001* (Cth) (Corporations Act) and other legislation.
- 3.2 ASIC is required, among other things, to take whatever action it can take and is necessary in order to enforce and give effect to the legislation which ASIC administers.

### **4. ATO**

- 4.1 The ATO manages and shapes tax, excise and superannuation systems that fund services for Australians, giving effect to social and economic policy. The ATO's excise role excludes customs duty.
- 4.2 The ATO administers legislation in the following areas:
- income tax
  - pay as you go (PAYG) withholding and instalments
  - goods and services tax (GST)
  - fringe benefits tax
  - excise duty; and
  - superannuation.
- 4.3 The ATO is guided in its compliance strategies by the principles and directions in the *Taxpayers' Charter* and in accordance with the *Compliance Model*. The ATO has a range of administrative, civil and criminal remedies available to address non-compliant behaviour by taxpayers.

### **5. LIAISON ARRANGEMENTS**

- 5.1 ASIC and the ATO will liaise at a national level, and in relation to specific areas of common interest.

#### ***National liaison***

- 5.2 Liaison at the national level will be conducted on a continuing basis, with liaison meetings being held quarterly. The Deputy Commissioner, Serious Non-Compliance of the ATO and the Executive Director, Enforcement of ASIC, in addition to such other senior officers as are agreed by the two agencies, will be responsible for this liaison. The Commissioner of Taxation and Chairman of ASIC will attend liaison meetings at least once each year. National liaison will deal with operational and organisational issues, expected workloads and systemic issues that may warrant law reform.

- 5.3 The Relationship Manager of each agency will be responsible for its general adherence to this MOU. Any disagreement which cannot be resolved between the Relationship Managers or at a liaison meeting will be immediately referred to the Chairman of ASIC and the Commissioner of Taxation.

***Specific areas for liaison***

- 5.4 ATO and ASIC Contact Officers will be responsible for the day to day operation of this MOU and will liaise as required to discuss the progress of current matters of common interest, to improve the sharing of information, to attempt to identify opportunities for joint enforcement or other activities where appropriate, and to resolve problems that may arise either in the audit, investigation or prosecution of particular matters or other relationships between the two agencies.
- 5.5 From time to time opportunities will arise for the agencies to develop strategies for closer collaboration in areas of common interest, such as illegal phoenix activity, auditor and liquidator misconduct, superannuation and illegal schemes. The agencies will also collaborate on law reform issues of common concern. ASIC and the ATO agree to pursue all opportunities for closer collaboration, such as developing open data standards to facilitate efficient exchange of database information and cooperation in exchange of systems-based intelligence. If ASIC and the ATO are unable to agree upon a proposed course of action in a specific area at the officer level, the matter will be considered by the relevant ASIC Director and ATO Assistant Commissioner. If, following consultation, the disagreement cannot be resolved it will be referred to the next National Liaison meeting for consideration.
- 5.6 ASIC and the ATO may issue joint media releases or publications in relation to any joint enforcement or other activities. The agencies will collaborate in drafting proposed joint media releases or other joint publications.

**6. INFORMATION SHARING**

- 6.1 Each agency is subject to statutory obligations of secrecy or confidentiality, which govern the permitted disclosure of confidential or protected information.
- 6.2 ASIC and the ATO agree to exchange confidential or protected information if permitted by the relevant statutory provisions. Information may be provided by one agency in compliance with a request from the other agency. An agency may also provide information to the other agency, even if it has not been first requested, if the information would be likely to assist that other agency in administering or enforcing the particular laws for which that agency is responsible.

**7. PROPOSING A SPECIFIC ARRANGEMENT**

- 7.1 Either agency may give the other a written proposal for a specific arrangement. The proposal should set out:
- the information exchanges and/or other activities to be carried out under that specific arrangement,
  - the agencies' Contact Officers for that specific arrangement,
  - monitoring, evaluation and reporting requirements for that specific arrangement, and

- all other terms proposed for that specific arrangement including commencement, expiry, variation, status, interpretation, confidentiality and other provisions as appropriate.

7.2 Specific arrangements will be cooperatively developed and negotiated by the agencies.

7.3 The termination or expiry of a specific arrangement will not affect this MOU or any other specific arrangement (unless that other specific arrangement states otherwise). All specific arrangements are automatically terminated by the termination of this MOU, unless expressly continued.

**8. REVIEW AND TERMINATION OF THIS MOU**

8.1 This MOU will be reviewed within three years of the date of signing. Either agency may request a variation of this MOU from time to time. All variations to the MOU are to be recorded in the Change Control Register in the Annexure.

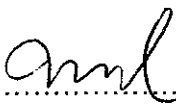
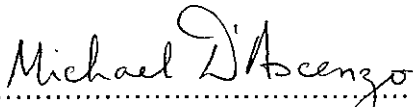
8.2 Either agency may terminate this MOU by giving 30 days written notice to the other agency. The termination will take effect on the expiry of the notice unless otherwise arranged by the agencies.

8.3 This MOU will remain in force unless terminated by the agencies.

**9. DATE OF COMMENCEMENT**

9.1 This MOU shall take effect on and from the date when it becomes signed by both the Chairman of ASIC and the Commissioner of Taxation.

**SIGNATURES**

<p>Signed for the Australian Securities and Investments Commission by</p> <p></p> <p>.....</p> <p>Jeffrey John Lucy AM Chairman</p> <p>Date of signature: <u>4 May 2007</u></p>	<p>Signed for the Australian Taxation Office by</p> <p></p> <p>.....</p> <p>Michael D'Ascenzo Commissioner of Taxation</p> <p>Date of signature: <u>9 May 2007</u></p>
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**ANNEXURE**

**CHANGE CONTROL REGISTER**

<b>Version</b>	<b>Date</b>	<b>Revisions made</b>	<b>Areas affected</b>
1	9 May 2007	Original Agreement	Original Agreement
2			
3			
4			
5			
6			
7			