



Australian Government
Australian Taxation Office

OECD INTERNATIONAL ACADEMY FOR TAX CRIME INVESTIGATION
VAT/GST FRAUD INVESTIGATIONS PROGRAMME

ASSET RECOVERY

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Asset Recovery

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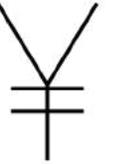
Overview

1. Substantiation of unlawful conduct
2. Identification
3. Restraint
4. Confiscation
5. Disposal

OECD: Ten Global Principles of Fighting Tax Crime

Principle 4: Have effective powers to freeze, seize and confiscate assets

Freezing or Seizing of assets



- Freezing = temporarily suspending the rights over an asset
- Seizing = temporarily restraining an asset or putting it into the custody of the government



These measures are generally used to temporarily prevent the movement of assets pending the outcome of an investigation and prosecution case.

Confiscation of assets

- Confiscation (*'Asset Forfeiture'*) generally used after the final outcome of a case, to stop criminals from accessing assets obtained from a crime



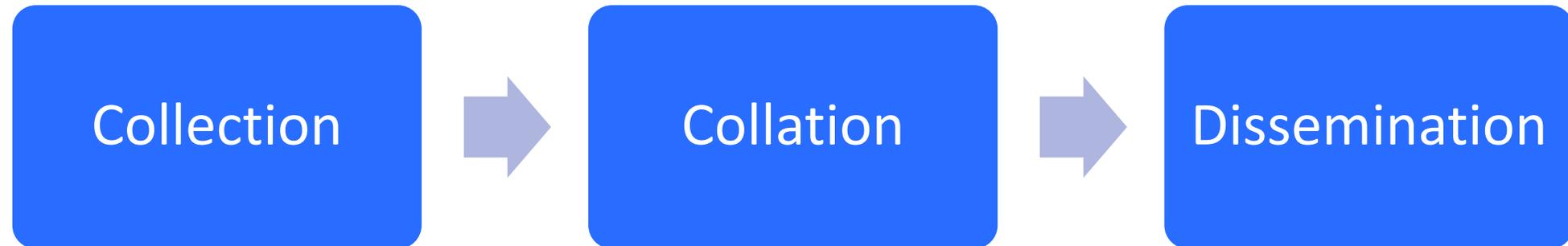
Asset Recovery Considerations

- Domestic and Foreign tax investigations / judgements
- Timeliness
- Transparency and Integrity
- Organisational Structures and expertise
- Legislative Fairness
- Security of assets
- International partner engagement

Tax Crime – Asset Recovery



Information Systems



1. What options are available to you to identify assets held by targets?

Civil Treatment - Audit

- Self Assessment Taxation system
 - Prevent
 - Deter
 - Recover
- Audit / Assessment Action
 - Tax Fraud / Evasion
- Standard of proof = *'Balance of probabilities'*
- Burden of proof

Civil Treatment - Audit

- Joint Agency Taskforce
 - ATO, AFP, ACIC, AGD, AUSTRAC, ASIC, CDPP, Home Affairs, ABF
- Targeted tax crime areas –
 - Serious Financial Crime
 - Offshore Tax Evasion
 - Illegal Phoenix Activity
 - Cybercrime
 - Unexplained Wealth

Asset Recovery - Civil

- Secured Payment Plan
- Garnishee Notice
- Director Penalties
- Departure Prohibition Order (DPO)
- Freezing Order / Mareva Injunction / APO
- Warrant of Seizure / Writ of Execution
- Mutual Assistance for the Collection of Tax Debts (MACTD)

Criminal Treatment - Investigation

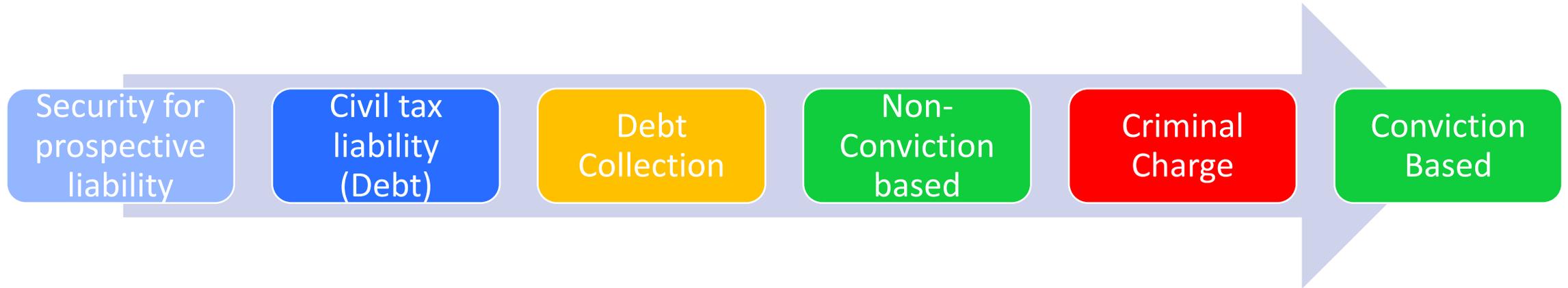
- Standard of proof = *'Beyond reasonable doubt'*
- Burden of proof = Prosecutions
- Information Gathering
- Tax crime offenders



Asset Recovery - Criminal

- Criminal Investigation
- Successful Prosecution
- Restitution
- Asset Forfeiture
 - Proceeds of Crime
 - Crime derived
 - Unexplained Wealth

Asset Recovery Options



Challenge: How can we proactively improve Asset Recovery Options?

Improving the Outcome

- Proactive and early identification
- Director ID
- GST at Settlement
- Agency Co-Operation
- Financial transaction tracing
 - AUSTRAC



Improving the Outcome

- Taskforce approach
- Information gathering/sharing
- \$ Collectability
- Cross border issues
- Media / Publicity



2. What improvements do you suggest?

Money Laundering

- Transnational
- Global Financial System
- Suspicious Transaction Reports
- Cryptocurrencies
- Predicate Offence
- Legislation



Asset Confiscation Legislation

To enable the confiscation of Property (assets) –

- derived directly or indirectly from criminal activity
- used in committing an offence, even if it was lawfully acquired
- belonging to serious drug offenders
- of individuals who are unable to explain how they lawfully acquired their wealth

Asset Confiscation Legislation

- State / Territory Legislation
- Commonwealth Legislation
- Proceeds of Crime Act 2002
- Criminal Asset Confiscation Taskforce (CACT)



POCA02 – Principle objectives

To deprive persons of -

- a) *proceeds of offences, *instruments of offences, and *benefits derived from offences, against the laws of the Commonwealth ...;
- b) *literary proceeds derived from commercial exploitation of their notoriety from having committed offences;
 - (ba) *unexplained wealth amounts ...;
- c) to punish and deter persons from breaching laws ...;

POCA02 – Principle objectives

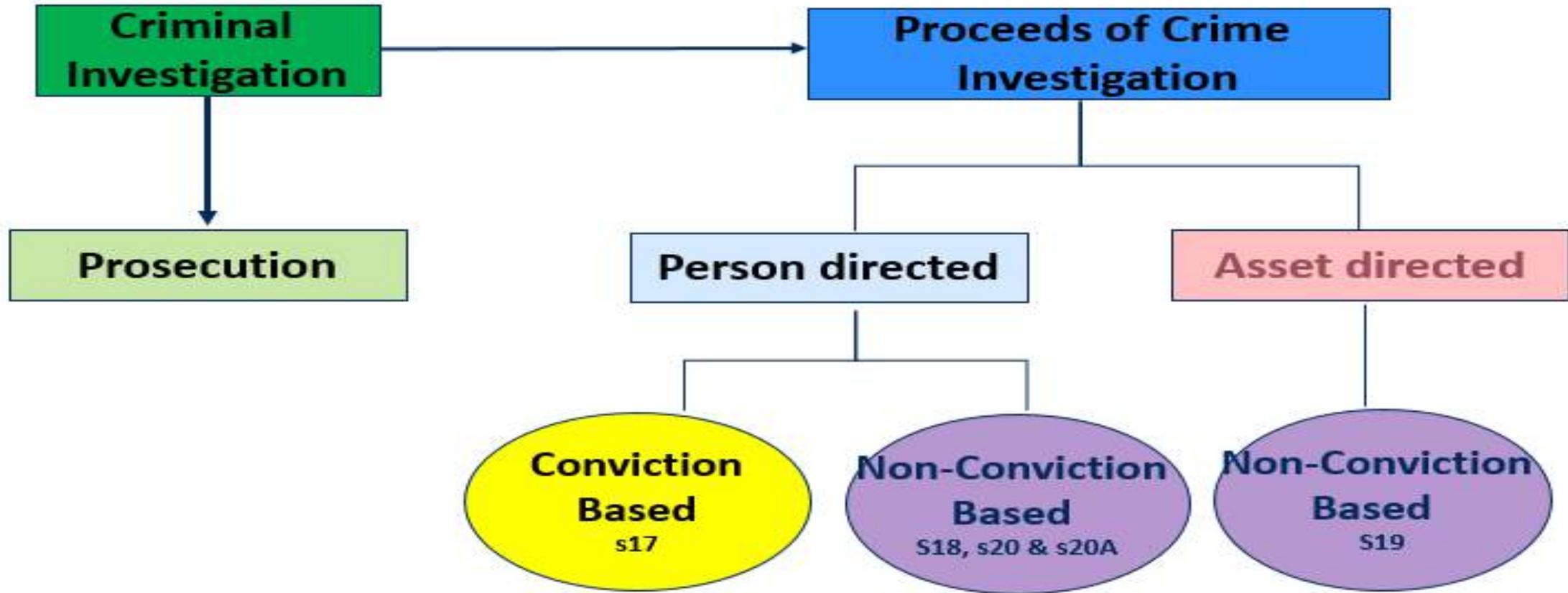
- d) prevent reinvestment ... in further criminal activities;
(da) undermine the profitability of criminal enterprises;
- e) effectively trace ...;
- f) Australia's obligations under the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, and ...;
- g) provide for confiscation orders and restraining orders made in respect of offences ...

Key Definitions

- Proceeds
- Instrument
- Unexplained Wealth
- Effective Control
 - Held
 - Given away or Gifted



CACT Investigation Overview



Procedural matters

- Indictable Offence
 - Offence punishable by imprisonment for 1 or more years
- Serious offences
 - Offence punishable by imprisonment for 3 or more years
 - Value or loss of at least \$10,000
- Civil proceedings
- Standard of proof = Balance of Probabilities
- Reverse Onus
- Coercive ‘type’ Powers

Common Defences

Defences encountered –

- Gambling
- Inheritance
- Gifts or loans from friends
- Savings or cash hoard
- Sale of an asset

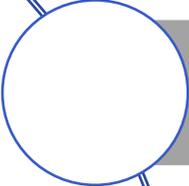
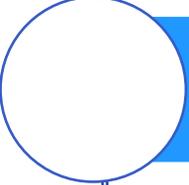
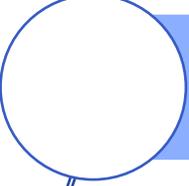
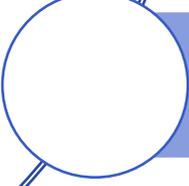


3. What defences have you seen that are different to these?

Asset Management

- Cannot be used to pay legal expenses
- Australian Financial Security Authority (AFSA)
 - Sale
- Funds returned to the use of the community
 - Equitable sharing with States
- Prescribed programs –
 - Law enforcement, crime prevention, drug related
 - Foreign orders
 - Legal Aid Commission expenses
 - Expenses relating to conduct of examinations

Is there similar framework within your jurisdiction? Consider:

-  Rapid freezing order powers?
-  Powers for third party confiscations?
-  Powers for non-conviction based confiscation?
-  Availability of seizing and confiscation powers in respect of foreign tax matters?



Asset Recovery: Gold Scheme Criminal Syndicate

- 1. What information do you need and how will you source this information?
- 2. What type of assets could you be looking for?
- 3. Will you use other agencies or jurisdictions to assist you? If yes, who and why?
- 4. Are you looking at conviction based or non-conviction based actions and why?



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Thankyou | Arigatou