

Memorandum of Understanding

between

Inland Revenue Department

and

Serious Fraud Office

Memorandum of Understanding dated 12 November 2015

Between

The Inland Revenue Department, a Government Department constituted under the Tax Administration Act 1994 (“Inland Revenue”)

And

The Serious Fraud Office, a Government Department established by the Serious Fraud Office Act 1990 (“SFO”)

Introduction

- A The SFO has statutory functions relating to the detection, investigation and prosecution of offences involving serious or complex financial crime or matters of bribery and corruption. The SFO may investigate and prosecute breaches of any legislation containing relevant offences.
- B The Inland Revenue has statutory functions in relation to the assessment, collection and protection of Crown revenue. The Inland Revenue also has a role in the detection, investigation and prosecution of revenue fraud.
- C The SFO and Inland Revenue (the parties) both have an interest in the efficient and effective detection, investigation and prosecution of financial crime, and the economic and social wellbeing of New Zealanders. In addition, the functions of the parties may be required to be exercised in relation to the same entities or circumstances.

1. Definitions

1.1. In this memorandum the following terms have the following meanings:

“Inland Revenue Acts” means those Acts listed in the schedule to the TAA;

“Primary Contacts” means the General Counsel of the SFO and the Director of Litigation of Inland Revenue;

“SFO Act” means the Serious Fraud Office Act 1990;

“TAA” means the Tax Administration Act 1994.

2. Purpose of this memorandum

- 2.1. The purpose of this Memorandum of Understanding (MoU) is to record the parties’ shared commitment to:
 - a. further enhance collaboration and support for each other to fulfil each department’s statutory objectives;
 - b. work together to ensure the most effective and efficient use of each department’s resources in the investigation and prosecution of financial and revenue related crime;

- c. the processes and principles that will apply to enable decisions to be made quickly and efficiently as to the role each department will play in response to potential or actual offending; and
- d. enhance the cooperation between the parties on areas of common interest (those matters where each party contributes to a shared outcome or has a shared investigative role or interest).

3. Relationship management and co-operation

- 3.1. The parties will, subject to statutory restrictions on disclosure and the sharing of information:
 - a. work together to achieve the most efficient regulatory and law enforcement outcomes including, so far as is practicable, to avoid duplication in the expenditure of tax payer funded resources;
 - b. provide feedback after a common interest matter to ensure the parties are learning and updating knowledge and enhancing processes; and
 - c. share training and staff development opportunities.

4. Strategic coordination

- 4.1. The Director of the SFO and the Commissioner of Inland Revenue will meet quarterly (or more or less frequently as agreed by the parties) to:
 - a. discuss the general strategic coordination of each department's enforcement activities, the sharing of knowledge (as permitted) and resources between the parties and other matters relevant to the performance of the party's respective statutory functions;
 - b. address any issues that may have arisen with respect to matters of common interest; and
 - c. raise issues otherwise impacting upon the capacity of both departments to discharge their statutory mandates.

5. Co-ordination principles

- 5.1. The parties agree that, wherever possible, as soon as either department becomes aware of a matter that may be a matter of common interest, they will notify the Primary Contact. The parties will then work together to decide if it is a matter of common interest and which department will take the lead in relation to the matter.
- 5.2. The decision making process will reflect the following principles:
 - a. notification of a common interest matter will be given to the other department in a timely way once a department has become aware of the matter;
 - b. subject to the restrictions on disclosure, sufficient information will be exchanged between each department to enable the departments to determine which shall have the primary responsibility; and
 - c. the decision as to which will take the lead will be made as early as possible.
- 5.3. If a joint investigation is to be undertaken the parties:
 - a. will agree on an investigation team and an investigation lead which will meet and agree the steps to be taken by each department with respect to the investigation; and

- b. cooperate to ensure that all matters of responsibility are efficiently and effectively dealt with.

6. Confidentiality and Information sharing

- 6.1. The parties acknowledge the secrecy provisions under section 81 of the TAA and sections 36 and 37 of the SFO Act and that the disclosure and sharing of information between them is governed by the limitations imposed by that legislation.

7. Secondments

- 7.1. From time to time each party may second staff to the other party for an agreed period of time. During the period of secondment, the seconded employee will remain employed by their home organisation and will return to their home organisation at the completion of their secondment in accordance with the conditions of any relevant employment agreement.
- 7.2. The seconded employee will continue to be subject to their original terms and conditions of their employment, except where modified by agreement between the parties and the seconded employee, or where modified by necessity of the relevant legislative frameworks within which the host department operates.

8. General Liaison

- 8.1. All correspondence and notices not relating to a common interest matter will be directed to the Primary Contact.

9. Public Statements

- 9.1. The parties agree that as far as possible, and wherever appropriate, no public comment will be made about any joint interest matter without prior notification to the other party of the proposed comment and prior consultation as to the form and timing of the comment being made.
- 9.2. The parties agree that any media releases that may affect or be of interest to the other party will be disclosed and coordinated in accordance with a communications protocol to be formulated by the parties.

10. Term and Review

- 10.1. This MoU shall be subject to review every two years from the date of signing.
- 10.2. Either party shall provide three months' notice of their intention to terminate the MoU.

11. Legal Nature of Memorandum

- 11.1. Nothing in this MoU is intended to limit or affect the independence of either body. The parties acknowledge that the terms and conditions of this MoU are not in substitution for and do not replace the requirements of the TAA or the SFO Act and nothing:
 - a. limits or affects the statutory powers of either party or its ability to perform its functions and act where necessary in the public interest; or
 - b. requires or obliges either party to provide any information to the other except as required by law; or

- c. binds either parties in the exercise of any discretion conferred on it by law or obliges either party to do any other act or thing with goes beyond its legal rights powers and obligations under the appropriate Acts.
- 11.2. In particular, this MoU is intended to be facilitative only and to assist with the mechanics and implementation of the statutory functions conferred on the parties, and is not intended to create legally enforceable rights or obligations.

Execution



Naomi Ferguson
Commissioner of Inland Revenue and Chief Executive



Julie Read
Director of the Serious Fraud Office and Chief Executive

