

Forty pieces of silver — should New Zealand adopt a tax bounty system?

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For two millennia, 40 pieces of silver was the Biblical measure of betrayal. It was the bounty given by the Romans to Judas Iscariot for betraying Jesus Christ. Ever since it has stood as the clichéd amount awarded for traitors who turn against friends and loved-ones. And no one likes a turn-coat or even a tattle-tail. So the public view of informants who betray their allies has never been good.

But since the GFC global tax authorities have attempted to change that perception, at least when it comes to encouraging the public to turn in tax cheats. The squeeze on tax revenues and the spotlight on tax evasion and avoidance has allowed revenue authorities to adopt new and aggressive measures to identify and bring defaulting taxpayers to justice.

In their pursuit of revenue, a number of countries have unilaterally shown a willingness to pay informants for information. This self-help remedy has proved surprisingly effective, and has created a back-door allowing revenue authorities to obtain information that may be inaccessible through official channels.¹ A growing number of countries have introduced reward or bounty systems under which informants receive payment for assisting revenue authorities. It is claimed such bounty regimes create both an incentive for persons in possession of information regarding taxpayer dishonesty or trickery to capitalise on that knowledge by disclosing it to revenue authorities in return for financial reward, and sows a corresponding doubt in the minds of offending taxpayers that their incriminating information can ever be truly secure. Information is power and revenue authorities are increasingly willing to pay for it in cash — but not (yet) in New Zealand.

Tax barrister Mark Keating reviews the development of tax bounty regimes in a range of comparable jurisdictions and considers the possible benefits and implications for both Inland Revenue and taxpayers if New Zealand was to follow the global trend.

The wall of tax secrecy crumbles

The last decade has seen coordinated international initiatives to erode taxpayer secrecy. Public opinion appears to have shifted against taxpayers' ability to hide behind veils of secrecy in order to implement tax reduction measures.² Secrecy always favoured taxpayers, so any reduction in protection should obviously worry taxpayers and their advisers.

No one actually knows how much tax revenue is lost to tax avoidance and evasion — but the Tax Justice Network estimated in 2010 that it may be as much as US\$3.1 trillion (or 5.1% of global GDP) each year.³ Closer to home, the Australian Government estimated it was losing approximately AU\$6.1 billion each year to (alleged) corporate tax avoidance alone⁴ (although an ATO taskforce created to tackle the issue expects to recover only AU\$2.2 billion).⁵ It has been estimated that for New Zealand Inland Revenue may lose up to NZ\$700m annually (the New Zealand Government itself claims an annual loss to multinational tax avoidance of approximately NZ\$300m).⁶

New Zealand media commonly run news stories about alleged tax avoidance.⁷ So the mood is ripe for revenue authorities to boil the tar and stock-pile the feathers — if only they knew who to put into the public stocks ... That is where tax bounties become attractive as a practical attempt to break down the wall of secrecy surrounding taxpayers.

The use of tax bounties paid to informants overseas has been widely reported.⁸ Such stories fascinate the public for two reasons:

- Envy — the secret wealth of the rich and famous are finally being subject to tax; and
- Greed — whistleblowers receive large rewards for disclosing information they often obtained in legally or morally dubious ways.

The largest and most well-publicised bounty involved an informant, Mr Bradley Birkenfeld, who sold information regarding United States clients of the UBS bank to the US Inland Revenue Service (IRS). This information identified large-scale international tax evasion. Mr Birkenfeld, one of UBS's mid-level employees involved in helping clients hide their income within the bank's offshore network, copied copious and detailed information about the activity of the bank and its clients — and then voluntarily disclosed all this information to the IRS in 2008.

Faced with this avalanche of insider information regarding its illicit activities, UBS entered into a deferred prosecution agreement in 2009 and paid US\$780m in fines, penalties, interest and restitution to settle criminal charges. It was never disclosed what action was taken against the individual clients involved. But what was widely reported in both the United States⁹ and around the world¹⁰ was the US\$104m reward paid by the IRS to Mr Birkenfeld for this information. At the time the press noted that the case¹¹:

[H]as helped set off a rush of would-be imitators hoping to cash in on a government program to catch tax cheats. ... According to the U.S. Government Accountability Office, as of last April [2012], a total of 1,387 whistleblowers had identified 9,540 taxpayers since the overhaul was enacted.

Mr Birkenfeld's example demonstrated to the IRS both the size of the problem of detecting and taxing the overseas funds owned by United States citizens and highlighted to citizens the riches available for handing over such information. So the rewards are there, both for the revenue authorities and the informants.¹²

Revenue authorities in other jurisdictions also took notice. A growing number introduced their own incentive or reward schemes. These are statutory or administrative regimes under which an informant will receive a reward for providing information regarding evasion (and sometimes avoidance) by other taxpayers. Generally the quantum of that reward is calculated according to the amount of tax recovered by the revenue authority from the use of that information. Such schemes have subsequently been established in Singapore, Canada, and the United Kingdom, along with many other jurisdictions.

It takes cheese to catch a rat

The United States bounty system under which Mr Birkenfeld benefited serves as the template for most other jurisdictions.¹³ The United States has a long history of rewarding informants who turn in fellow citizens or companies guilty of defrauding government programs. The first such federal program was established in 1863 under the *False Claims Act*. Likewise, whenever there has been a federal income tax (ie briefly during the Civil War and then permanently since 1913)¹⁴ the United States has utilised a tax whistleblower program.

This is in line with the United States's history of "bounty hunters" in general, with rewards offered across a range of fields, most notably with respect to disclosures regarding anti-competitive business practices and securities market fraud.¹⁵

Officially known as the Whistleblower Informant Award scheme, the tax bounty regime is codified in s 7623 of the *Internal Revenue Code* (United States). The IRS even established the Whistleblowers Office in 2006, with the purpose of encouraging informants "to provide specific and credible information [about] the non-compliant taxpayer".¹⁶ Broadly stated, it offers informants a reward of between 15% and 30% of the additional tax collected as a result of the information provided. The regime contains a *de minimis* threshold regarding information whereby the amount of additional tax collected must exceed US\$2m. Likewise, if the information relates to non-compliance by individual taxpayers, that person must have a gross income in excess of US\$200,000. This latter restriction prevents informants from profiting from non-compliance involving small or insignificant amounts of tax. However, in some circumstances the IRS retains a discretion to make voluntary rewards (of no more than 15% with a maximum of US\$10m) to informants for the disclosure of information below the *de minimis* thresholds.

As Mr Birkenfeld discovered, there is no upper limit on any reward as it is simply calculated according to the additional tax collected. A special IRS Form 211 is available for making such disclosures. The reward is then quantified based on all tax collected (ie the reward is calculated including additional penalties and interest).¹⁷ In keeping with the wide definition of "income" under the United States tax code that reward itself is also taxable to the informant.¹⁸ The informant's entitlement to, and quantum of any reward is contestable to the US Tax Court under the normal appeal mechanism used for tax disputes.¹⁹

Helpfully, the US Whistleblowers Office publishes annual statistics on its operation, including the number of tips it receives, the amount of additional revenue collected and the quantum of rewards paid out. For instance, in the 2010 fiscal year the IRS received information on 5,429 taxpayers, collected additional tax revenue of almost US\$465m, and paid out US\$18.7m in rewards.²⁰

The United States whistleblower regime has proved so successful that the most common criticism is that it takes too long to investigate the information provided by informants.²¹ Within the United States there appears little criticism of the regime, with few commentators concerned that it may encourage false or malicious claims, or that it undermines trusted relationships between taxpayers and their employees/ advisers.

Rather its most controversial aspect appears to be that it rewards culpable whistleblowers who have often taken an active role in the taxpayer's conduct they later disclose (again, like Mr Birkenfeld).²² But even that view seems to be in the minority. For instance, Sen Charles E Grassley, a US Republican Senator who helped to write the rules enhancing the whistleblower regime in 2006 just in time for Mr Birkenfeld to take advantage of them welcomed his huge reward. He explained²³ :

If the IRS is serious about encouraging future whistleblowers, it needs to continue to honor the spirit and the intent of the law and issue awards in a timely manner.

Likewise, a lawyer who has represented whistleblowers under the IRS law told the *New York Times* that²⁴ :

It heartens those who deal with whistle-blowers daily to see the IRS simply follow the law and reward a whistle-blower who meets the law's requirements.

Whatever its moral shortcomings, other countries were quick to follow the United States example and began offering rewards to tax whistleblowers, although often using regimes that are less wide-ranging or generous.

Singapore

Singapore offers a 15% reward on tax recovered from informants, capped at a maximum of S\$100,000.²⁵ This regime is not codified in statute and therefore the Singapore revenue authority explains that "all reward payments are made solely at the discretion of the Commissioner of Inland Revenue, after the investigation has completed and taxes are collected. At that point, IRAS will contact those informants who are to be

rewarded.²⁶ Nevertheless, this regime has been recognised by commentators as “incentivising disclosures” and it has been claimed that it provides²⁷ :

[A]n additional source of informational supply to the tax authority [and] may restore a healthier level of fear in the purveyors and purchasers of tax planning schemes.

Canada

Canada traditionally refused to pay rewards to tax informers. It even famously refused to enter into an agreement with Mr Birkenfeld in 2008 regarding information he offered to provide regarding alleged evasion by Canadian UBS customers. That remains the approach for the disclosure of domestic tax evasion and avoidance²⁸ — but from January 2014 the Canadian Revenue Authority introduced a separate whistleblower regime for the disclosure of information regarding “major cases of international tax non-compliance” resulting in more than C\$100,000 of additional tax being assessed and collected.²⁹ This program, known as the Offshore Tax Informant Program (OTIP), offers financial rewards to informants of between 5% and 15% of the additional tax collected after the *de minimis* C\$100,000 threshold is reached.

The scheme extends to “any individual, no matter where they are in the world” but, unlike the United States regime, it expressly excludes any person who has been convicted of tax evasion or certain other criminal offences concerning the information provided. It explains³⁰ : “This ensures that criminals do not use the program to profit from their crimes.” Accordingly, the likes of Mr Birkenfeld could not profit from their own roles in their clients’ wrongdoing. Like the United States, the Canadian scheme also explains that any reward payment will be treated as taxable income to the informant in the year it is received.³¹

The Canadian Revenue Authority explains the reason for its change of heart to pay informants³² :

Launched as part of the Canada Revenue Agency’s (CRA) efforts to fight international tax evasion and aggressive tax avoidance, the new Offshore Tax Informant Program (OTIP) allows the CRA to make financial awards to individuals who provide information related to major international tax non-compliance that leads to the collection of taxes owing. The OTIP draws on international best practices from across the globe. A number of member countries of the Organisation for Economic Co-operation and Development (OECD) also provide rewards for information regarding taxpayer non-compliance. ... International tax non-compliance is a focus of all developed nations, particularly members of the G-20, and the CRA’s actions to combat this non-compliance are part of this global effort.

So the normally conservative Canadians obviously feel recent developments in the coordinated global fight against tax evasion and avoidance warrant the introduction of a reward programme. Nevertheless, Canadian commentators have still been critical of the regime with one claiming it would be responsible for “turning Canada into a gold mine for tax snoops” whereby “the government may ultimately benefit from net additional revenue collection, but it will do so at a price for society at large”.³³

United Kingdom

Unlike Singapore and Canada, the United Kingdom “tax bounty” system applies to both domestic as well as international taxes. The United Kingdom reward regime appears to have been implemented as an administration practice from approximately 2008 and is not enshrined in statute. Rather, it is simply used as an encouragement for informants to make disclosures.

Surprisingly, the HMRC website itself is silent regarding these reward payments.³⁴ Rather, details about the scheme were disclosed in 2012 in response to a Freedom of Information request by investigative journalists.³⁵ Media reports regarding payments made to informants under the scheme have appeared regularly thereafter.³⁶ These disclose that rewards may be paid at HMRC’s discretion for the disclosure of information regarding even the smallest instances of evasion or avoidance. One media report explained³⁷ :

‘It can range from someone who has heard someone bragging in the pub about work they have done cash-in-hand, to details of someone shipping in lorry loads of vodka [without] paying tax’, an HMRC spokesman said. Information may come from employees, business partners or even spouses, the spokesman said. The payments are based on the amount of unpaid tax that is recovered but there is no formula or fixed percentage basis for the rewards.

Other media reports that³⁸ :

HMRC said that most payments are for low amounts – £50 or £60 – and are paid out following calls to its tax evasion hotline. Information that leads to higher sums of unpaid tax being recovered can trigger payments running to several thousand pounds. Reports from 2008 claim HMRC paid £100,000 to an individual who provided details of secret bank accounts held by wealthy Britons in Liechtenstein.

So HMRC appears to view the payments in the same light as payments commonly made by police to informants regarding other types of crimes. The media report continued³⁹ :

A spokesman said: ‘The system works in the same way as Crime Stoppers – sometimes there will be cash rewards to help persuade the public to come forward. Officers review all calls and must decide which ones to open investigations into, watching out for malicious and incorrect information [...] The payments to informants represents good value for money in the fight against illegal tax evasion. There are no up-to-date figures for the level of tax recovered as a result of information from paid informants, but figures for the period between 2005 and 2009 showed £42million was clawed back by the taxman this way.

The quantum of payments made to these informants disclosed by HMRC showed more than £2m has been paid between 2009 and 2015. So as word-of-mouth spreads, it seems the number of informants and quantum of rewards is steadily rising.⁴⁰ While HMRC does not publicly report on the level of rewards, these press reports of the increasing payments suggests they have been effective in motivating whistleblower activity.

There have even been calls for HMRC to formally adopt a United States-style whistleblower regime for tax⁴¹ :

That’s a massive incentive for people. There are well-publicised campaigns about shopping benefit cheats, but the losses from tax evasion are now about 100 times bigger. Why aren’t they spending the same money publicising tax evasion hotlines? Let’s treat tax cheats for what they are – criminals.

Australia

Australia has no bounty regime to provide financial rewards to tax whistleblowers but the ATO will accept and act on reports of tax non-compliance, such information being processed via the ATO’s Tax Evasion Reporting Centre.⁴²

Some changes are pending in the form of the Treasury Laws Amendment (Enhancing Whistleblower Protections) Bill 2018, introduced in December 2017. The Bill proposes a regime which will protect and compensate individuals who report tax non-compliance and tax misconduct (including tax avoidance schemes). New rules will protect the identity of an eligible whistleblower, who will also be shielded from civil, criminal and administrative liability in relation to a qualifying disclosure. Compensation will be paid in cases where a tax whistleblower suffers loss, damage or injury as a result of victimization relating to a disclosure that has qualified for protection.⁴³

Two wrongs?

A common problem is whether the informant can receive a reward if he or she was personally involved in the very non-compliance that they disclose. Most jurisdictions refuse to grant rewards; such participants are either expressly or presumptively excluded from all bounty regimes except for the United States.⁴⁴ However, while the United States regime pays out a reward, it provides no protection for informants against prosecution for their personal role in the non-compliance they disclose.

This somewhat contradictory approach is again best demonstrated with the case of Mr Birkenfeld. Under a plea bargain agreement he was obliged to plead guilty to criminal charges for his role in the evasion perpetrated by UBS that he disclosed, and served 30 months in federal prison. It was only upon his subsequent release that he then received his whistleblower reward of US\$104m. However, as noted by the media at the time⁴⁵:

Birkenfeld's jail time has proved quite remunerative. Based on netting roughly \$44 million after paying federal taxes and legal fees – which lawyers not involved in the case called a reasonable estimate – he realized about \$46,000 for each day he spent in prison.

Obviously it is somewhat unpalatable to reward an informant who personally participated in (and sometimes profited from) the non-compliance. But from a practical perspective, excluding this group from a reward significantly reduces the efficacy of bounty regimes. Potential whistleblowers are typically insiders who possess their information only by virtue of the role they play in assisting with the client's avoidance or evasion. So if the aim is simply to receive information in order to collect more revenue from defaulting taxpayers then no distinction is warranted.

Taxpayer secrecy?

Another inherent difficulty with any whistleblower regime is that the reward is calculated on the additional tax gathered from the defaulting taxpayer/s. At least by implication, and often directly, this requires the revenue authority to disclose to the informant the result of its investigation into that other taxpayer. Obviously, such disclosure raises concerns regarding the normal secrecy that pertains to taxpayer information held by the Commissioner. Certainly Inland Revenue officials stipulate that, for taxpayer secrecy reasons, they will not update or report back to informants regarding the use to which their information was put or the outcome of any investigation.

But it has been increasingly recognised recently that the confidentiality of taxpayer information is not absolute and it may be disclosed where such disclosure is required for the purpose of carrying into effect the tax laws. Presumably disclosure to an informant of the tax collected from the use of its information would fall under this wide exception.⁴⁶

Show me the money!

The spread of these types of regimes appears to demonstrate that they work. Furthermore, they are by their very nature cost-effective, as rewards are only paid out once tax is collected using the information provided. While beyond the scope of this article, the economic literature suggests that the use of economic rewards, such as bounties for whistleblowers act as an effective incentive for informants.⁴⁷

Nevertheless, to maximise such disclosures, any bounty regime must include:

- effective protections for whistleblowers against retaliation,
- the payment of rewards must be transparent and timely,
- there must be adequate communication between the tax authority and the whistleblower, and
- the rewards must be sufficiently large to encourage whistleblowers to face the risks of come forward.

New Zealand's refusal to adopt a tax bounty system

To date, New Zealand has refused to adopt a whistleblower incentive regime, relying instead only on the unsolicited voluntary disclosure of information. In particular, Inland Revenue welcomes the reporting of tax evasion and fraud anonymously on its websites⁴⁸ and even provides a template form for informants to complete.⁴⁹ It explains:

Paying tax is important – it pays for things that make New Zealand a great place to live. Most people do the right thing and pay their fair share. We are committed to targeting tax evasion and fraud. If you

have information about tax evasion and fraud, you can report it to us anonymously. ... Please provide us with as much detail as possible so we can identify the correct individual, business or industry that you are providing information about.

So Inland Revenue already solicits anonymous information and appears unconcerned about how that information was obtained or the motives of the informant.

Case law in New Zealand confirms that the Commissioner is entitled to rely upon and use stolen information. Most famously the entire Winebox Inquiry in the 1990s⁵⁰ arose from the public disclosure of stolen documents.⁵¹ A review of the litigation surrounding the conduct of that inquiry identifies no criticism of the illicit source of that information or any limit imposed on Inland Revenue's subsequent use of that information.

Likewise, in *Wojcik v Police*⁵² the court found that Inland Revenue was entitled to rely upon information obtained from the New Zealand Police, even when that information resulted from an unlawful search. The police seized drugs, cash and incriminating diary records from the taxpayer, and immediately informed Inland Revenue of their find, which then exercised its statutory powers to obtain that information from the police.

At the subsequent criminal trial the search was ruled unlawful and all evidence excluded. The remaining question was whether Inland Revenue was itself obliged to exclude that information as "fruits of the poison tree" or whether it could continue to rely upon it to support its reassessment of the taxpayer.

The court had no difficulty in confirming Inland Revenue's right to receive and rely upon that information regardless of its provenance. Barber DJ explained:

I agree that, generally, property should be returned to its owner, whether by Court order or otherwise, but, in this case, information was given to the IRD and it acted on that information in accordance with the law. Those IRD procedures are not in any way invalidated by the fact that the Police had acquired the cash and diaries by an illegal search.⁵³

Accordingly, New Zealand appears to have no restriction on Inland Revenue's right to receive and use information from third parties, even when that information was obtained unlawfully. Provided the Commissioner herself had acted within her powers in obtaining that information, she is entitled to rely upon it.

That New Zealand approach is consistent with the reasoning in the Australian cases. For example, in *Awad v Deputy Commissioner of Taxation*⁵⁴ the ATO was entitled to rely upon confidential information that had come innocently into the hands of the Commissioner as the result of the execution of warrants which were later quashed on constitutional grounds.

Illegal conduct by informants was directly considered in the Australian case *Denlay v Federal Commissioner of Taxation (Denlay)*⁵⁵ in which the ATO received information about the taxpayer that had been stolen by an employee of a Liechtenstein bank. Based on that stolen information the Commissioner raised amended assessments, to which the taxpayer objected.

The taxpayer also brought judicial review proceedings alleging the assessments were invalid as the Commissioner had used information known to be stolen.

The Full Federal Court rejected that argument and upheld the ATO's right to receive and rely upon the stolen information. Much of the case turned on whether the Commissioner's receipt of the information constituted the receipt of "stolen property", with the court finding that information is not "property" under Australian federal law. However, the court did not criticise the ATO for receiving the stolen information provided it did not incite or participate in its theft.

That reasoning in *Denlay* was subsequently relied upon in *Donoghue*⁵⁶ to permit the ATO to utilise information arguably obtained in breach of legal professional privilege. There an employee of a law firm provided the ATO with confidential (and potentially legally privileged) information about one of the firm's clients. When the ATO relied upon that information to reassess the client, that taxpayer alleged those assessments were invalid.

The Federal Court ruled in favour of the taxpayer and quashed all the assessments. The court criticised the ATO's knowing or reckless reliance on what it should reasonably have recognised was potentially legally

privileged information. But that decision was overturned on appeal by the Full Federal Court⁵⁷ which ruled that, even if the information was privileged and had been knowingly received by the ATO in breach of that privilege, such receipt was still valid.

The reasoning in the New Zealand and Australian cases clearly confirms that Inland Revenue can obtain and utilise information from third parties obtained by theft or breach of privilege provided its officers did not themselves act illegally. Put at its most stark: the end of an accurate assessment of tax justifies the means by which Inland Revenue obtains that information.

So Inland Revenue cannot be accused of having adopted high moral standards when it comes to the receipt of stolen information, but for some peculiar reason it still appears too squeamish to pay the informant. In refusing to do so Inland Revenue is out of step with other New Zealand law enforcement agencies that offer rewards to informants. For instance, it is common for police to offer rewards of up to \$50,000 to informants for information relating to serious offences,⁵⁸ with more than NZ\$2m being paid to informants in five years.⁵⁹

Obviously the information sought in most of those instances relates to crimes far more heinous than tax evasion or avoidance. But it can also be presumed that some of the informants who provide that information and collect the rewards are fairly unsavoury. In some instances they are secondary offenders or accomplices (so the Mr Birkenfelds of the criminal underworld). Yet the benefit to police of obtaining that information may prove vital and therefore outweighs any qualms about paying those rewards.

If it is acceptable for police to offer rewards for important and valuable information to uphold the criminal law, why shouldn't Inland Revenue do likewise? Only recently this logic appears to have dawned on the Australian Securities and Investment Commission, which publicly considered enhancing its voluntary whistleblower program to introduce rewards.⁶⁰ Will Inland Revenue ever follow this same approach?

Conclusion

Inland Revenue stubbornly refuses to copy the methods successfully adopted by so many other revenue authorities and pay informants for valuable taxpayer information. While it welcomes anonymous disclosures and has no qualms about using stolen information it refuses to reward the informant — and has rejected all calls to change that stance.⁶¹

This approach allows Inland Revenue to use that information while avoiding the stigma of being seen as an accomplice to its theft. Instead Inland Revenue appears content to rely upon the flow of information from its current crop of informants made up largely of angry ex-spouses, jealous relatives, disgruntled employees, and envious neighbours. These informants are motivated by malice so do not require economic rewards.

But it is questionable whether the motive of the informant (whether personal revenge or financial gain) really provides a proper distinction. Is there really a moral hierarchy whereby voluntary acts of personal revenge are somehow superior to financial gain? Such false equivalences put New Zealand out of step with the global approach.

Last reviewed on 1 March 2019

Footnotes

- 1 For a fuller discussion in the trade in this information see M Keating and J Harrison, *The Use of Bounties in Tax Administration*, (2017) 47 AT Rev 1.
- 2 S Mulvey and C McClatchey, "Tax Havens: Is the Tide Turning?", *BBC News Magazine*, 11 October 2011.
- 3 The Tax Justice Network is an independent research and lobbying organisation. Its objective is to encourage global and national reform of taxation, particularly in relation to the harmful impacts of tax evasion, tax avoidance, tax competition, and tax havens www.taxjustice.net. Its report is in <http://www.taxjustice.net/2014/04/01/cost-tax-abuse-2011/>.

- 4 See <http://www.smh.com.au/business/the-economy/australia-loses-almost-8-billion-a-year-from-multinational-profitshiftingstudy-20170322-gv4g23.html>.
- 5 See <http://www.reuters.com/article/us-australia-taxavoidance-idUSKBN17805A>.
- 6 See http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=11824675.
- 7 See http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=11766623. For example, see http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=11616350; <http://www.smh.com.au/business/the-economy/australians-identified-in-panama-papers-could-be-up-for-criminal-charges-ato-20160511-goskti.html>. Note that many cases reported in the Panama Papers did not contain instances of either tax avoidance or evasion, although some were regarded by many as morally questionable, see <https://www.theatlantic.com/business/archive/2016/04/panama-papers-crimes/477156/>.
- 8 For example, see, *How Germany's Taxman Used Stolen Data to Squeeze Switzerland* (21 November 2013) Reuters <http://www.reuters.com/article/2013/11/21/us-germany-swiss-datatheft-specialreport-idUSBRE9AK0GT20131121>.
- 9 For example, see <http://www.cnbc.com/2015/04/30/why-did-the-us-pay-this-former-swiss-banker-104m.html>; <http://www.nytimes.com/2012/09/12/business/whistle-blower-awarded-104-million-by-irs.html>.
- 10 For example, see <http://www.dailymail.co.uk/news/article-2201815/Bradley-Birkenfeld-Jailed-tax-cheat-whistleblower-gets-104m-reward-IRS-exposing-secret-accounts.html>.
- 11 “Record \$104 Million Reward Boosts Whistleblowing on Tax Cheats”, *Reuters News*, 3 October 2012 <http://www.reuters.com/article/us-usa-tax-whistleblower-idUSBRE8921ED20121003>.
- 12 A Aldinger, “A Race to the IRS: Are Snitches and Criminals the New Business Model?” (2014) 51 *Houston Law Review* 913, notes that the Birkenfeld case is a clear example of where crime does pay.
- 13 See explanation of the regime at https://www.irs.gov/uac/whistleblower-informant-award?_ga=1.30665151.1047850514.1478756842.
- 14 Following passage of the 16th Amendment to the US Constitution, on 3 February 2013. See: <https://www.ourdocuments.gov/doc.php?flash=false&doc=57>.
- 15 For example, see <https://www.nytimes.com/2016/08/22/business/to-crack-down-on-securities-fraud-states-reward-whistleblowers.html>; <http://fortune.com/2016/01/15/sec-whistleblower-reward/>.
- 16 See explanation of the regime at https://www.irs.gov/uac/whistleblower-informant-award?_ga=1.30665151.1047850514.1478756842.
- 17 <http://www.forbes.com/sites/deanzerbe/2016/08/04/irs-rewards-for-tax-whistleblowers-good-news/#7576a85b288f>.
- 18 See Treas Reg §1.61-2(a)(1). An award from a *qui tam* lawsuit is considered a reward included within gross income. *Roco v Commissioner*, 121 TC 160, 164 (2003).
- 19 See, *Whistleblower 21276-13W v CIR*, 147 TC 4.
- 20 Inland Revenue Service, *Fiscal 2010 Report to Congress on the Use of Section 7623* http://www.irs.gov/pub/whistleblower/annual_report_to_congress_fy_2010.pdf.
- 21 R Howse and RJ Daniels, “Rewarding Whistleblowers: The Costs and Benefits of an Incentive-based Compliance Strategy” in RJ Daniels and R Morck (eds) *Corporate Decision-Making in Canada* (University of Calgary Press, Calgary, 1995) 525–549.
- 22 JM Pacella, “Bounties for Bad Behaviour: Rewarding Culpable Whistleblowers under the Dodd-Frank Act and Internal Revenue Code” (2015) 17 *University of Pennsylvania Journal of Business Law* 345, concludes that while it is not ideal to reward those with “unclean hands”, she draws a moral equivalence between an individual who “observes wrongdoing in silence, taking no action” and “a participator in the wrongdoing who reveals it” (p 392).
- 23 <http://www.nytimes.com/2012/09/12/business/whistle-blower-awarded-104-million-by-irs.html>.
- 24 <http://www.nytimes.com/2012/09/12/business/whistle-blower-awarded-104-million-by-irs.html>.
- 25 <https://www.iras.gov.sg/IRASHome/Contact-Us/Report-Tax-Evasion/>.

- 26 <https://www.iras.gov.sg/IRASHome/Contact-Us/Report-Tax-Evasion/>.
- 27 S Phua, “Convergence in Global Tax Compliance” (2015) *Singapore Journal of Legal Studies* 107.
- 28 See <http://www.cra-arc.gc.ca/leads/>.
- 29 See <http://www.cra-arc.gc.ca/gncy/cmplnc/otip-pdife/menu-eng.html>.
- 30 See <https://www.canada.ca/en/revenue-agency/programs/about-canada-revenue-agency-cra/compliance/offshore-taxinformant-program.html>.
- 31 See <http://www.cra-arc.gc.ca/gncy/cmplnc/otip-pdife/pymntctr-eng.html>.
- 32 See <http://www.cra-arc.gc.ca/gncy/cmplnc/otip-pdife/menu-eng.html>.
- 33 See <http://business.financialpost.com/legal-post/vern-krishna-turning-canada-into-a-goldmine-for-tax-snoops>.
- 34 <https://www.gov.uk/government/organisations/hm-revenue-customs/contact/reporting-tax-evasion>.
- 35 Before it ceased operating in 2016: see <https://www.theguardian.com/media/2016/jul/21/investigative-journalism-wesiteexaro-closes>. For an analysis of the related tax avoidance arrangements, see G Loutzenhiser, “Tax Avoidance, Private Companies and the Family” 72 *Cambridge Law Journal* 35.
- 36 For example, in 2012 see <http://www.thisismoney.co.uk/money/news/article-2181488/HMRC-pays-hundreds-thousands-bountypayments-members-public-shop-tax-dodgers.html>; in 2014 see <http://www.ibtimes.co.uk/hmrc-paid-400000-tax-avoidancewhistleblowers-2013-1471887>; in 2015 see: <https://www.theguardian.com/politics/2015/jun/15/uk-tax-authorities-hmrc-record-informants>.
- 37 <http://www.thisismoney.co.uk/money/news/article-2181488/HMRC-pays-hundreds-thousands-bounty-payments-memberspublic-shop-tax-dodgers.html>.
- 38 <https://www.theguardian.com/politics/2015/jun/15/uk-tax-authorities-hmrc-record-informants>.
- 39 <http://www.thisismoney.co.uk/money/news/article-2181488/HMRC-pays-hundreds-thousands-bounty-payments-memberspublic-shop-tax-dodgers.html>.
- 40 <https://www.theguardian.com/politics/2015/jun/15/uk-tax-authorities-hmrc-record-informants>.
- 41 <https://www.theguardian.com/politics/2015/jun/15/uk-tax-authorities-hmrc-record-informants>.
- 42 See the discussion paper *Review of tax and corporate whistleblower protections in Australia*, 20 December 2016, p 2 https://static.treasury.gov.au/uploads/sites/1/2017/06/C2016-059_CP-whistleblowing.pdf.
- 43 Treasury Laws Amendment (Enhancing Whistleblower Protections) Bill 2018, Explanatory Memorandum, Ch 3, p 80 https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=s1120. On 6 December 2018 the Bill was awaiting third reading.
- 44 See as A Aldridge, “A Race to the IRS: Are Snitches and Criminals the New Business Model” (2014) 51 *Houston Law Review* 913.
- 45 “Record \$104 Million Reward Boosts Whistleblowing on Tax Cheats”, *Reuters News*, 3 October 2012 <http://www.reuters.com/article/us-usa-tax-whistleblower-idUSBRE8921ED20121003>.
- 46 See M Keating, “Can You Keep a Secret? The Obligation of Secrecy and Right to Disclose Taxpayers’ Information” (2009) 38 *Australian Tax Review* 135.
- 47 This literature is summarised in M Keating and J Harrison, *The Use of Bounties in Tax Administration*, (2017) 47 *AT Rev* 1.
- 48 <http://www.ird.govt.nz/online-services/service-name/services-a/online-anonymous-info.html>.
- 49 https://www2.e-services.ird.govt.nz/interact/services/e-services!/ut/p/b1/04_Sj9CPyKssy0xPLMnMz0vMAfGjzOI9HD3NDD2DDTzcgx1NDRwD_d3d_BxNjQwsDPULsh0VAQfME6w!/.
- 50 AJ Sawyer, “Blurring the Distinction between Avoidance and Evasion: The Abusive Tax Position” (1996) 5 *British Tax Review* 483.
- 51 The full history is set out in both *Fay Richwhite Ltd v Davison*(1995) 17 NZTC 12011 and *Peters v Davison (No 3)*(1998) 18 NZTC 14027.
- 52 *Wojcik v Police*(1996) 17 NZTC 12646.

- 53 See also *R v Collis*(1990) 5 CRNZ 445 which found that, provided the law enforcement agency acted lawfully within its powers in obtaining the information, it could not be tainted with any unlawfulness in the manner by which the person who provided that information to it had acted.
- 54 *Awad v Deputy Commissioner of Taxation*(2000) 104 FCR 106; 45 ATR 162; [2000] FCA 1288.
- 55 *Denlay v Federal Commissioner of Taxation*(2011) 193 FCR 412; 83 ATR 625; [2011] FCAFC 63.
- 56 *Donoghue v Federal Commissioner of Taxation*(2015) 100 ATR 893; [2015] FCA 235.
- 57 *Federal Commissioner of Taxation v Donoghue*(2015) 237 FCR 316; [2015] FCAFC 183.
- 58 <https://www.crimestoppers-nz.org/speak-up/rewards>.
- 59 <http://www.stuff.co.nz/national/crime/9439136/How-rewarding-are-police-rewards>.
- 60 <http://www.abc.net.au/news/2016-08-29/government-pressured-to-strengthen-whistleblower-protection-laws/7793230>. The New Zealand Commerce Commission provides a secure whistleblowing tool enabling cartel behaviour to be reported anonymously, although no financial reward is offered for the information; see “Cartel whistleblowers backed”, National Business Review 10 August 2018, p 3.
- 61 For example, see <https://i.stuff.co.nz/business/opinion-analysis/69818450/null>.