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ATO benchmarking can be improved: report

The Inspector-General of Taxation's report into the ATO's use of performance benchmarks to target small businesses who may not be reporting all their income has been released by the Government and it says that improvements can be made.

The report was sparked by concerns raised by tax practitioners and their clients concerning the ATO's use of the benchmarks. The ATO uses the benchmarks to compare the performance of businesses with similar businesses in the same industry. One purpose of the benchmarking is to help identify potential cases for audits, with a particular focus on unreported cash transactions.

The report made 11 recommendations for the ATO to improve its use of the benchmarks, which the ATO has largely accepted. According to the Government, the recommendations should improve the ATO's risk identification and audit selection processes to further exclude compliant businesses from audits, thereby minimising unnecessary compliance costs in relation to the cash economy and GST obligations.

TIP: Reporting more net income than industry peers could be a sign that a business might have forgotten to claim a business deduction. However, reporting significantly lower income than industry peers would attract ATO attention.

Living-away-from-home concessions: new laws

The Government has made a raft of changes concerning living-away-from-home allowances (LAFHAs) and benefits. Essentially, the Government is restricting access to the concessions. Employers and employees who may be affected need to take note. The changes started on 1 October 2012, although there are grandfathering provisions to preserve tax concessions for a limited time for some arrangements that were in place prior to Budget night (8 May 2012).

TIP: The changes raise significant issues for affected employers and employees. If you have any questions, please contact our office.

Contractual promises can have GST implications

A recent High Court case has highlighted a need to take a closer look at contracts for the provision of services or goods. The majority of the High Court recently allowed the Tax Commissioner's appeal in relation to a case concerning whether an airline, Qantas, was liable for GST on purchased airfares where the passenger does not turn up for the flight.

Qantas had argued that no GST was payable on unused fares and that the GST that had been paid should be refunded by the Commissioner. The majority held that Qantas was liable for GST and that the taxable supply for which the consideration, being the fare, was received was something less than the actual air travel – namely, Qantas' contractual promise to use "best endeavours to carry the passenger and baggage, having regard to the circumstances of the business operations of the airline".

Contractor payments undergo ATO data-matching

The ATO has recently released details of a data-matching program focusing on contractor payments. Under the program, the ATO intends to collect information in relation to payments made to contractors for the 2009–2010 to the 2011–2012 income years by businesses audited by the ATO's employer obligations area. The program will also cover this financial year. According to the ATO, records relating to around 75,000 individuals and entities who have received contract payments from the employers or businesses will be matched.

TIP: The ATO says its matching capabilities have grown strongly over the years. This financial year, the ATO expects to match over 600 million transactions.

Property developers and GST under ATO spotlight

The ATO has advised that it intends to increase its focus this financial year on property developers who have a history of non-compliance with GST obligations. The ATO has observed that some developers have claimed input tax credits throughout the life of a development, but then avoided paying the GST when they sell. The ATO says it has adopted a new approach of identifying and engaging with these developers prior to the sale of a development.

ATO warning on dodgy offshore emission unit schemes

The ATO has issued a warning for individuals to be aware of arrangements that promote deductions for the purchase of offshore "emission units" that do not exist at the time of the arrangement.

"These arrangements, entered into with an offshore entity which may be incorporated in a tax haven, claim to allow participants to deduct the entire purchase price of the offshore 'emission units', while making only a small initial payment," the Commissioner of Taxation Michael D'Ascenzo said. The ATO warns these arrangements may not be legitimate and that those involved could face a large tax bill, substantial penalties or even prosecution.

Excess super contributions: once-only refund offer

The ATO has started offering refunds to some individuals who have exceeded their annual superannuation concessional contributions cap. From the 2011–2012 year, there is a once-only opportunity to have excess concessional contributions refunded. The offer will only be made once. If individuals decide to accept the offer, they will pay marginal tax rates on the amount above the cap, instead of paying excess contributions tax.

An individual's choice as to whether to accept the one time only offer, or not, is a final decision and cannot be revoked. Once a taxpayer has received an offer, regardless of whether or not they accept it, they will not be eligible for an offer in future years. The ATO says the offers will be sent directly to the taxpayer's postal address. Election to accept the offer must be returned to the ATO within 28 days of the issue date of the offer.

TIP: The refund offer provides some relief, but is not without conditions and limitations. Please contact our office for further information.

Goods taken from stock for private use

The ATO has determined for the 2011–2012 year the amounts the Commissioner will accept as estimates of the value of goods taken from trading stock for private use by businesses in certain specified industries. The amounts (which exclude GST) are as follows:

Type of business	Adult/child aged over 16 years ($)	Child aged 4 to 16 years ($)
Bakery	1,300	650
Butcher	770	385
Restaurant/cafe (licensed)	4,300	1,685
Restaurant/cafe (unlicensed)	3,370	1,685
Caterer	3,640	1,820
Delicatessen	3,370	1,685
Fruiterer/greengrocer	760	380
Takeaway food shop	3,240	1,620
Mixed business (includes a milk bar, general store and convenience store)	4,030	2,015