

# client alert

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## Tax data net to be widened

The government has proposed to improve taxpayer compliance through new third-party reporting regimes and has undertaken public consultation to seek feedback on possible policy issues. The proposal aims to improve taxpayer compliance by enhancing the information reported to the ATO by a range of third parties. The proposal is currently scheduled to commence from 1 July 2014 (although first reports would not be due to the ATO until after 1 July 2015).

The government notes that some of the elements of the proposal can be implemented by the ATO, whereas other elements will require tax law changes. This would involve the creation of new third-party reporting regimes in relation to:

- sales of real property;
- sales of shares and units in unit trusts;
- sales through merchant debit and credit services; and
- taxable government grants and other payments.

In respect of these transactions, the government suggests that the ATO would initially seek to receive annual reports and then seek to move to quarterly, monthly or real-time reporting.

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## ATO compliance approach can be improved

The government has released several reports prepared by the Inspector-General of Taxation, Mr Ali Noroozi, into the ATO's compliance approach to individual taxpayers.

The Tax Inspector found that data-matching was generally positively received where the ATO uses it to assist individuals. However, he found that stakeholders were concerned that the data used by the ATO could be inaccurate and not sufficiently vetted before comparisons were made with taxpayer-reported information.

In relation to the ATO delaying tax returns to check refund claims, the Tax Inspector recommended that the ATO improve its processes as well as communication with taxpayers. Among other things,

Mr Noroozi thought the ATO could better differentiate potentially fraudulent claims from mere mistakes. The ATO could also improve the time taken to review cases, and provide clearer reasons for any adjustments made.

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## ATO complaints-handling report highlights issues

The Australian National Audit Office (ANAO) has recently reviewed the ATO's complaints-handling processes. Although the ANAO found that the ATO's complaints-handling framework is well designed, it found that there are opportunities for the ATO to improve its practices, including by obtaining a better understanding of the issues that are the subject of complaints and the needs of the complainants themselves.

It said there is scope for the ATO to:

- improve reporting against complaints-handling timeliness measures;
- implement a more coherent agency-wide quality assurance framework for complaints and other feedback;
- restrict sensitive information about named ATO officer complaints from being included in records on the ATO's client relationship management computer system; and
- implement measures to periodically check that ATO officers have not accessed client relationship records inappropriately.

The ANAO made three recommendations, all agreed to by the ATO, which are aimed at improving the ATO's handling of complaints and its monitoring and reporting of performance in managing complaints.

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## No deduction for preparatory activities

Successful entrepreneurs are a creative and motivated bunch, but it generally takes several attempts to develop a successful business venture. Costs are quickly incurred in determining the viability of, and in pursuing, a business idea. However, careful

consideration of the deductibility of such costs needs to be taken. If the idea is a winner and a new business venture is born, a deduction may be available. However, in other cases, the deduction may not be available.

In one recent case, an individual was unsuccessful before the Federal Court in relation to his claims for deductions incurred in pursuing 14 business ventures on a 500-acre property. The Administrative Appeals Tribunal (AAT) had earlier found that although the man's operations met a number of criteria relevant in determining whether a business was being carried on, none of the activities had advanced much beyond the planning stage.

The AAT held that the individual was not "carrying on a business" and that the claimed deductions were therefore not available. The Federal Court affirmed the AAT's decision.

**TIP:** Given the breadth of examples covered in this decision, the decision is a useful reference point for taxpayers dealing with the issue of deductibility of costs incurred in preparatory activities associated with a business idea that is later abandoned or a business venture not yet generating income. Please contact our office for further details.

## Penalty for late superannuation contribution

The Federal Court has affirmed an excess superannuation contributions tax assessment issued to an individual after finding there were no "special circumstances" to warrant reallocating excess concessional contributions that had been received late via BPAY.

The Court heard that the bookkeeper of the individual's employer had made two payments on 30 June 2009 via BPAY to the individual's superannuation fund, and that those payments were received by the fund on 1 July 2009. The Court also heard that the bookkeeper had mistakenly made an early payment to the individual's superannuation fund on 27 May 2010, which was meant for the following financial year.

As a result of these payments, the total amount of funds received by the superannuation fund in the 2009–2010 financial year exceeded the individual's \$50,000 concessional contributions cap for the year.

The individual argued that there were "special circumstances" and that the Commissioner should reallocate the two late payments to the 2008–2009 financial year, and the 27 May 2010 payment to the 2010–2011 financial year.

However, the Court said late BPAY payments did not amount to "special circumstances". Further, simple errors such as making a contribution too early also did not amount to "special circumstances". The Court was also of the view that the individual had been in a

position to ensure that the contributions were made in the correct year.

**TIP:** A taxpayer who has contributed above his or her concessional or non-concessional contributions caps can apply to the Commissioner to exercise his discretion to disregard or reallocate excess contributions for a financial year. However, it should be noted that the discretion is not easy to obtain.

Individuals should consider keeping track of contributions and avoid making last-minute contributions that could be allocated to the next financial year. Individuals with salary-sacrifice arrangements should carefully identify the timing of superannuation payments relating to wages accrued for the June quarter (or June month). Please contact us for further information.

## ATO eye on dividend stripping

The ATO has released details of "dividend access share" arrangements that it considers to be dividend stripping schemes under the tax law anti-avoidance provisions. These arrangements aim to allow ordinary shareholders of a private company and/or their associates to derive the economic benefit of significant profits accumulating in the private company in a substantially (if not entirely) tax-free form.

These arrangements involve a number of features, but principally include the company issuing a new class of shares to another entity (eg another company controlled by the original shareholders) for nominal consideration, and the company declaring and paying fully franked dividends on the new class of shares of an amount approximately equal to the accumulated profits in the company. The ATO says these arrangements generally result in a reduction or elimination of the taxation liabilities that would normally arise with the payment of dividends (that is, if those dividends were paid to the company's ordinary shareholders).

The Commissioner is of the view that under such circumstances, he can exercise his power to cancel all or part of the tax benefit obtained from these schemes.

**Important:** Clients should not act solely on the basis of the material contained in Client Alert. Items herein are general comments only and do not constitute or convey advice per se. Also changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas. Client Alert is issued as a helpful guide to clients and for their private information. Therefore it should be regarded as confidential and not be made available to any person without our prior approval.