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## September 2012

# client alert

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### Company tax rate cut comes with compromises

The Government's Business Tax Working Group has recently released a discussion paper highlighting a number of possible ways in which a company tax rate cut could be funded from within the business tax system.

According to the Working Group, a comprehensive tax base that contains minimal special exemptions and deductions for certain investments can result in a more productive mix of different investment options and a broader tax base that will generate greater revenue to fund a lower company tax rate. Public consultation closes on 21 September 2012.

### ATO compliance activities

The ATO has highlighted a number of areas that it will focus on in its compliance activities this year. This includes:

- incorrect claims for work-related expenses. In particular, the ATO says it will focus on claims made by plumbers, IT managers and defence force personnel. Taxpayers must keep written records for all their work-related expenses if their claims total more than \$300;
- unrecorded and unreported cash transactions in the café and plastering industries. Note, the ATO is stepping up its use of third party information, such as information from suppliers, to identify under-reporting of income;
- incorrectly treating employees as contractors, particularly in the construction industry. In addition, the ATO notes that from 1 July 2012, businesses that make payments to contractors in the building and construction industry are required to report the payments to the ATO each year;

- treatment of private company profits, particularly in relation to loan arrangements; and
- superannuation obligations of employers, with a focus on cafés and restaurants, real estate businesses and carpentry businesses in home building or construction.

**TIP:** The ATO's main tool for detecting non-compliance is matching information reported to it by taxpayers and third parties, such as financial institutions both in Australia and overseas. The ATO says its matching capabilities have grown strongly over the years. This financial year, the ATO expects to match over 600 million transactions.

### ATO small business benchmarks

The ATO has been publishing small business benchmarks since 2009 as part of its strategy to help small businesses to compare their performances against similar businesses. The benchmarks are also used by the ATO to identify taxpayers who may be under-declaring income.

The Commissioner of Taxation, Michael D'Ascenzo, recently said that approximately 90% of small businesses in benchmarked industries fall within a benchmark ratio. However, he said around 76,000 businesses have reported income that is significantly below those benchmarks. To address this issue, Mr D'Ascenzo said the ATO wrote to around 30,000 small businesses regarding the benchmarks in 2010–2011. He said around 17% (or over 5,000) of the businesses have since started reporting income commensurate with the benchmarks, thereby lowering their risk profile with the ATO.

**TIP:** According to the ATO, the benchmarks may also prompt taxpayers to consider whether they have forgotten to claim any relevant deductions if they report significantly more net income than their industry peers. Please contact our office if you have further questions.

**TIP:** There are currently benchmarks covering over 100 industries including: accommodation and food services; building and construction trade services; education, training, recreation and support services; health care and personal services; manufacturing; professional, scientific and technical services; retail trade; and transport, postal and warehousing.

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## ATO alert on “dividend access share arrangements”

The ATO has warned taxpayers about arrangements where accumulated profits of a private company are distributed substantially tax-free to an entity associated with the ordinary shareholders of the private company.

The ATO says the dividends are generally distributed on a new class of shares that the private company has created and issued to the associated entity for nominal consideration. In addition, it says the dividends will often be fully franked such that the associated entity will bear little or no additional income tax.

The Commissioner said the ATO is concerned the arrangements are set up with the dominant purpose of avoiding tax. “While some arrangements may be claimed to be done for commercial and other non-tax purposes, we will be closely examining whether the way these arrangements have been set up would show a tax avoidance purpose,” said Mr D’Ascenzo.

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## Taxpayer fails to prove bank deposits were loans

The Commissioner has been successful before the Federal Court in overturning an earlier decision that had held that around \$4.7 million deposited into a taxpayer’s bank account from an overseas bank were loans and that payments made in respect of the loans were deductible interest.

The taxpayer’s financial statements for the 1997 to 2008 income years recorded a loan liability to an overseas bank and substantial related interest expenses. The Commissioner argued that the asserted loan liability related to funds that the taxpayer received as assessable, and that none of the asserted interest payments were deductible.

In allowing the Commissioner’s appeal, the Federal Court held that the Administrative Appeals Tribunal (AAT) had made an error in finding that the taxpayer had discharged the onus of proving that the amounts were not income. The taxpayer is seeking to appeal to the Full Federal Court against the decision.

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## Amended assessment issued four years later was within time

In a recent decision, the AAT found a taxpayer was at all relevant times a beneficiary of a trust estate and that an amended assessment issued in April 2010 for the 2005 tax year was issued within time – that is, the Commissioner was allowed, in this instance, up to four years to issue an amended assessment. The amended assessment included an additional amount of \$2.1 million.

The taxpayer lodged his 2005 tax return in April 2006, disclosing nil distributions from a family trust. He argued that as he had received no distributions in relation to the 2005 tax year, he was not a beneficiary of the trust estate at any time in that year and that the Commissioner therefore only had the standard two years to issue an amended assessment. However, the AAT disagreed and found that the amended assessment made within four years was within time.

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## Illegal early super release promoters to face penalties

The Government has announced that it will introduce penalties to deter promoters of illegal early release superannuation schemes. These schemes usually involve a promoter offering to assist individuals to gain early access to their super before they retire.

The Minister of Superannuation, Bill Shorten, said promoters of such schemes have in the past targeted vulnerable people, including those from non-English speaking backgrounds. He said promoters have taken fees of up to 50% of the members’ superannuation balances.

Mr Shorten said legislation to give effect to this measure is being progressed and will commence on formal enactment.

**TIP:** Early release of super is not always illegal. There are very limited circumstances in which members can legally access their super savings early, such as on compassionate grounds or where members experience severe financial hardship. There are very strict conditions to be met, and they include some restrictions.

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