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## client alert

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### Tax anti-avoidance rules to be tightened

The Government has announced that it will amend the general anti-avoidance provisions in the tax law. First introduced in 1981, the provisions broadly allow the Commissioner to cancel a tax benefit obtained in connection with a scheme subject to some conditions. According to the Government, the changes will ensure the provisions will continue to be effective in countering tax avoidance schemes that are carried out as part of broader commercial transactions. The announcement was made on 1 March 2012 and the Government proposed that the changes would apply to schemes entered into or carried out after that date.

Some commentators have expressed alarm over the Government's announcement, saying the move will only cause greater uncertainty for businesses when considering key transactions and that it is an overreaction to the Commissioner's recent court case losses. In particular, the arguments have centred on the announced retrospective start date of 1 March 2012 with little detail on the proposed changes. The Government said it intends to release draft legislation for public consultation before introducing the amendments in Parliament later this year.

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### Check your small business benchmarks regularly

The ATO has recently updated its small business benchmarks. It has also added two new activity statement benchmark ratios for non-capital purchases and GST-free sales. The ATO uses the benchmarks to identify businesses that it considers may not be reporting some or all of their income. The ATO can also use the benchmarks to quantify income that it considers not reported. According to the ATO, the benchmarks provide the "most accurate predictor of business turnover for each industry".

It recommended that taxpayers review their relevant business benchmarks regularly.

The ATO has published benchmarks for a wide range of 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 data matching coffee sellers and builders

The ATO has announced data matching programs targeting coffee sellers and hardware store trade account holders as part of its latest compliance activities to tackle the cash economy. The ATO said it has already obtained data from a number of coffee suppliers and a major warehouse chain and from NSW Fair Trading, Queensland Building Services Authority, and the Government of South Australia, Consumer and Business Services. Under the "coffee suppliers" data matching program, the ATO expects to match records of more than 8,000 individuals to ensure they are reporting all their business income. In relation to the "building industry" program, the ATO says around 20,000 individuals will have purchases cross-checked with reported income.

**TIP:** If you are concerned these data matching programs will affect you, please contact our office.

## Private health insurance rebate changes

A package of Bills to means test the 30% private health insurance rebate has made its way through Parliament. The changes will mean the amount of rebate available will depend on an income test for each financial year for individuals and families. The changes will apply from 1 July 2012 and will introduce three new "Private Health Insurance Incentive Tiers".

In conjunction with this, and also from 1 July 2012, the rate of Medicare levy surcharge for individuals and families without private patient hospital cover will increase depending on their level of income.

**TIP:** Individuals and families should be mindful of the 1 July 2012 start date. Further, some health insurance companies have indicated their intention to increase premiums. Please contact our office for more information.

Tier	Income (\$)		Private health insurance rebate			Medicare levy surcharge
	Singles	Families	Under 65 yrs old	65 – 69 years old	70 years or over	
	0 - 84,000	0 - 168,000	30%	35%	40%	
1	84,001 - 97,000	168,001 - 194,000	20%	25%	30%	1%
2	97,001 - 130,000	194,001 - 260,000	10%	15%	20%	1.25%
3	130,001+	260,001+	0%	0%	0%	1.5%

Note: The thresholds increase annually, based on growth in Average Weekly Ordinary Time Earnings (AWOTE). Single parents and couples (including de facto couples) are subject to the family tiers. For families with children, the thresholds are increased by \$1,500 for each child after the first.

## Tribunal finds businessman a resident for tax purposes

A businessman has been unsuccessful before the Administrative Appeals Tribunal in arguing that he was not a resident of Australia for tax purposes as he had spent most of his time overseas. The businessman was a director of a company incorporated in NSW and he worked for that company as a sales agent on commission, selling Australian residential property to overseas investors mainly in Indonesia. However, the Tribunal noted, among other things, the businessman's family home in Australia and confirmed the tax assessments and penalties issued by the Commissioner of Taxation for the 2002, 2003, 2005 and 2006 income years. The Tribunal concluded the businessman had his home, or "settled place of abode", in Australia and was therefore a resident of Australia for tax purposes.

**TIP:** A taxpayer's country of residence and the source of income are important issues. As a general principle, an Australian resident is subject to tax in Australia on income derived from all (worldwide) sources, whereas a foreign resident is only subject to tax in Australia on income from Australian sources. There are a number of tests under the tax law. If an individual passes any of the tests, the individual will be considered a "resident of Australia" for Australian domestic tax purposes.

## Super rules breached for investment in related entities

In a recent decision, the Administrative Appeals Tribunal affirmed a non-compliance notice issued to a self-managed superannuation fund (SMSF). The Commissioner of Taxation had issued the notice for regulatory breaches in respect of "book entry" loans made via a related party trust. Broadly, the case concerned members of an SMSF who were also directors of the corporate trustee of the fund and other related trusts, including one which operated a family business. The SMSF had invested in a related unit trust which in turn had financial dealings with the family business. The Tribunal confirmed the non-compliance notice after finding there were breaches of the "sole purpose test" and "in-house asset rules" under the superannuation law.

**TIP:** Broadly, the "sole purpose test" seeks to ensure that superannuation money is set aside and only applied to fund members' benefits in retirement, whereas the "in-house asset rules" generally restrict an SMSF from having more than 5% of its total assets invested in "in-house assets". An "in-house asset" can include a loan to, or investment in, a "related party" of the fund. The rules can be complex, so it is important for trustees to carefully consider their investments to avoid falling foul of the rules.

**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.