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## client alert

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### ATO data-matching programs

The ATO has revealed details of two new data-matching programs aimed at identifying tax non-compliance. These will affect individual taxpayers.

The ATO has advised that it will collect share transaction details from various organisations relating to securities held in ASX-listed entities. The details will be electronically matched with ATO data holdings. Areas of concern for the ATO include incorrect compliance with capital gains tax, income tax and GST obligations. The ATO said around 1.2 million individuals will be affected by the program.

The ATO has also advised that it will request from Centrelink details of individuals who were eligible for Family Tax Benefit Part B for the 2010 to 2013 income years and/or received parental leave pay for the 2010 to 2013 income years. The details will be electronically matched with ATO data holdings to identify incorrect claims for the dependent spouse tax offset. According to the ATO, some 1.3 million individuals will be affected.

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### Living-away-from-home tax law changes on the way

The Government has introduced into Parliament proposed changes to the tax treatment of living-away-from-home (LAFH) allowances and benefits. The Government said it is reforming the tax concession "by better targeting it at people who are legitimately living away from their actual home in Australia (which they continue to maintain) for an initial period". Essentially, the Government is restricting access to the concessions.

Employers and employees who may be affected need to take note. The proposed changes are set to take effect on 1 October 2012 (not 1 July 2012, as originally proposed). However, there will be grandfathering

provisions to preserve tax concessions for some arrangements that were in place prior to Budget night (8 May 2012).

**TIP:** As a result of these developments, it will be critical for employers and employees to identify, before the enactment of the legislation, if and how the changes might apply.

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### Trust beneficiaries: amended assessments were excessive

Two beneficiaries of a family trust, a father and son, have been successful before the Administrative Appeals Tribunal (AAT) in arguing that amended assessments issued to them were excessive.

The family trust owned all the units in a unit trust that operated a fuel distribution business. The Commissioner issued the amended assessments for the 2004 and 2005 income years to increase the taxpayers' tax liability following the disallowance of a large deduction for payments made by the unit trust to an employee entitlement fund.

Before the AAT, the taxpayers effectively argued that the assessments were excessive because the taxpayers, as beneficiaries, were not presently entitled to the income from the family trust in the years in question (except to the extent that they might be entitled as two of the 46 default beneficiaries of the trust). The AAT found in the taxpayers' favour.

**TIP:** Some commentators have noted that this case highlights the need for trustees to consider documenting distribution minutes by 30 June. The issues in the case are complex. If you have any questions, please contact our office.

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## **SMSF notice of non-compliance set aside**

The husband and wife trustees of a self managed superannuation fund (SMSF) have had a "notice of non-compliance" that was issued by the Commissioner of Taxation set aside by the AAT. This was despite regulatory breaches involving loans to a related-party company.

Between the years 2004 to 2007, the SMSF loaned money to a property development company of which the trustees were the directors. The loans were partially repaid. The trustees provided an undertaking to the Commissioner that the loans would be repaid by September 2009. However, the loans were not repaid by that time because the taxpayers did not want to sell the properties in a fire sale during the global financial crisis.

The Commissioner issued a "notice of non-compliance", making the fund non-complying and removing the concessional tax treatment enjoyed by complying funds.

While the AAT found that the contraventions of the superannuation rules were "serious", it set aside the notice of non-compliance. It noted, among other things, the fact that the loans were eventually paid (albeit late), the poor health of one of the trustees and the significant tax consequences that would affect the trustees given their age (who were aged 65).

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## **Excess super contributions: Commissioner's discretion refused**

In a number of recent decisions, the AAT has affirmed the Commissioner's refusal to reallocate excess superannuation contributions received by superannuation funds to an earlier financial year, and has therefore affirmed the excess contributions tax assessments made in those cases.

In one decision, the AAT found that the taxpayer had tried to stay under the relevant contribution cap, but had simply "miscalculated" and that the law had been correctly applied by the Commissioner.

In two other cases, the AAT held that contributions that were made by way of electronic funds transfer and BPAY just before (or on) 30 June, but that were received by the relevant fund on 1 July (ie in the next financial year), were not situations that amounted to "special circumstances" that would warrant the Commissioner's discretion to reallocate the excess contributions to another financial year.

However, in one recent decision, the taxpayer was successful in convincing the AAT that there were "special circumstances" to warrant the Commissioner's discretion. Among other things, the AAT found that the taxpayer had missed the relevant deadline for contributions for the relevant year as a result of "misunderstanding" the rules.

**TIP:** The above cases mainly involve contributions for the 2008–2009 financial year (and earlier). The Government has recently amended the law to allow a limited, once-only refund option for excess concessional contributions of up to \$10,000.

The new refund option is only available for excess concessional contributions in respect of the 2011–2012 or later years, and only for the first year. The refund option provides some relief, but is not without conditions and limitations.

**TIP:** The Commissioner may only exercise his discretion to reallocate or disregard excess contributions if "special circumstances" exist and the making of a determination is consistent with the objective of the superannuation regime that individuals gradually build their super over their lifetimes.

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## **Division 7A benchmark interest rate**

The ATO has advised that, for the income year that commenced on 1 July 2012, the benchmark interest rate to be used in calculating the interest component on the repayment of a private company loan received by a shareholder (or the associate of a shareholder) is 7.05%.

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## **Reasonable travel and meal allowance amounts**

The ATO has announced the amounts the Commissioner considers are "reasonable" for the 2012–2013 income year in relation to claims made for:

- overtime meal allowance expenses;
- domestic travel allowance expenses;
- travel allowance expenses for employee truck drivers; and
- overseas travel allowance expenses.

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## **Car depreciation limit and luxury car tax threshold**

The ATO has released the following limits and thresholds for the 2012–2013 income year:

- car depreciation limit – \$57,466;
- luxury car tax threshold – \$59,133; and
- fuel efficient car limit – \$75,375.

**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.