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## client alert

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### Tax relief for small businesses that restructure on the way

Small businesses are important to the Australian economy, as they facilitate growth and innovation. However, as a small business develops over time, its initial legal structure may no longer be suitable for the business. Where a business has to restructure to accommodate growth, the transfer of assets from one legal structure to another could give rise to unwanted tax liabilities, even though the underlying economic ownership remains the same.

With this in mind, the Government has proposed amendments to the law to provide tax relief for small businesses that restructure on a genuine basis. If the legislative amendments are enacted as proposed, the changes would apply for restructures occurring on or after 1 July 2016. In introducing the Bill, the Assistant Treasurer said that this legislation completes the Government's \$5.5 billion Growing Jobs and Small Business package. Ms O'Dwyer said the Bill will reduce risk and complexity, and will make it easier for businesses to grow.

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### Trusts' ABNs to be cancelled if no longer carrying on business

The ATO has advised that the Registrar of the Australian Business Register (ABR) will begin cancelling the Australian Business Numbers (ABNs) of approximately 220,000 trusts, where there is evidence they are no longer carrying on an enterprise.

A trust's ABN will be cancelled where available information indicates that the trust has not lodged business activity statements and/or trust income tax returns for the last two years. Exclusions to these ABN cancellations apply for trusts that are registered with the Australian Charities and Not-for-profits

Commission (ACNC) or are non-reporting members of a GST or income tax group.

The ATO said entities will receive a letter if their ABNs had been cancelled. This letter will include the reason for the cancellation, and a phone number to ring to have the ABN reinstated immediately if the entity does not agree with the decision.

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### Withholding tax for car allowances

Car expense deductions for individuals were simplified from 1 July 2015. Employers who pay their employees a car allowance need to withhold tax on the amount they pay over 66c per kilometre. If employers have not been doing this, the ATO notes they should start now to avoid their employees having a tax debt.

**TIP:** Employers should consider having a discussion with affected employees about whether to increase the withholding amount for the remainder of the financial year to cover the shortfall.

If you have any questions, please contact our office.

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### Travellers with student debts need to update contact details

Australians with a Higher Education Loan Programme (HELP) debt and/or a Trade Support Loans (TSL) debt who are moving overseas for longer than six months will need to provide the ATO with their overseas contact details within seven days of leaving the country. International contact details can be provided to the ATO using its online services (eg an ATO account linked to myGov).

From the 2016–2017 income year, anyone who has a HELP or TSL debt and earns above the minimum repayment threshold will be required to make repayments regardless of where they live.

**TIP:** Students' debt will be indexed each year until it is paid off. You can make additional voluntary repayments at any time, including from overseas, to reduce the balance of your debt.

## Small business tax concession refused as threshold test failed

The small business capital gains tax (CGT) concessions contained in the tax law allow eligible small businesses to access tax concessions on capital gains made from the sale of certain CGT assets.

There are threshold tests for accessing the concessions outlined in the tax law. Importantly, the taxpayer must be a small business entity, or a partner in a partnership that is a small business entity, or the taxpayer's net assets, together with certain associated entities', must not exceed \$6 million. This is the Maximum Net Asset Value (MNAV) test.

A recent case before the Federal Court examined whether a taxpayer was entitled to the tax concessions. In particular, the Court looked at whether the taxpayer had correctly excluded a debt (a pre-1998 loan) from the MNAV test calculation. The taxpayer had not included the pre-1998 loan on the basis that it had no value, being "statute-barred" under the relevant state legislation, in this instance the *Limitation of Actions Act 1936* (SA).

However, the Court dismissed the taxpayer's appeal. The Court confirmed that the pre-1998 loan could not be regarded as having no value, and that the loan amount of \$1.1 million should be included in the MNAV test calculation. The inclusion of the amount meant that the sum of the net values of the relevant CGT assets exceeded the \$6 million MNAV threshold. As a result, the small business CGT concessions were not available to the taxpayer.

**TIP:** This case highlights the importance of satisfying the basic conditions to access the small business CGT concessions, in particular when an asset originally excluded from the MNAV test is subsequently included in the test calculation and results in the breach of the MNAV threshold.

## "Wildly excessive" tax deduction claims refused

A professional sales commission agent has been largely unsuccessful before the Administrative Appeals Tribunal (AAT) in claiming tax deductions for work-related expenses, including home office expenses, various grocery items and overtime meal allowances.

The case concerned the taxpayer's deduction claims in his 2011 and 2012 tax returns. The taxpayer worked as a professional sales commission agent and his employer did not provide him with a dedicated office or workspace. His original claims (which changed

throughout the course of the AAT proceeding) totalled over \$63,000 for 2010–2011 and over \$53,000 for 2011–12, representing at least 30% of his employment income. During the proceedings, the taxpayer abandoned a claim for a \$5,388 payment to his seven-year-old son for his "secretarial assistance".

The AAT found that the taxpayer's home office claims were "wildly excessive", and that the taxpayer and his representatives failed to critically analyse how these claims helped produce the taxpayer's assessable income. The AAT rejected everything claimed under "staff and client amenities", as it considered the products were overwhelmingly consumed by the taxpayer's family, making the claims "outrageous and utterly unacceptable". The claimed meal allowances were also rejected in their entirety. However, the AAT did not disturb heating and lighting expenses allowed by the Commissioner.

## GST credits not available for payments on behalf of super funds

The ATO has issued GST Determination GSTD 2016/1, which provides the Commissioner's view on whether employers can claim input tax credits for expenses paid on behalf of superannuation funds.

The Determination notes that employers may pay expenses on behalf of superannuation funds for administrative convenience. It provides that an employer is not entitled to an input tax credit if a superannuation fund makes an acquisition and the employer pays the expense on the fund's behalf (eg the super fund obtains legal advice but the employer pays the legal adviser). This is because the advice is supplied to the fund and not to the employer. However, the Determination notes that the fund may be entitled to claim a reduced input tax credit under the financial supply rules (contained in the GST Act), provided the requirements of those rules are satisfied.

**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.