# client alert

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## Separate ATO appeals unit needed to resolve tax disputes

The Inspector-General of Taxation has called for a separate appeals unit within the ATO following a review of the ATO's management of tax disputes.

The Tax Inspector noted that while the ATO's recent initiatives represent a positive step in tax dispute management, more could be done to help small businesses and individual taxpayers. Mr Ali Noroozi said a separate, dedicated appeals unit within the ATO, should be led by a new Second Commissioner.

The unit within the ATO proposed by the Tax Inspector would manage and resolve tax disputes for all taxpayers including the conduct of pre-assessment reviews, objections and litigation (including providing oversight on settlements), as well as championing the use of alternative dispute resolution. The Government said it would consider the recommendation along with any other recommendations to be made by a parliamentary committee that was examining tax disputes.

## Single Touch Payroll consultation noted big changes afoot

Businesses need to be aware of big changes afoot with the implementation of the Government's proposed Single Touch Payroll. Under Single Touch Payroll, employers will be required to electronically report payroll and superannuation information to the ATO when employees are paid, using Standard Business Reporting-enabled software.

According to the Government, Single Touch Payroll would cut red tape for employers and simplify tax and superannuation reporting.

**TIP:** Single Touch Payroll is expected to be launched in July 2016. In a brief public consultation period, the ATO highlighted potential impacts that the implementation of Single Touch Payroll could have on employers. Businesses or their payroll providers may be required to either purchase or upgrade existing software, potentially at an additional cost. Another concern is the immediate impact on cash flow, particularly during transition.

## Time limits on trustee tax assessments clarified

The ATO has issued Practice Statement PS LA 2015/2 which outlines its practice of limiting the period within which it will raise an original trustee assessment. The practice means that returns lodged by trustees are broadly exposed to similar time limits for review as other taxpayers.

Generally, the ATO notes it will not issue an original trustee assessment more than four years after the relevant trust tax return was lodged, or more than two years after lodgment for the 30 June 2014 and later income years if the trust was a small business entity (and certain specific qualifications under the tax law do not apply). However, the ATO notes that the time limits can be extended in certain cases.

The following example illustrates the time limit within which the ATO can raise an original trustee assessment:

*The 2010 income tax return for the Oak Family Trust was lodged on 9 May 2011. The trust was not a small business entity for the 2010 income year. An audit of the trust reveals that some of the trust net income should be assessed to the trustee. The Practice Statement provides that the Tax Office must issue an assessment to the trustee by 9 May 2015 (unless the time limit is extended).*

## GST credits for employee accommodation refused

The Federal Court has held in the recent decision of *Rio Tinto Services Ltd v FCT* [2015] FCA 94 (handed down on 19 February 2015) that the taxpayers are not entitled to input tax credits for providing remote region residential accommodation to employees who are required to live remotely in order to carry out their employment duties.

Broadly, the Federal Court held that the taxpayer, Rio Tinto, was not entitled to input tax credits for the acquisition made by Hamersley Iron Pty Ltd (Hamersley), a related company in Rio Tinto's GST group, in providing and maintaining heavily subsidised residential accommodation for their employees in the remote Pilbara region of Western Australia, where they conducted mining operations.

The Federal Court was prepared to accept that Hamersley's leasing activities may have been wholly incidental to its mining operation and merely a means to carrying on its business. However, the Court denied Hamersley input tax credits in relation to that activity on the basis of a narrower interpretation that the acquisition "relates to" the supply of residential accommodation by way of lease, being an input taxed supply (which means there is no GST credit).

**TIP:** At the time of writing, Rio Tinto has appealed to the Full Federal Court against the decision handed down by the Federal Court. The principles followed by the Federal Court could have wide-reaching implications for GST registered businesses, and the appeal process should be followed closely.

## Penalty for promoting pharmaceuticals donations scheme

The Federal Court has imposed a $1.5 million penalty after finding a promoter of a scheme involving the purchase and donation of pharmaceuticals to charities with foreign operations engaged in conduct that resulted in himself and two other corporate entities being promoters of a tax exploitation scheme.

The ATO noted the penalty of $1.5 million was the "highest civil penalty to date". In commenting on the decision of the Federal Court, ATO Deputy Commissioner Tim Dyce said the scheme involved the purchase and donation of AIDS pharmaceuticals to charities in Africa. "As we discovered, the purchasers only paid 7.5% of the grossly inflated price of the drugs, yet claimed tax deductions of 100%," said Mr Dyce.

## Tax concessions following business sale cancelled

The Administrative Appeals Tribunal (AAT) has confirmed that the general anti-avoidance rules under the tax law applied to a "scheme" carried out by taxpayers in order to enable them to qualify for the capital gains tax (CGT) concessions for small businesses on the sale of a business. In particular, the AAT examined the effect of a "restructure" of the business which occurred several weeks before the sale. An effect of the "restructure" was to enable the taxpayers to meet a requirement to access the CGT small business concessions.

Before the AAT, the taxpayers sought to argue that, contrary to the position they took on claiming the tax concessions on the lodgment of their tax returns, they did not qualify for the concessions. However, the AAT held the taxpayers did qualify for the concessions. It also held that, after finding that the steps to "restructure" the business constituted a "scheme", the general anti-avoidance rules under the tax law applied to cancel the "tax benefit". The AAT found the taxpayer entered into the scheme for the dominant purpose of obtaining a tax benefit (reduced tax) and not for any asset "protection purpose".

**TIP:** The ATO uses data-matching to identify taxpayers that may be inappropriately seeking the CGT small business concessions. Business "restructures" which occur just prior to a particular transaction which result in significant tax benefits could potentially raise red flags. Where a restructure is effected for purposes such as asset protection (which the courts have said is a legitimate non-tax purpose), such benefits must be real and not simply illusory.