

## ATO's Hit List for 2011/12

**The new financial year brings a new compliance hit list from the ATO. Outlined below are the key areas of focus this year, for micro-businesses and small to medium size businesses, wealthy individuals, sham contracting and work-related expenses all of which are in the tax man's sights.**

The Tax Office says fields as diverse as real estate, hospitality, carpentry, medicine, football and aviation will be in focus for the year to 30th June, 2012.

Below are some of the key targets the ATO has in store for this financial year:

### Small business benchmarks

**What the ATO is looking at:** The Tax Office says it has identified 46,000 businesses potentially under-reporting their cash incomes - many of them associated with registered agents. The benchmarks, designed to help businesses compare their performance versus the rest of the industry, are expected to expand from 107 industries to 137 in the next 12 months.

**What they say:** "Businesses outside industry benchmarks may need to review their record-keeping and business management practices.

"We will always take into account the individual circumstances of each tax business we review, based on records maintained by that business. Where a business does not have records to show its income and expenses, we can use our benchmarks and other information available to us to assess the profits of the business. Default assessments may include an additional penalty of up to 75% of the tax liability."

### Wealthy Australians

**What the ATO is looking at:** Individuals with a net worth of between \$5 million and \$30 million are generally found by the ATO to have met basic taxation obligations, although the ATO expects to contact 2000 people about outstanding tax issues.

But 2,660 highly wealthy individuals - individuals who, together with associates, effectively control \$30 million or more in net wealth - are being monitored by the ATO as of this month. The Tax Office raised more than \$800 million in income tax adjustments from highly wealthy individuals, although much of that remains in dispute. This year, it says it will complete more than 380 risk assessments and reviews, and 60 audits.

**What they say:** "Common risks associated with highly wealthy individuals include classification between revenue and capital account items; capital gains tax not being returned; Division 7A: access to company profits other than via dividends; overseas interests and international dealings; and arrangements involving trusts.

"These risks will be the subject of on-going risk assessment and audit activity. We will be contacting highly wealthy individuals where we identify outstanding lodgement obligations. We will also work closely with those who have been subject to compliance activity to clarify their payment obligations and support the collection of any outstanding debt."

### Executives, directors and other highly paid individuals

**What the ATO is looking at:** Individuals with incomes over \$1 million and their use of closely held entities, including charitable trusts and self-managed super funds, will be reviewed, with people from medical practices and football codes in focus. The ATO says a review of 2,000 highly paid individuals over the past four years found 60% of tax returns needed correction, mostly because of incorrect deductions or amounts being claimed, income omission, and the use of tax-minimisation schemes.

**What they say:** "This year we will pay particular attention to:

- Large deductions, including gifts and donations and the cost of managing tax affairs;
- Incorrect calculations of net capital gains and losses;
- Deductions for contributions to self-managed superannuation funds;
- Claims for large revenue losses
- Non-disclosure of partnership and trust distributions
- Alienation of personal services income
- Non-commercial loans with related entities
- Under-reporting of employment benefits including participation in employee share schemes."

## Employer obligations

**What the ATO is looking at:** The Tax Office says the majority of SMEs do the right thing by keeping up with pay-as-you-go withholding obligations, superannuation guarantee contributions, and fringe benefit tax obligations. But PAYG contributions and super payments will be in focus in the year to July 2012.

The ATO says it followed up on complaints about 14,000 micro-employers not meeting their superannuation obligations last year, and it expects to contact about 12,500 mainly micro-employers this year.

**What they say:** "This year, we expect to review the tax affairs of over 3,400 small-to-medium businesses to ensure they are reporting the correct amounts of pay-as-you-go withholding.

"We will continue our proactive activities regarding employer compliance with superannuation guarantee obligations. We will undertake an education and communication campaign aimed at promoting knowledge of superannuation guarantee obligations in several target industries: cafes and restaurants, real estate services, and carpentry services.

"These industries have been selected based on analysis of previous employee complaints. We will review over 4,000 high-risk employers where we find evidence of non-compliance with superannuation guarantee obligations, particularly in the industries where we have previously focused our communication activities, including computer system design and related services and accommodation."

## Work-related expenses

**What the ATO is looking at:** The Tax Office says there's been a 16% surge in work-related expenses since 2007, and says advisory letters are being issued to help people understand their obligations and correctly claim expenses.

Workers in the following fields will be targeted in 2011-2012:

- Real estate employees
- Carpenters and joiners
- Earthmoving plant operators
- Flight attendants.

**What they say:** "We selected these occupations because of the number of employees and the relatively high amount of work-related expenses being claimed in previous years, compared with other similar occupations.

"One example we find is that claims for travel deductions by flight attendants are not always correct. Where an amount for travel expenses is included in the salary package of a flight attendant then these payments are not considered to be a bona fide travel allowance, so any deductions for travel expenses need to be fully substantiated.

"The most common mistakes for many occupations include insufficient documentation to support motor vehicle and travel expenses, and incorrectly claiming home office, mobile phone and internet expenses."

## Cash economy

**What the ATO is looking at:** The Tax Office says plastering and coffee shop industries will be paid close attention this year to ensure they don't abuse tax laws through cash payments, with administrative penalties and prosecutions possible from business reviews.

**What they say:** "We are likely to detect businesses with inadequate records, or those failing to record all sale transactions, paying cash-in-hand wages or operating outside the system. Last year we continued to see poor record-keeping practices by some small business owners. Specifically, some businesses did not record all sales transactions, thereby leading to a higher risk of not reporting all cash income and their GST on sales.

"A clear link exists between compliance with tax obligations and good record-keeping practices. Record keeping therefore continues to be an important focus of our compliance, help and education strategies. We will continue to visit businesses, work with tax practitioners and industry/professional associations to identify and share best practice in record keeping."

## Business Activity Statements

**What the ATO is looking at:** The Tax Office says it expects to verify more than 47,000 refund claims this year, and will refer to the Tax Practitioners Board details of unregistered preparers and registered agents who have prepared fraudulent statements. Those who have perpetrated the fraud may be prosecuted, it warns.

**What they say:** "We have received additional funding from government to increase our focus on preventing refund fraud, sham business operations and identity fraud. The more blatant fraudulent claims will be referred for prosecution.

"Many businesses can access credits for the fuel used in business activities. We will review fuel tax credit claims that appear to be inflated or not legitimate. Those involved in preparing fraudulent statements may be prosecuted."

## GST evasion

**What the ATO is looking at:** The ATO says 300 audits and reviews will look at serious and significant non-compliance.

**What they say:** "Where appropriate, we will refer for prosecution those businesses that:

- Purposefully do not register to participate in the GST system;
- Intentionally do not report, or under-report, their GST and other tax obligations;
- Collude with others to evade or avoid GST and other tax obligations;
- Intentionally do not pay their GST or other tax obligations, including through engaging in phoenix behaviour or offshore arrangements.

"We are also working closely with other agencies, including Australian Customs and Border Protection Services and state revenue authorities, to share information indicating serious non-compliance."

## Super

**What the ATO is looking at:** Schemes offering early access to superannuation and superannuation contribution caps, which limit the amount of contributions qualifying for concessional tax treatment, will be in focus. The ATO also promises "firm action" for breaches related to self-managed super funds, whose number stood at 445,000 in March this year.

**What they say:** "Failure by a fund to lodge an annual report is a breach of tax and superannuation law. Where a self-managed superannuation fund has repeatedly not lodged a return we may issue assessments with penalties based on the information available to us. As these funds have not met their regulatory obligations we may also make the fund non-complying. This will result in the fund losing access to concessional tax treatment.

Prosecutions may result where trustees fail to meet their fund's lodgment obligations.

"This year, the focus of our compliance activity will be on:

- Newly registered funds, to ensure they have not been established to provide illegal early release of superannuation funds to their members;
- Funds lodging their first annual return to ensure they are entitled to receive their 'notice of compliance';
- Auditor contravention reports;
- Related-party investments, to ensure they are not contravening the prohibition of lending to members or the 5% in-house asset limit;
- Exempt current pension income and non-arms-length income.

"Where appropriate, we will apply non-tax shortfall penalties to cases where we identify incorrect fund reporting."

## Sham contracting

**What the ATO is looking at:** Sham contracting, where an employee is wrongly classified as a contractor to save on employee entitlements, is in the ATO's sights for the 2012 fiscal year. The ATO says its field work has gathered evidence of sham contracting arrangements, and reports it received 16,300 employee complaints last year.

It says it will consult with industry representatives about new tax compliance measures that require certain businesses to report annually on payments they make to contractors in the building and construction industry.

**What they say:** "Since commencing this work in 2009, we have completed approximately 2,000 level-playing-field reviews and are concerned about the extent of 'sham' contracting we have detected. Up to 35% of businesses we visited were incorrectly treating employees as contractors.

"While prevalent in the building and construction industries, sham arrangements are spreading into industries with more traditional employee-employer relationships.

"We have identified cases in:

- Call centres
- Cleaning
- Security
- Logistics
- Retail
- Tourism and hospitality
- Education
- Aged care
- Health
- Telecommunications."

## Contractors

**What the ATO is looking at:** The Tax Office says individuals streaming their personal services income through another entity might incorrectly split their income with an associate, such as a spouse or child, in a lower tax bracket often meaning that people in the same work situation "inappropriately pay different levels of tax".

**What they say:** "We will continue our test-case program to clarify the law relating to personal services income. We will provide further information to contractors and tax practitioners to help them get the tax treatment right. We will use information received from labour hire firms to identify contractors, particularly in engineering and computer technology industries. We may review or audit the tax affairs of these contractors where we see apparent anomalies.