



Regulatory Roundup

Data matching by ATO targets card payments, online sales, ride sourcing

Every year, the ATO collects new data from financial institutions and matches this data with its own information, which is sourced from income tax returns, activity statements and other tax records.

It says that its current data matching activities are focused on gathering data on:

- the total credit and debit card payments received by businesses
- information on sellers using online selling platforms (specifically those who sold at least \$12,000 worth of goods or services)
- details of payments made to ride-sourcing drivers from accounts held by the ride-sourcing facilitator.

The ATO then matches this data with information held in its databases to identify any discrepancies.

“Data matching helps us identify businesses that may need some assistance,” the ATO says, “as well as those that get an unfair advantage over honest businesses by not reporting all their income or meeting their registration, lodgment or payment obligations.”

The ATO advises businesses, or indeed all taxpayers, that if they think they’ve made a mistake or left something out to contact either the ATO or their registered tax adviser to correct the mistake or to amend the relevant return.

“You can also make a voluntary disclosure – we may reduce or even waive penalties if you make a disclosure before we contact you,” it says.

The ATO adds that if any taxpayer thinks a person or a business is gaining an unfair advantage, that they can report a concern and “help us protect honest

businesses”. This can even be done anonymously ([see more here](#)).

Funding litigation costs for tax cases

The ATO says it can help fund some reasonable litigation costs if the outcome of a particular case will affect a significant number of taxpayers by:

- clarifying the law, and/or
- developing legal precedent.

Its test case litigation program was established to fund cases that have broader implications beyond individual disputes with the ATO. The program can provide financial assistance to taxpayers to help them meet some or all of their reasonable litigation costs and – in limited circumstances – pre-litigation costs, associated with clarifying tax, superannuation and in some instances debt-related issues.

A test case litigation panel considers applications for funding. The panel’s chair and deputy chair are senior ATO officers, and external members are from the legal and accounting professions.

In certain instances, cases will be considered for funding without an application being submitted. These cases will generally be considered separately by the chair or deputy chair of the panel.

The sort of case that may be considered will be expected to be in the public interest. Funding will be considered where, in addition to meeting the test case funding criterion:

- your case must have significance to a substantial section of the public or have significant commercial implications for an industry
 - this means that there should be a number of taxpayers affected or there are industry and or community views

that the issue is uncertain or contentious.

- you must demonstrate a willingness to progress the dispute in a timely manner
 - the ATO expects taxpayers who are approved for funding to cooperate with it to avoid delays and to progress cases in a timely manner – any indication that this may not occur (based on past or current behaviour) will be considered before an application is approved for funding
- your case must be likely to provide legal precedent
 - legal precedent means a decision that establishes a principle of law that is capable of being used to decide other cases with similar facts – a precedential decision will provide certainty and clarity for taxpayers – in some instances, the program will consider funding cases before the Administrative Appeals Tribunal, particularly if the case is to be heard by a presidential member
- your case must not involve a tax avoidance scheme unless it tests the proper meaning of anti-avoidance provisions
 - there are many different types of tax avoidance – funding will only be considered for tax avoidance schemes where it tests the meaning of those laws
- your case must not appear to be an attempt to gain a benefit not intended by the law – this includes cases where there is an attempt to seek a windfall gain or an outcome contrary to the intent of the legislation and public policy
 - funding is not usually provided where the outcome you seek is clearly not an outcome intended by the law.

A tax agent or an individual can apply online, and the panel will consider each case against the funding criterion and expectations.

To make an application for funding will require you to fill in the [test case funding application form](#), however it is recommended that you read the information

under the [test case litigation register](#) before submitting an application.

Super changes you need to be prepared for

The government has released exposure draft regulations aimed to complement the recently enacted reforms [Superannuation reform package – regulations](#). The submissions are open until February 10.

The exposure drafts also include regulations in respect of the *Superannuation (Objective) Bill 2016* that specify the subsidiary objective of the superannuation system.

The ATO has released drafts of the following law companion guidelines (LCGs) outlining how the Commissioner will apply the new superannuation laws:

- [Superannuation reform: transfer balance cap and transition-to-retirement reforms: transitional CGT relief for superannuation funds](#) (LCG 2016/D8)
- [Superannuation reform: transfer balance cap](#) (LCG 2016/D9)
- [Superannuation reform: defined benefit income streams – non commutable, lifetime pensions and lifetime annuities](#) (LCG 2016/D10)
- [Superannuation reform: concessional contributions – defined benefit interests and constitutionally protected funds](#) (LCG 2016/D11)
- [Superannuation reform: total superannuation balance](#) (LCG 2016/D12)
- [Superannuation reform: defined benefit income streams – pensions or annuities paid from non-commutable, life expectancy or market-linked products](#) (LCG 2017/D1)

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.