

# client report

tax news | views | clues

*Merry Christmas 2012*

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## **New company loss carry-back regime**

The Government intends to introduce a company loss carry-back regime and has released draft legislation for public consultation.

Under the proposal, which will have effect from 1 July 2012, companies will be able to carry back up to \$1 million worth of losses to obtain a refund of tax paid in the previous year. From 1 July 2013, companies will be able to carry back up to \$1 million worth of losses against tax paid up to *two* years earlier.

The regime is proposed to be available only to “corporate tax entities” as currently defined under the tax law. The Government has said that restricting loss carry-back to those companies that have recently paid tax would target the measure to companies that have had a history of being profitable, and would improve companies' cash flow by allowing access to losses in a more timely manner.

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## **ATO focus on small businesses and wealthy individuals**

The ATO has launched a public online resource that spells out its tax compliance approach to small businesses and wealthy individuals. The new resource is available on the ATO website at [www.ato.gov.au/smeecompliance](http://www.ato.gov.au/smeecompliance).

This online resource contains information on how the ATO conducts itself in compliance activities and the tax risks that may attract its attention. It also explains that the ATO can, through powerful data-mining techniques, obtain an indicative view of a “private group” of entities that is under the control of an individual and their associates.

## **Key tax risks that may attract ATO attention include:**

- tax performance that varies substantially from business performance;
- inconsistencies in activity statements or spikes in refund claims;
- large, one-off or unusual transactions;
- tax and economic performance that varies significantly from similar businesses in the same industry;
- unexplained losses;
- tax outcomes inconsistent with the intent of tax law;
- lifestyles not supported by after-tax income;

- treating private assets as business assets;

- not disclosing offshore dealings with overseas entities, especially low-tax jurisdictions and tax havens that allow banking secrecy;
- using complex structures and intra-group transactions to minimise tax;
- poor governance and risk-management systems;
- distortions and inconsistencies in market valuations and apportionments; and
- business performance that falls outside small business benchmarks (for businesses with turnover of up to \$15 million).
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**TIP:** The ATO's main tool for detecting non-compliance is matching information reported to it by taxpayers and third parties, such as financial institutions both in Australia and overseas. The ATO says its matching capabilities have grown strongly over the years. This financial year, the ATO expects to match over 600 million transactions.

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### **Bakery finds itself on the wrong side of ATO benchmarks**

In a recent decision, the Administrative Appeals Tribunal (AAT) affirmed an amended assessment issued to a bakery business for undeclared income and incorrectly calculated GST.

Among the factors considered by the AAT was the fact that the taxpayer's costs were 58% of reported sales income, which was considerably higher than the 32% to 40% range identified by the Commissioner of Taxation as the benchmark for costs in bakeries and hot bread shops.

**TIP:** The ATO publishes small business performance benchmarks that it uses to identify businesses that may be avoiding their tax obligations by not reporting some or all of their income. There are benchmarks for over 900,000 small businesses in over 100 industries.

The ATO says approximately 90% of businesses in benchmarked industries fall within a benchmark range. This means around 800,000 businesses are likely to be competing on a level playing field with their peers. Reporting greater net income than industry peers could be a sign that a business has forgotten to claim a relevant business deduction. However, reporting significantly lower income than industry peers would attract ATO attention.

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### **Worked overseas, but still an Australian resident, says Tribunal**

The AAT has recently heard two cases relating to whether the individual taxpayers involved, men who worked in the oil and gas industry in the Middle East, were Australian residents for tax purposes.

In both cases, the AAT affirmed that they were Australian residents, and foreign sourced income derived by the men was therefore included as assessable income for Australian tax purposes. The men had argued that they were not Australian residents during the 2009 income year.

**TIP:** Taxpayers classified as residents of Australia pay Australian tax on their worldwide income, whether derived in or outside of Australia, subject to certain exceptions. In respect of foreign sourced income, a resident pays tax in Australia on that income but receives a foreign income tax offset for any overseas tax they are personally liable to pay on that foreign income.

**TIP:** Foreign sourced income derived by Australian residents remains a key ATO compliance focus area. The ATO increasingly obtains information from financial institutions and other organisations, both in Australia and overseas, that may identify employment-related income.

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### **ATO benchmarking can be improved: report**

The Inspector-General of Taxation's report into the ATO's use of performance benchmarks to target small businesses who may not be reporting all their income has been released by the Government and it says that improvements can be made.

The report was sparked by concerns raised by tax practitioners and their clients concerning the ATO's use of the benchmarks. The ATO uses the benchmarks to compare the performance of businesses with similar

businesses in the same industry. One purpose of the benchmarking is to help identify potential cases for audits, with a particular focus on unreported cash transactions.

The report made 11 recommendations for the ATO to improve its use of the benchmarks, which the ATO has largely accepted. According to the Government, the recommendations should improve the ATO's risk identification and audit selection processes to further exclude compliant businesses from audits, thereby minimising unnecessary compliance costs in relation to the cash economy and GST obligations.

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### **Living-away-from-home concessions: new laws**

The Government has made a raft of changes concerning living-away-from-home allowances (LAFHAs) and benefits. Essentially, the Government is restricting access to the concessions. Employers and employees who may be affected need to take note. The changes started on 1 October 2012, although there are grandfathering provisions to preserve tax concessions for a limited time for some arrangements that were in place prior to Budget night (8 May 2012).

**TIP:** The changes raise significant issues for affected employers and employees. If you have any questions, please contact our office.

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### **Contractual promises can have GST implications**

A recent High Court case has highlighted a need to take a closer look at contracts for the provision of services or goods. The majority of the High Court recently allowed the Tax Commissioner's appeal in relation to a case concerning whether an airline, Qantas, was liable for GST on purchased airfares where the passenger does not turn up for the flight.

Qantas had argued that no GST was payable on unused fares and that the GST that had been paid should be refunded by the Commissioner. The majority held that Qantas was liable for GST and that the taxable supply for which the consideration, being the fare, was received was something less than the actual air travel – namely, Qantas' contractual promise to use "best endeavours to carry the passenger and baggage, having regard to the circumstances of the business operations of the airline".

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### **Contractor payments undergo ATO data-matching**

The ATO has recently released details of a data-matching program focusing on contractor payments. Under the program, the ATO intends to collect information in relation to payments made to contractors for the 2009–2010 to the 2011–2012 income years by businesses audited by the ATO's employer obligations area. The program will also cover this financial year. According to the ATO, records relating to around 75,000 individuals and entities who have received contract payments from the employers or businesses will be matched.

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### **Property developers and GST under ATO spotlight**

The ATO has advised that it intends to increase its focus this financial year on property developers who have a history of non-compliance with GST obligations. The ATO has observed that some developers have claimed input tax credits throughout the life of a development, but then avoided paying the GST when they sell. The ATO says it has adopted a new approach of identifying and engaging with these developers prior to the sale of a development.

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### **ATO warning on dodgy offshore emission unit schemes**

The ATO has issued a warning for individuals to be aware of arrangements that promote deductions for the purchase of offshore "emission units" that do not exist at the time of the arrangement.

"These arrangements, entered into with an offshore entity which may be incorporated in a tax haven, claim to allow participants to deduct the entire purchase price of the offshore 'emission units', while making only a small initial payment," the Commissioner of Taxation Michael D'Ascenzo said. The ATO warns these arrangements may not be legitimate and that those involved could face a large tax bill, substantial penalties or even prosecution.

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### **Excess super contributions: once-only refund offer**

The ATO has started offering refunds to some individuals who have exceeded their annual superannuation concessional contributions cap. From the 2011–2012 year, there is a once-only

opportunity to have excess concessional contributions refunded. The offer will only be made once. If individuals decide to accept the offer, they will pay marginal tax rates on the amount above the cap, instead of paying excess contributions tax.

An individual's choice as to whether to accept the one time only offer, or not, is a final decision and cannot be revoked. Once a taxpayer has received an offer, regardless of whether or not they accept it, they will not be eligible for an offer in future years. The ATO says the offers will be sent directly to the taxpayer's postal address. Election to accept the offer must be returned to the ATO within 28 days of the issue date of the offer.

**TIP:** The refund offer provides some relief, but is not without conditions and limitations. Please contact our office for further information.

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### Goods taken from stock for private use

The ATO has determined for the 2011–2012 year the amounts the Commissioner will accept as estimates of the value of goods taken from trading stock for private use by businesses in certain specified industries. The amounts (which exclude GST) are as follows:

Type of business	Adult/child aged over 16 years (\$)	Child aged 4 to 16 years (\$)
Bakery	1,300	650
Butcher	770	385
Restaurant/cafe (licensed)	4,300	1,685
Restaurant/cafe (unlicensed)	3,370	1,685
Caterer	3,640	1,820
Delicatessen	3,370	1,685
Fruiterer/greengrocer	760	380
Takeaway food shop	3,240	1,620
Mixed business (includes a milk bar, general store and convenience store)	4,030	2,015

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### Mini-budget tightens fringe benefits, health rebates and more

The Government's mid-year budget update was handed down in late October 2012. The Treasurer revised down the expected Budget underlying cash surplus to \$1.1 billion for 2012–2013 – down from \$1.5 billion estimated in the May 2012 Budget.

The Government did not announce anticipated changes to claw-back superannuation tax concessions (much to the relief of many superannuation investors). However, the update did contain a host of small, but not insignificant, tax proposals.

In the mini-budget update the Government announced the removal of the concessional treatment for in-house fringe benefits that are accessed through a salary sacrifice arrangement. The proposal will apply from 22 October 2012 to salary sacrifice arrangements entered into on or after 22 October 2012, and from 1 April 2014 for salary sacrifice arrangements entered into prior to 22 October 2012.

Changes to the Private Health Insurance Rebate were also announced. From April 2014, the premium to which the rebate is applied will move in line with the CPI or commercial premium increase, whichever is lower.

The Government is also widening the circumstances for which monies in "lost" or "inactive" superannuation accounts are to be transferred to the ATO. However, the Government said that from 1

July 2013, interest at a rate equivalent to CPI inflation will be paid on lost superannuation monies reclaimed from the ATO.

**TIP:** These proposals, including many others, are subject to the formal enactment of legislation. Please contact our office for further information.

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### **ATO to data-match motor vehicle purchases**

The ATO is collecting details of individuals and businesses who have purchased or acquired a vehicle with a transaction value of \$10,000 or greater in the 2011–2012 or 2012–2013 financial years. The information will be collected from state and territory motor vehicle registries and matched electronically with the ATO's records. The ATO is seeking to address potential non-compliance in the following areas:

- income tax;
- superannuation;
- goods and services tax;
- fringe benefits tax; and
- luxury car tax.

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### **AUSTRAC shares information with the ATO**

AUSTRAC has recently highlighted the growing role of financial intelligence in tackling crime, including tax evasion. In 2011–2012, AUSTRAC reported that information sharing with the ATO assisted with over 3,500 cases that resulted in \$252 million in additional tax assessments being raised. The year before, AUSTRAC reported that its information directly contributed to some 1,600 ATO investigations, leading to tax assessments of around \$241 million.

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### **Honest mistake in not documenting private company loans**

A taxpayer has been, in most part, successful before the Administrative Appeals Tribunal (AAT) in relation to a matter concerning loans from a private company. These loans were made to him, over various years, as a shareholder and director of the private company. The ATO had treated the loans, which were made in the 2005, 2006 and 2007 income years, as assessable dividends.

The AAT sided with the ATO in relation to the 2005 loans. However, the AAT decided differently in respect of the 2006 and 2007 loans. It found that a discretion under the tax law should be exercised to disregard the deemed dividends because it found that there was an “honest mistake” in failing to properly document the loans.

**TIP:** The Tax Commissioner has the ability to disregard a deemed dividend, or allow it to be franked, if certain conditions are met. Generally, a taxpayer must apply to the Commissioner to ask for the discretion to be exercised, and must be able to demonstrate that the failure to meet the requirements of the law was due to an honest mistake or an inadvertent omission.

In making his decision, the Commissioner must have regard to various factors specified in the law. Please contact our office if you have any questions.

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### **Depreciation deduction allowed for certain equipment**

A recent case before the AAT has highlighted the need for businesses to maintain appropriate records of plant and equipment used in business.

The taxpayer, who was a partner of a box manufacturing business, was partially successful before the AAT in relation to claims for depreciation for certain items of plant and equipment used in the business. The AAT found that there was sufficient evidence that some items of plant and equipment were used in the business for the purpose of deriving assessable income. However, the AAT found it was not possible to allow the depreciation claimed for a number of other items. A key problem noted by the AAT “was the fact that the partnership did not keep basic business records”.

**TIP:** The depreciation rules for small businesses have recently been amended. The changes only apply to small businesses (including connected or affiliated businesses) that have an aggregated turnover of less than \$2 million. Businesses must keep appropriate records. From the 2012–2013 income year:

- the small business instant asset write-off threshold has increased from \$1,000 to \$6,500;
- small businesses can claim an accelerated initial deduction for motor vehicles acquired in 2012–2013 and subsequent years; and
- the long-life small business pool and the general small business pool have been consolidated into a single pool to be written off at one rate.

### Special circumstances found to set aside excess contributions tax

A taxpayer has successfully argued before the AAT that there were special circumstances in his situation to allow for the exercise of the Commissioner's discretion under the law to reallocate superannuation contributions. Accordingly, monies paid into his superannuation account in late July 2009 could be attributed to the 2008–2009 financial year, and this meant that the taxpayer would not exceed the (then) \$50,000 contributions cap.

The taxpayer had a salary sacrifice arrangement with his employer, whereby funds were paid on his behalf to his super fund. The taxpayer had the intention of contributing super each month and staying below the relevant cap.

However, the AAT heard that the disputed payments occurred because salary sacrifice amounts for the months of April, May and June 2009 were not transferred by the taxpayer's employer to the fund until July 2009.

The taxpayer claimed that he had been unaware of the delay because he believed the sums were transferred to the fund, based on his monthly payslips. The AAT found that, in this case, there were "special circumstances" that allowed the reallocation of the monies to the previous year.

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

**TIP:** This case highlights the need for individuals to check their payslips for their super contributions (especially year-to-date amounts) and know when their super contributions are being paid into their super fund by their employer.

Individuals should also consider reviewing their salary sacrifice arrangements to check whether there is an agreement as to when salary sacrifice amounts will be transferred by the employer to the individual's super fund. Please contact our office if you have any questions.

### Penalty units increased for 2013

To add a little more Christmas cheer to our lives the Government has seen fit to increase the base penalty unit from \$110 to \$170.

The penalty unit is applied within most Commonwealth laws; the most common imposition we see relates to late lodgement of documents such as Activity Statements, Income Tax Returns, TFN declarations, and PAYG reporting. Typically the penalty increments by one unit for every month a document is overdue, to a maximum of 5 months. In addition there is a loading of 2 times for 'medium' size offenders, and 5 times for 'large' offenders. So, with effect from 28 December the new scale of late lodgement penalties will be as set out hereunder:

Period late	1 to 28 days	29 to 56 days	57 to 84 days	85 to 112 days	More than 128 days
Taxpayer 'size'					
<b>Small</b>	\$170	\$ 340	\$ 510	\$ 680	\$ 850
<b>Medium</b>	\$340	\$ 680	\$1,020	\$1,360	\$1,700
<b>Large</b>	\$850	\$1,700	\$2,550	\$3,400	\$4,250

Penalty units are also applied in relation to contested tax deduction claims or income declarations, failure to withhold or remit amounts, and other omitted tax obligations.

***PARTNERS AND STAFF WISH ALL OUR CLIENTS A VERY MERRY CHRISTMAS AND A PROSPEROUS  
NEW YEAR***



***OUR OFFICE WILL BE CLOSED FROM  
MIDDAY 21 DECEMBER 2012  
AND REOPENING  
WEDNESDAY 2 JANUARY 2013***

Noel's News



***Film Reviews – by Mark Lisle***

***ARGO***

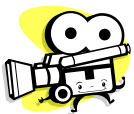
***Starring: Ben Affleck, Alan Arkin, John Goodman, Bryan Cranston***

Definitely the best film I've seen this year. Based on a true story, this film directed by and starring Ben Affleck, is about the joint CIA-Canadian secret operation to extract six American Embassy employees out of Iran during the time of the 1980 hostage crisis, by pretending to make a *Star Wars* type movie in Iran. I'm old enough to remember the hostage crisis in Iran but, like the rest of the world, I had no idea about this sub-plot that was unfolding in the background. This would have to be one of the most gripping films I have ever seen. From the very first scene, where the Iranians storm the American Embassy in Iran, to the final scene, where a plane carrying the Americans is about to take off while the Iranians are chasing them in cars on the tarmac, you are on the edge of your seat. The only hint of light relief comes when the film crosses back to Hollywood occasionally to see how the "*would be*" movie producer and his offsider are getting on. The contrast is not lost on the audience. If you haven't seen this movie yet, do yourself a favour.

## ***THE INTOUCHABLES***

***Starring: Francois Cluzet, Omar Sy***

This is a feel good movie about a French quadriplegic aristocrat who hires a young hood from the streets as his caretaker. Being a French film, it is screened with sub-titles but this does not detract from the viewing experience. Both the aristocrat and his carer are able to learn from each other's philosophies and the film is full of humorous and heart-warming moments. It is a film where you can just sit back and relax without having to worry about unravelling a complex plot, or when your heart rate will return to somewhere near an acceptable resting rate. The movie goes for 113 minutes, which seems like a long time, but I must say I didn't think it dragged on at all. A good one for all the family.



***Film Review – by Kate Reid***

## ***SKYFALL***

**Starring: Daniel Craig, Judi Dench, Javier Bardem & Ralph Fiennes**

Skyfall is the 23<sup>rd</sup> instalment in the James Bond franchise and marks the 50<sup>th</sup> anniversary of the first film. Skyfall is not intended to be a sequel to Casino Royale or Quantum of Solace, so you don't need to have seen the more recent (or any of) the James Bond films to be able to enjoy it.

Although the first half of the film is a bit 'slow', don't be disillusioned as the action certainly picks up in the second half. There is, of course, the mandatory 'car chase', 'fight on top of a train' and 'far too big to be believable explosion', but there are also a few unexpected delights to be enjoyed as well, and the special effects are impeccable.

For James Bond fans, this latest instalment will not disappoint. For those who are not James Bond fans, I would still recommend this film as it can be enjoyed as a standalone adventure film. And for the ladies, even if the action doesn't impress you, Daniel Craig without a shirt on certainly will.





## ***Restaurant Reviews – by Mark Lisle***

### ***San Telmo 14 Meyers Place Melbourne***

San Telmo is a delightful Argentinian restaurant and bar, tucked away in a little side street off the top end of Little Collins Street. The menu is largely designed around this very large charcoal grill box called a *parilla*, which was apparently imported from Argentina. You can see it as you enter the restaurant and you immediately take in the aroma and flavour of the meals that you will soon be eating. The menu is largely based around meat dishes, although not entirely, and most of the dishes are designed to share. We shared about 5 entrées and 3 main meals between four of us and all were delicious. The charcoal grill dishes in particular had a unique flavour. I didn't have dessert but those that did were impressed. Apparently the Argentinian national dessert, *Dulce De Leche*, is to die for. The wine list is full of imported Argentinian beers and wines, although there were other options. Finally the service was excellent. Our waiter was not only attentive but went to some lengths to explain the dishes and the philosophy behind Argentinian dining. I recommend that you give San Telmo a try.

### ***Centonove, 109 Cotham Road, Kew***

For those that don't want to go into the City to experience fine dining, Centonove is a good option. I would describe Centonove as an Italian restaurant that does the basic things very, very well. It's hard to fault anything about this restaurant – the décor, the service, the menu, the wine list, the meal sizes were all top class. The menu has a good mix of simple Italian dishes, along with some “fancier” dishes. I found it difficult to make a selection from the menu, as there were so many dishes that appealed to me. I noticed that there was outdoor seating as well, which might be a good option on some of those balmy summer nights. If you are a true lover of Italian Cuisine, you can't go past Centonove.



## ***Sporting Predictions – as seen by Brad Roach***

### **Cricket**

The Australian cricket team is on the rise with a competitive effort against the number 1 test team South Africa. The upcoming test series against Sri Lanka is all about finding the combination of players that will tour England next July for the Ashes series. Unfortunately a couple of upcoming front line bowlers will be missing for the Australian summer with injuries but the Australian team should have no troubles defeating the Sri Lankans 3-0.

### **Twenty20 Big Bash**

For entertainment value this summer in sport it would be hard to go past the Twenty 20 Big Bash competition. If you think cricket is a slow and boring sport then go along to one of these games. Action packed with the duration of each match only 3 hours. The Melbourne Stars to be the winners over the Hobart Hurricanes.

### **Tennis**

There has been very little change in Men's tennis in recent with Federer, Nadal and Djokovic dominating the grand slam tournaments. Andy Murray, after being a runner-up on numerous occasions, finally broke through for his first grand slam win in last year's US Open. Andy Murray will continue his winning form to take out the Australian Open defeating Novak Djokovic. As for the ladies, Victoria Azarenka will defeat Serena Williams for the title.

### **American Football**

The 2013 Super Bowl will be played in early February. While it can be difficult to grasp the rules of this game it is an entertaining sport. The New England Patriots will overcome last year's loss to win the 2013 Super Bowl.

### **Yachting**

Peter's "*Addiction*", this year skippered by co-owner Richard McGarvie will again set off in the nation's most challenging ocean yacht race – Melbourne to Hobart "West Coaster". You can follow *Addiction's* exploits commencing with the Boxing Day Dash to Blairgowrie and then the 1.00pm start from Portsea on 27 December by going to: [orcv.org.au](http://orcv.org.au). Click on the "tracker" tab and select the appropriate link for your media device.

## Due Diligence: Purchasing a Business Action Checklist

Buying a business requires careful consideration of various choices. A business can be purchased either by purchasing the business' assets or purchasing the shares in the company or interests in the trust.

It is important to ensure that a thorough due diligence review has been conducted before a decision to buy is made. Through the review you should find out as much information about the business as possible, which you can then discuss with your adviser. You should also consider how embarking on a business venture would fit with your personal circumstances.

This checklist highlights common areas that must be considered when buying a business.

Item		Yes	No
	<b>Where the business is conducted through a company</b>		
1	Has a company search been done to verify the vendor?	<input type="checkbox"/>	<input type="checkbox"/>
2	Are all ASIC compliance requirements up-to-date?	<input type="checkbox"/>	<input type="checkbox"/>
3	Does the company have any overseas operations?	<input type="checkbox"/>	<input type="checkbox"/>
	<b>Financial health</b>		
4	Have you obtained the last four years' financial statements of the business?	<input type="checkbox"/>	<input type="checkbox"/>
	<b>TIP:</b> The financial statements should contain a breakdown of: liabilities (including contingent liabilities); inventory; and accounts receivable and payable.		
5	Have you obtained information on the business' capital structure and, where possible, a current list of vested interests (such as shares, options, warrants, etc) and outstanding debt instruments?	<input type="checkbox"/>	<input type="checkbox"/>
6	Have you obtained an up-to-date copy of the business' credit report, if available?	<input type="checkbox"/>	<input type="checkbox"/>
7	Has a comparison between the business' gross profits and the industry trends been done?	<input type="checkbox"/>	<input type="checkbox"/>
8	Have you considered the financial projections and major growth drivers of the business in the next four years?	<input type="checkbox"/>	<input type="checkbox"/>
	<b>Taxation considerations</b>		
9	Have you obtained the last four years' tax returns, including supporting schedules and workpapers of the business, such as Capital Allowance schedules, Business Activity Statements, Fringe Benefits Tax returns, etc?	<input type="checkbox"/>	<input type="checkbox"/>
10	Have you obtained confirmation that all tax obligations such as income tax, GST, PAYG withholding, stamp duty and payroll tax are up-to-date and paid?	<input type="checkbox"/>	<input type="checkbox"/>
11	Have you familiarised yourself with the tax obligations of the entity to be purchased?	<input type="checkbox"/>	<input type="checkbox"/>
	<b>ALERT:</b> Consideration must be given to the duties of a director under the tax law. New directors need take action within 30 days of their appointment if the company has outstanding PAYG withholding or super contribution amounts, or face the possibility of becoming personally liable to pay a director penalty.		
12	Have you reviewed all correspondence with the ATO and determined whether the business has any private tax rulings, tax elections, amended notices of assessment, etc that may apply?	<input type="checkbox"/>	<input type="checkbox"/>
13	Are you aware if the business is currently being audited by the ATO or has been audited in the last four years and, if so, what its outcome was?	<input type="checkbox"/>	<input type="checkbox"/>
14	Have you considered the stamp duty implications of the purchase of the business?	<input type="checkbox"/>	<input type="checkbox"/>
15	Have you considered whether the purchase of the business will be a supply of a going concern, ie GST-free?	<input type="checkbox"/>	<input type="checkbox"/>

Item		Yes	No
	<p><b>ALERT:</b> Where a business is sold through an asset sale, the purchaser does not inherit any tax liabilities of the business. However, where a business is sold through the sale of units or shares, the purchaser inherits the tax liabilities of the business.</p> <p>Where a business is sold through the sale of units or shares, it will not qualify as a supply of a going concern, ie the purchase of the units or shares will be an input taxed financial supply.</p>		
	<b>If you are buying a business through an asset sale</b>		
16	Has a fixed asset register been obtained detailing all the assets being sold?	<input type="checkbox"/>	<input type="checkbox"/>
	<p><b>TIP:</b> The register should detail the following information about the assets:</p> <ul style="list-style-type: none"> <li>• the original purchase price;</li> <li>• the purchase date;</li> <li>• the depreciation method used;</li> <li>• the depreciation rate used;</li> <li>• the effective life of the asset; and</li> <li>• the written down value.</li> </ul>		
17	Have you checked the ownership and condition of the assets being sold? Are copies of instruction manuals available?	<input type="checkbox"/>	<input type="checkbox"/>
18	Where the assets are leased by the business, have you obtained copies of the leases?	<input type="checkbox"/>	<input type="checkbox"/>
	<b>TIP:</b> If you are taking over the existing leases, consideration should be given to whether the leasing terms are reasonable.		
19	Are the assets adequately insured until settlement of the purchase?	<input type="checkbox"/>	<input type="checkbox"/>
20	Has the purchase price been apportioned across the assets being purchased?	<input type="checkbox"/>	<input type="checkbox"/>
	<b>If you are buying a business through a sale of units or shares</b>		
21	Have you obtained a listing of all current shareholders or unitholders?	<input type="checkbox"/>	<input type="checkbox"/>
22	If you are purchasing the business through the sale of units, has the trust made a Family Trust Election (FTE)?	<input type="checkbox"/>	<input type="checkbox"/>
23	If you are purchasing the business through the sale of shares, has the company made an Interposed Entity Election (IEE)?	<input type="checkbox"/>	<input type="checkbox"/>
	<p><b>ALERT:</b> The existence of an FTE and IEE restricts who may receive a distribution from the trust or company, and to whom the trust may distribute any income derived.</p> <p>Generally, a trust will be denied a tax deduction for carried-forward losses or bad debts, provided certain tests are passed. Similarly, where the substantial shareholder of a company changes, the company can be denied a tax deduction for carried-forward losses or bad debts, provided the same business test is satisfied.</p>		
	<b>Employee obligations</b>		
24	Have you obtained a list of the employees, including their salaries and other entitlements? Are there any key staff who would be imperative to the smooth, continued running of the business?	<input type="checkbox"/>	<input type="checkbox"/>
25	Are you aware of all employment conditions, including key workplace agreements, any incentive bonus plans, staff rotation policies, disciplinary procedures, standards of conduct, etc?	<input type="checkbox"/>	<input type="checkbox"/>
26	Have all outstanding employee entitlements, such as superannuation guarantee and annual leave, been accounted for?	<input type="checkbox"/>	<input type="checkbox"/>
27	Are the WorkCover premiums up-to-date?	<input type="checkbox"/>	<input type="checkbox"/>
28	Are you comfortable with the current business culture, the level of staff relations and turnover over the last four years?	<input type="checkbox"/>	<input type="checkbox"/>
	<p><b>ALERT:</b> Where a business is sold through an asset sale, the purchaser can choose not to take on the employees of the vendor. However, where a business is sold through the sale of units or shares, there will be a continuity of employment and the buyer is responsible for any employee liabilities accrued.</p>		

Item		Yes	No
	<b>Trading stock</b>		
29	Does the trading stock include any obsolete stock?	<input type="checkbox"/>	<input type="checkbox"/>
30	Has the trading stock been valued at market value?	<input type="checkbox"/>	<input type="checkbox"/>
	<b>TIP:</b> Where the purchase of the business includes trading stock, the trading stock must be valued at market value on the day of disposal, which is normally the date of the purchase contract.		
	<b>Business premises</b>		
31	Have you sighted copies of all real estate lease agreements, deeds, mortgages and any relevant documents relating to the premises?	<input type="checkbox"/>	<input type="checkbox"/>
32	If the same business premises are to continue, has the vendor facilitated a lease assignment and all documents signed by you?	<input type="checkbox"/>	<input type="checkbox"/>
33	If there are improvements to the business premises, has a register been obtained detailing the improvements?	<input type="checkbox"/>	<input type="checkbox"/>
	<b>TIP:</b> The register should detail the following information: <ul style="list-style-type: none"> <li>• the cost of the improvements; and</li> <li>• date of construction or acquisition.</li> </ul>		
	<b>Other considerations</b>		
34	Do you know why the vendor is selling?	<input type="checkbox"/>	<input type="checkbox"/>
	<b>TIP:</b> You should be wary of a vendor who does not disclose important information. Sources of information can include social media, the internet and press items.		
35	Is there a documented business plan?	<input type="checkbox"/>	<input type="checkbox"/>
36	If you are acquiring the business with other people, do you have the necessary agreements in place?	<input type="checkbox"/>	<input type="checkbox"/>
37	Are the business operations subject to any government regulations? If so, are all relevant government licences, permits or consents up-to-date?	<input type="checkbox"/>	<input type="checkbox"/>
38	Does the business have any pending or ongoing lawsuits, or any recently finalised litigation cases?	<input type="checkbox"/>	<input type="checkbox"/>
39	Have you given thought to whether the structure (company, partnership or trust) that the business operates through is suitable for your needs?	<input type="checkbox"/>	<input type="checkbox"/>
40	Have you searched the local council and other government agency records to ensure there are no plans or council orders that could disrupt the business or lead to a potential drop in sales?	<input type="checkbox"/>	<input type="checkbox"/>
41	If a restrictive covenant, earn-out clause or claw-back clause is included in the purchase contract, have you ascertained the legal and tax implications?	<input type="checkbox"/>	<input type="checkbox"/>
42	Have you identified the key customer and supplier contracts and the likely impact a change of ownership might have on these agreements?	<input type="checkbox"/>	<input type="checkbox"/>
43	Have you examined current production, distribution, sales and marketing strategies (including websites) of the business and the likely impact of a change of ownership?	<input type="checkbox"/>	<input type="checkbox"/>
44	Do you know who the main competitors are?	<input type="checkbox"/>	<input type="checkbox"/>