



# BATES | COSGRAVE

FACTSHEET: ASSET BETTERMENT & TAXPAYER ONUS

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## INTERNATIONAL TAX FACTSHEET



Transfers of funds, particularly from overseas business interests, need to be substantiated and accurately reported to stay on the right side of the ATO.

Australian small businesses are the backbone of the economy, supporting local jobs, economies and growth. With more than 210,000 SMBs across the country, many are family-owned enterprises that may consist of multiple businesses with shared resources.

A recent case before the AAT has highlighted the importance of accurately documenting and reporting on the financial position, tax arrangements and transactions that occur with these types of structures, especially where the

business may have international assets.

The Australian Tax Office has amassed massive data-matching capabilities, with particular emphasis on foreign asset transfers, ownership and registration.

### BACKGROUND: THE FAMILY BUSINESS

In the case mentioned above, a family business became the subject of an audit after inconsistencies were discovered between income disclosed to the ATO and the actual income, assets and transactions that were made in a 5-year period.

During the same period, the family acquired a number of properties, with one member having access to most family bank accounts

and playing a central part in the transactions relating to property purchases. Large inbound transfers of cash from overseas business interests had not been reported and the pattern of income vs property acquisition led the ATO to look more closely at the family's activities.

The case involved six taxpayers who were members of one family, involved in various businesses such as a supermarket, a bakery, a takeaway shop, fruit shops and an export business.

The family members had little interest in the family's finances, however the same family member was able to shift money between accounts and the taxpayers.

### ASSET BETTERMENT ANALYSIS A 'BLUNT TOOL' ...

During the ATO audit, the Commissioner formed the view the family had access to much greater income, with expenses and asset acquisitions far and above the amounts disclosed in the relevant tax returns.

He then issued amended assessments and

default assessments to various family members based on asset betterment analysis.

An asset betterment analysis is one method used to determine the correct amount on which tax ought to be levied, however it is viewed as a blunt tool because of inherent flaws in the 'asset management test'.

By comparing the entity's net worth at the end of each income year compared to its beginning, the it is possible - though can be inaccurate - to derive an assessable amount.

### LACK OF DOCUMENTATION PUTS ONUS OF PROOF ON THE TAXPAYER

The taxpayers argued that the funds were related to gambling wins, wedding gifts, and gifts or loans from other family members, however the family member responsible for the property acquisition also conceded he took money from the business on a regular basis for living expenses.

The family were, however, unable to substantiate or prove how these large amounts were derived and used.

The AAT found that the taxpayers failed "individually and collectively" to discharge their burden of proving the relevant assessments were excessive.

This was despite an acknowledgement by the AAT that the amended and default assessments were probably inaccurate in light of the shortcomings of the asset betterment methodology.

With regard to the taxpayers' attempt to prove its case based on its own calculations, the AAT said "More should be expected of a taxpayer, even one who has lost records in a flood".

While the Commissioner used this method in making his default assessments, the AAT commented that "the Commissioner has no choice but to make an informed guess and then put the taxpayer to proof".

Amended assessments were issued to various members based on the ATO's asset betterment analyses.

The Commissioner also claimed that he was authorised to issue some of the assessments out of time due to fraud or evasion.

Administrative penalties were imposed at the rate of 75% of the shortfall for intentional disregard, with a 20% uplift.

## DATA MATCHING AND SHARED OF INFORMATION

The ATO has long made clear that it utilises data matching and that it shares tax related information with different tax jurisdictions.

## MORE INFORMATION

If you are part of a family business, talk to our team about a review of your structures, documentation and tax planning.

### **Disclaimer**

Last updated November 2016. The material and contents provided in this publication are informative in nature only. It is not intended to be advice and you should not act specifically on the basis of this information alone. If expert assistance is required, professional advice should be obtained. Please contact us on 02 9957 4033 to discuss your specific circumstances.

# ABOUT US

## Our Expertise

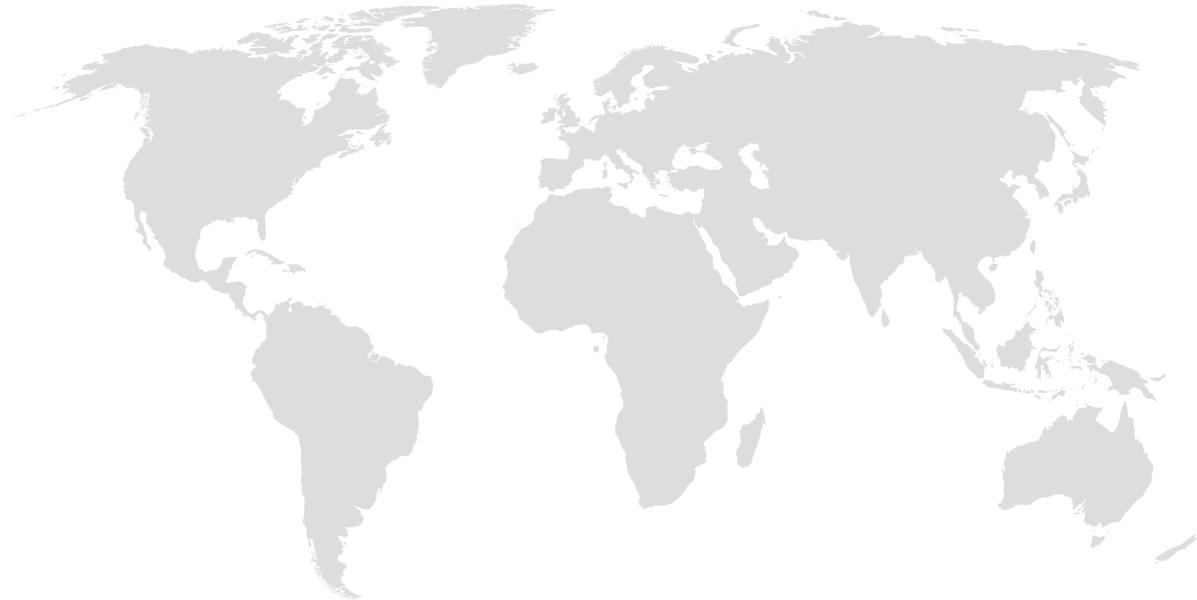
### Domestically

Bates Cosgrave advises domestic and international businesses.

We provide highly personalised services across a wide range of industries with in-depth knowledge in real estate, renewable energy, import and distribution, health professionals, inbound and outbound investments, and innovative/start-up businesses.

### Internationally

Although we are a boutique firm based in Sydney, we have access to a strong global network and specialise in advising cross-border transactions and global structuring.



# OUR TEAM

## Directors



MATT ZHOU

DIRECTOR

CA, B. COMM, M ACC, M  
TAX, CTA

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Matt joined Bates Cosgrave in April of 2007 as a manager and was promoted to Director from 1 July 2009. Matt has a reputation for his technical expertise and experience in specialist advice to professionals including medical doctors, professional investors and family offices, multinational companies.

His diverse knowledge on International tax, expatriates tax, employee share schemes, business structuring including cross border issues, CGT and GST is formidable.

His industry knowledge is broad and includes medical services, real estate, pharmaceuticals and technology companies. As tax advisors, we must think ahead and consider not just the current situation but the future.

Good advice reflects not simply value now, but lasting value.



GLENN COSGRAVE

DIRECTOR

CA, B.COMM, FTIA

[VIEW ONLINE PROFILE](#)

Glenn is passionate about business improvement and works with our clients to get the fundamentals of their business right, serving as a mentor through their business journey of establishment, growth and exiting when the time is right. His approach has helped many businesses evolve from start-up to commercialisation and ultimately setting up their business in the best possible position for sale.

Glenn's extensive experience as a strategic advisor ensures his clients have a clear focus for their personal and business goals, including a roadmap for future success and alignment of multidisciplinary advice to achieve best outcomes.

Glenn is also a professional adviser to engineers, valuers, project managers, accountants, lawyers and high net worth individuals, with a strong portfolio of clients in import and distribution, professional advisory and innovative businesses.



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