



R U N D L E S

C H A R T E R E D A C C O U N T A N T S

client report

tax news | views | clues

WINTER REPORT 2015

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.

www.rundles.com.au

N C Rundle & Co Services Pty ACN 005 453 305

Level One 500 Collins Street Melbourne VIC 3000 Telephone: 03 9205 4690 Facsimile: 03 9614 3460

Liability limited by a Scheme approved under Professional Standards Legislation

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.

Tax planning

There are many ways in which entities can defer income, maximise deductions and take advantage of other tax planning initiatives to manage their taxable incomes. Taxpayers should be aware that in order to maximise these opportunities, they need to start the year-end tax planning process early. Of course, those undertaking tax planning should be aware of the potential application of anti-avoidance provisions. However, if done correctly, tax planning can provide a number of tax savings for entities.

Deferring assessable income

- Income received in advance of services being provided is, generally, not assessable until the services are provided.
- Taxpayers who provide professional services may consider, in consultation with their clients, rendering accounts after 30 June in order to defer the income.
- A taxpayer is required to calculate the balancing adjustment amount resulting from the disposal of a depreciating asset. If the disposal of an asset will result in assessable income, a taxpayer may want to consider postponing the disposal to the following income year.
- Rollover relief may be available for balancing adjustments arising from an involuntary disposal of assets where replacement assets are acquired.

Maximising deductions

Business taxpayers

- Taxpayers should review all outstanding debts prior to year-end to determine whether there are any potential debtors who will be unable to pay their bills. Once a taxpayer has done everything in their power to seek repayment of the debt, the taxpayer could consider writing off the balance as bad debt.
- The entitlement of corporate tax entities to deductions in respect of prior year losses is subject to certain restrictions. An entity needs to satisfy the continuity of ownership test before deducting the prior year losses. If the continuity of ownership test is failed, the entity may still deduct the loss if it satisfies the same business test.
- A deduction may be available on the disposal of a depreciating asset if a taxpayer stops using it and expects never to use it again. Therefore, asset registers may need to be reviewed for any assets that fit this category.
- Small business entities are entitled to an outright deduction for the taxable purpose proportion of the adjustable value of a depreciating asset, subject to conditions.

Non-business taxpayers

- Non-business taxpayers are entitled to an immediate deduction for assets used predominantly to produce assessable income and that cost \$300 or less, subject to conditions.
- The self-employed and other eligible persons are entitled to a deduction for personal superannuation contributions subject to meeting conditions such as the 10% rule.

Companies

- Companies should ensure that all dividends paid to shareholders during the relevant franking period (generally the income year) are franked to the same extent to avoid breaching the benchmark rule.
- Loans, payments and debts forgiven by private companies to their shareholders and associates may give rise to unfranked dividends that are assessable to the shareholders and their associates. Shareholders and entities should consider repaying loans and payments on time or have appropriate loan agreements in place.
- Companies should consider whether they have undertaken eligible research and development (R&D) activities that may be eligible for the R&D tax incentive.
- Companies may want to consider consolidating for tax purposes prior to year-end to reduce compliance costs and take advantage of tax opportunities available as a result of the consolidated group being treated as a single entity for tax purposes.

Trusts

- Taxpayers should review trust deeds to determine how trust income is defined. This may have an impact on the trustee's tax planning.
- Trustees should consider whether a family trust election (FTE) is required to ensure that any losses or bad debts incurred by the trust will be deductible and to ensure that franking credits will be available to beneficiaries.
- Taxpayers should avoid retaining income in a trust because it may be taxed in the hands of the trustee at the top marginal tax rate.

Capital gains tax

- A taxpayer may consider crystallising any unrealised capital gains and losses to improve their overall tax position for an income year.
- Eligible small business entities can access a range of concessions for a capital gain made on a CGT asset that has been used in a business, provided certain conditions are met.

Superannuation

- Individuals who wish to take advantage of the concessional tax environment but wish to stay under the relevant contributions caps should consider keeping track of contributions and avoid making last-minute contributions that would be allocated to the next financial year.
- For 2014–2015, the general concessional contributions cap is \$30,000. For those who are aged 49 or over on 30 June for the previous income year, a higher \$35,000 cap applies.
- For 2014–2015, the non-concessional contributions cap is \$180,000. Individuals under 65 years may bring forward the non-concessional cap for the next two years (ie \$540,000 over three years from 2014–2015).
- From 1 July 2013, excess concessional contributions tax has been abolished. Instead, excess concessional contributions are included in an individual's assessable income (and subject to an interest charge).
- From 1 July 2013, excess non-concessional contributions tax continues to apply where relevant, unless the option to withdraw excess contributions is exercised. Associated earnings will be included in the individual's assessable income (subject to a 15% tax offset).
- Individuals with salary-sacrifice superannuation arrangements may want to have early discussions with their employers to help ensure contributions are allocated to the correct financial year.
- From 2012–2013, individuals earning above \$300,000 are subject to an additional 15% tax on concessional contributions. However, despite the extra 15% tax, there is still an effective tax concession of 15% (ie the top marginal rate less 30%) on their contributions up to the relevant cap.

Fringe benefits tax

- The four rates used in the statutory formula method for determining the taxable value of car fringe benefits have been replaced with a single statutory rate of 20% for fringe benefits.
- The first \$1,000 of the aggregate of the taxable values of “in-house” fringe benefits (ie in-house expense payment, in-house property and in-house residual fringe benefits) provided to an employee during a year is exempt from FBT. However, the \$1,000 reduction does not apply to an in-house benefit provided on or after 22 October 2012 under a salary packaging arrangement.

Individuals

- For the 2014–2015 income year, the general tax-free threshold available to Australian resident taxpayers is \$18,200.
- Certain low income taxpayers are entitled to the low income offset. The maximum offset for 2014–2015 is \$445.
- The medical expenses offset is being phased out and will no longer be available after 2018–2019. Transitional arrangements will allow taxpayers to claim the offset from the 2012–2013 income year until the end of the 2018–2019 income year, subject to limitations.
- The private health insurance offset has been means tested since 1 July 2012. There are three private health insurance incentive tiers.

Commissioner’s statutory remedial power on the way

Even though the Commissioner of Taxation endeavours to interpret the law to give effect to its purpose or object, there are instances where this is not possible. To address this, the Government has announced that it will provide the Commissioner with a statutory remedial power to allow for a more timely resolution of certain unforeseen or unintended outcomes in taxation and superannuation law.

In announcing the Government’s plan, the Assistant Treasurer Josh Frydenberg said the power will be appropriately limited in its application and will apply to the extent that it has a beneficial outcome for taxpayers. It will only be available where the modification is not inconsistent with the purpose or object of the law and has no more than a negligible revenue impact. The Commissioner will consult publicly prior to any exercise of the power.

ATO ramps up face-to-face contact with wealthy individuals

The ATO has released details of its new approach to wealthy individuals and their private groups. The ATO is focusing on a “prevention-before-correction” approach and is ramping up its face-to-face interaction with key taxpayers.

According to the ATO, about 30% of wealthy individuals and their private groups are considered “high risk”. Acting Second Commissioner Michael Cranston said that if taxpayers are open and transparent with the ATO, they can expect better services and faster turnaround of key decisions.

Mr Cranston also noted the ATO “will sign-off on the previous year’s tax returns of taxpayers who have been open and transparent” about their affairs, have good compliance records and are considered low-risk. He said this will provide certainty for about 30,000 privately owned and wealthy groups that they will not be subject to an audit for specific income years.

TIP: Some of the risk areas that attract the ATO’s attention include individuals with unreported foreign income or assets; certain types of remuneration arrangements used by members of professional firms; the egregious use of trusts; and mixing personal and company expenditure.

Sale of business earn-out arrangements – tax changes on the way

The Government is looking to provide clarity in relation to the capital gains tax (CGT) treatment of earn-out arrangements in connection with a sale or purchase of a business.

An earn-out arrangement is an arrangement whereby, as part of the sale of a business, the buyer and seller agree that subsequent financial benefits may be provided based on the future performance of the business. For example, two parties are negotiating the sale of the business where a significant part of the value of the business is tied to its customer base – that is its goodwill. There is considerable uncertainty about how the sale and other factors may impact

upon this goodwill. The parties could agree to an earn-out arrangement under which part of the consideration for the sale is linked to the future economic performance of the business.

The proposed rules aim to provide “look-through” CGT treatment to earn-out arrangements. That is, under the changes, taxpayers may disregard capital gains or losses that arise in relation to the qualifying right to financial benefits. Instead, taxpayers must include financial benefits provided or received under or in relation to such rights in determining the capital proceeds of the disposal of the underlying asset (for the seller) or the cost base and reduced cost base of the underlying asset for the buyer.

It is proposed that the changes would apply from the exposure draft legislation release date (ie 23 April 2015).

ATO data-matching eBay sellers

The ATO is collecting data from eBay Australia & New Zealand Pty Ltd of sellers who had sold more than \$10,000 worth of goods and services on the eBay online trading website during the 2013–2014 financial year.

The ATO said the data will be electronically matched with its records to identify possible non-compliance with the tax law.

The data-matching program is designed to enable the ATO to address the compliance behaviour of individuals and businesses selling goods and services via the online-selling site who may not be correctly meeting their taxation obligations, particularly those with undeclared income and incorrect lodgment and reporting for GST.

It is expected that records relating to between 15,000 and 25,000 individuals will be matched.

TIP: If you sell products or services online, you need to understand whether you are doing it as a hobby or carrying on a business. The ATO said the ongoing collection of online-selling data enables it to review online sellers who are transitioning from hobby status to potentially being “in business”. When selling online becomes a business, the income you earn from it is subject to tax. If this is the case, you may also be eligible for tax deductions.

Aggressive R&D claims under scrutiny

The ATO and AusIndustry are working closely with each other to identify taxpayers who may be involved in aggressive research and development (R&D) arrangements. In particular, the ATO and AusIndustry are seeking arrangements that are inconsistent with the requirements of the law, may have features of tax avoidance, and may be fraudulent.

In this regard, the ATO and AusIndustry have asked taxpayers to ensure that their claims for R&D expenditure are attributed to activities that are consistent with their AusIndustry registration – and, importantly, that expenses (eg labour costs) were actually incurred on R&D activities.

TIP: Companies should consider whether they have undertaken research and development (R&D) activities that may be eligible for the Government’s R&D Tax Incentive. Eligible R&D activities are experimental activities that are conducted in a scientific way for the purpose of generating new knowledge or information. To potentially claim the R&D Tax Incentive, the company’s R&D activities need to be registered with AusIndustry within 10 months of the end of the income year. Companies are required to maintain records to demonstrate, not only to AusIndustry, but also to the ATO, that the activities carried out are eligible R&D activities and that they incurred expenditure related to the activities.

No jab, no pay for child benefits – Government immunisation requirement

The Government will end the conscientious objector exemption on children’s vaccination for access to taxpayer-funded Child Care Benefits, the Child Care Rebate and the Family Tax Benefit Part A end-of-year supplement from 1 January 2016.

Immunisation requirements for the payment of the FTB Part A end-of-year supplement will also be extended to include children of all ages. Currently, vaccination status is only checked at 1, 2 and 5 years of age. The Government will also end the exemption on religious grounds, leaving only the existing exemption on medical grounds.

Noel's News



Film Review – by Jordan Lisle ***Mad Max: Fury Road***

Starring: Tom Hardy and Charlize Theron

George Miller's reboot of the 1970's Mad Max film is an electrifying, fast-paced action movie which is set in a post-apocalyptic Australian landscape.

Tom Hardy plays Max Rockatansky, an ex highway patrolman who is haunted by his past and the memories of his family that he failed to protect. He teams up with Imperator Furiosa (Charlize Theron) in a breathtakingly intense battle for survival.

This film was 2 hours of insane CGI action, where the viewer is taken for an edge of the seat adventure ride. The plot doesn't have a great deal of depth, nor dialogue (Max barely speaks throughout the film), but it doesn't need it.

The action speaks more than loudly enough for itself. Well worth a watch.



Restaurant Reviews

"Lucy Liu" by Kate Smith ***23 Oliver Lane Melbourne***

If you can find the entrance (don't be fooled by the street view on Russell Street, the entrance is hidden down Oliver's Lane) – "an eclectic multicultural Asian eating and drinking" experience awaits. Lucy Liu certainly lives up to its name with delicious street style food best shared between friends. We ate steamed crispy fried quail, sticky beef buns, drunken chicken, wok fried calamari with pickled papaya and hot mint salad and steamed pork and chestnut dumplings. They were all delicious but the drunken chicken was my personal favourite. We ordered a mix of small dishes and salads but I would recommend ordering at least one larger dish if you don't want to leave hungry. There is also the option to "let Lucy choose" for \$55 per head for 5 dishes or \$65 per head for 7 dishes.

I couldn't fault this restaurant and would definitely recommend you try it.

"Noir" by Mark Lisle ***175 Swan Street, Richmond***

This restaurant is described as "Modern French", which I think just means it's a little less formal than traditional French restaurants.

The menu is probably also a bit less traditional than some French restaurants. You won't find any escargots or French fries on the menu but the French influence is still there.

The menu isn't extensive but there is still something for everyone and we absolutely loved the food. Virtually every wine on the wine list is French, which won't suit everyone. Not ideal if your dining partner only drinks NZ Sauvignon Blanc.

Overall, a very enjoyable dining experience.



Sporting Predictions – as seen by Brad Roach

AFL – Mid Season Review

As we approach the half way mark of the season the AFL ladder looks a lot different to what I expected at the start of the season. West Coast, Collingwood and the Giants have all performed better than expected whilst Port Adelaide and North Melbourne will now find it almost impossible to reach the top four. In my view there are 3 teams in contention of claiming this years AFL premiership, Fremantle, Hawthorn and Sydney. This year we will see two non Victorian teams play off for the premiership. My prediction, Fremantle to win their first premiership.

TENNIS

The French Open is currently in its second week. Novak Djokovic will win the men's title from Rafael Nadal while Petra Kvitova will upset Serena Williams to win the women's title.

The French Open will be followed by Wimbledon in less than a months time. Andy Murray will defeat Stan Wawrinka in the men's final. The women's final will be played by Maria Sharapova and Victoria Azarenka with Azarenka being the victor.

GOLF

The next major golf championship is the US Open to be held at Chambers Bay. Jordan Spieth will win his second major championship from Jimmy Walker and Rory McIlroy.

CRICKET

Australia is about to commence a two test series against the West Indies. Australia should win the series 2-0.

Australia will then head to England to contest The Ashes. Australia will retain The Ashes with a 3-1 victory over England.