



RUNDLES

CHARTERED ACCOUNTANTS

Rundles Report

tax news | views | clues

SPRING 2016

ATO small business benchmarks updated

The ATO has announced the latest benchmarks for small businesses. Based on the data from 2014 income tax returns and business activity statements, the benchmarks cover over 1.3 million small businesses.

ATO Assistant Commissioner Matthew Bambrick said one of the great things about the benchmarks was that they gave a lot of small-business owners peace of mind.

"If a small business is inside the benchmark range for their industry and the ATO hasn't received any extra information that may cause concern, they can be confident that they probably won't hear from us", Mr Bambrick said.

Mr Bambrick said some small businesses outside the benchmark range may simply be incorrectly registered, or the business intent may have changed since starting up. "These types of small administrative errors can be easily fixed by checking the previous year's tax return to see which business industry code was used and then updating it in the next return and on the Australian Business Register", Mr Bambrick said.

TIP: Business owners can use the benchmarks to compare their businesses with other similar businesses. They can also be used by the ATO to identify businesses that may not be meeting their tax obligations.

SMSF early voluntary disclosure service for contraventions

The ATO has introduced a new self managed super fund (SMSF) early engagement and voluntary disclosure service. Each year, an approved SMSF auditor must audit a fund. The auditor is required to report certain regulatory contraventions to the ATO using the auditor/actuary contravention report. The ATO encourages SMSF trustees to voluntarily disclose regulatory contraventions, which they can now do using the ATO's SMSF early engagement and voluntary disclosure service. This service provides a single entry point for SMSF trustees to engage early with the ATO in relation to unrectified contraventions.

TIP: Before using this service, the ATO says trustees should engage with an SMSF professional to receive guidance about rectifying the contravention so they have a rectification proposal to include with their voluntary disclosure. Please contact us for further information.

New tax governance guide for SMSFs

The ATO has released a new tax governance guide that can be used by SMSFs. The ATO has worked with businesses to design a guide to help private groups with tax governance. The guide also provides practical guidance about the key elements of SMSF governance. When managing an SMSF, trustees need to apply a high level of governance to meet the requirements of both the income tax and superannuation laws.

SMSF trustees can use this guide to develop an effective governance framework and to identify ways to improve existing governance practices within their SMSFs. Issues covered in the guide include:

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- corporate governance and tax governance;
- starting your business;
- business expansion;
- funding and finance;
- philanthropy;
- succession planning;
- exiting a business;
- retirement planning (covering SMSFs and CGT small business concessions); and
- estate planning.

Property developer entitled to capital gain tax concession

A taxpayer has been successful before the Administrative Appeals Tribunal (AAT) in arguing that a commercial property it acquired, developed and later sold for a profit of some \$40 million had been acquired as a capital asset to generate rental income, and not for the purpose of resale at a profit. The AAT reached this decision despite indicating that the taxpayer was essentially involved in “property development” activities on a broad analysis of its activities. As a result, the AAT found that the profit of \$40 million was assessable as a capital gain and entitled to the 50% capital gains tax (CGT) discount.

TIP: This case is a good example of the need to maintain contemporaneous documentation should there be a dispute with the ATO. The ATO has recently reiterated its focus on trusts developing and selling properties as part of their normal business and incorrectly claiming the 50% CGT discount.

Superannuation concessional contributions caps must be observed

An individual taxpayer has been unsuccessful before AAT in seeking to have excess superannuation concessional contributions for the 2014 financial year ignored. In addition to having a full-time job, the individual also held a number of casual part-time jobs. To grow his retirement savings, he salary sacrificed super, but he did not check on his super balances. In June 2015, the individual was advised by the ATO that he had excess concessional contributions of around \$11,000 for the 2014 financial year, an amount which was added back to his taxable income. He was therefore charged interest of \$250. The AAT praised the individual’s efforts to save for his retirement, but it said the circumstances did not amount to “special circumstances” in which it could invoke its powers to ignore the excess contributions.

TIP: The taxpayer’s ultimate tax bill in this case would have been the same if he had stayed under the relevant cap, albeit the tax bill would have been met by PAYG deductions over time. Even so, this case is a good reminder for to monitor your super balances to ensure you don’t have a tax burden caused by extra contributions being added back to your taxable income.

Help the kids buy homes, but watch for land tax

A taxpayer has been unsuccessful before the Queensland Civil and Administrative Tribunal in a land tax dispute in arguing that there was a “constructive trust” in relation to three residential properties. The taxpayer, a father, had purchased the properties for each of his three adult children to live in. There were agreements that the children would pay their parents rent and, upon the death of both parents, as specified in mutual wills, the property would be left to the respective child. The Queensland Commissioner of State Revenue assessed land tax on the aggregate value of the three properties as at 30 June 2013 and 30 June 2014 respectively. The Tribunal affirmed the Commissioner’s decision, holding that the taxpayer was the “owner” of the properties and it was not convinced that there was a “constructive trust”. Therefore, it held the exemption under the *Land Tax Act 2010* (Qld) to assess separately trust land did not apply. In this case, the Tribunal hinted at the possibility that in future assessments the taxpayer could, on sufficient evidence, persuade the Commissioner or Tribunal otherwise.

TIP: For parents looking to assist their adult children with buying homes, this case highlights the need to consider land tax implications. It is important to note that the land tax regimes differ from state to state. Please contact our office for assistance.

Share economy participants reminded of tax obligations

The ATO has reminded people who earn income in the share economy that they have tax obligations. The type of goods or services you provide, and how much you provide, will determine what you need to do for tax. Popular sharing economy services include:

- providing “ride-sourcing” services for a fare;
- renting out a room or a whole house or unit on a short-time basis;
- renting out a car parking space; and
- providing personal services, such as creative or professional services like graphic design and website creation, or doing odd jobs like deliveries and furniture assembly.

The ATO notes that you need to get an ABN if you are carrying on an enterprise providing goods and services through the sharing economy, and register for GST if:

- your turnover is \$75,000 or more per year; or
- you are providing ride-sourcing services, regardless of how much you earn from doing so.

TIP: No matter how much you earn or your reasons for providing goods or services, it's a good idea to maintain records of your income and expenses, so you can keep track of your activities and deal with tax obligations when they arise. Tax deductions may also be available in certain circumstances. Please contact our office for more information.

Itinerant worker claim denied, so travel deductions refused

An individual has been unsuccessful before the Administrative Appeals Tribunal (AAT), where he argued that he was an itinerant worker and was therefore entitled to claim tax deductions for travel expenses of some \$38,000 for the 2011–2012 income year.

The taxpayer worked a number of short-term jobs in various country towns across New South Wales. He and his wife had a house, but they would travel to the work locations, taking their car and a motorhome to live in. The individual argued he was entitled to claim deductions for car expenses and travel expenses such as meals and accommodation.

The AAT found that he was not an itinerant worker and that the expenses were private in nature and therefore not tax deductible. Among other things, the AAT noted that his duties did not in fact require him to travel between and stay near the different workplace locations in the course of his employment.

ATO flags retirement planning schemes of concern

The ATO has launched the Super Scheme Smart initiative to inform people about retirement planning schemes that are of increasing concern. According to the ATO, people approaching retirement are most at risk of becoming involved in schemes that are “too good to be true”. While retirement planning schemes can vary, you should be aware of some common features of problematic schemes. These schemes generally:

- are artificially contrived and complex, and usually connected with a self managed super fund (an SMSF);
- involve a lot of paper shuffling;
- are designed to leave you paying minimal or no tax, or even receiving a tax refund; and/or
- aim to give you a present -day benefit.

The ATO has previously issued statements concerning schemes that involve non-arm's length limited borrowing arrangements, dividend stripping and diverting personal services income.

TIP: The ATO encourages people to report their involvement in such schemes early. In specific circumstances, penalties may be reduced. Please contact our office for more information.

Deductibility for gifts to clients and airport lounge membership fees

The ATO has recently released the following Taxation Determinations:

- TD 2016/14 states that business taxpayers are entitled to a tax deduction for the outgoing incurred for a gift made to a former or current client, if the gift is made for the purpose of producing future assessable income. The gift is not deductible if the outgoing is capital, relates to gaining "non-assessable, non-exempt" income, or is non-deductible under another provision.
 - TD 2016/15 states that employer taxpayers are entitled to a tax deduction for annual fees incurred on an airport lounge membership for use by employees, if that membership is provided because of the employment relationship.
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Home exempt from land tax for "world-traveller"

An individual has been successful before the Victorian Civil and Administrative Tribunal (VCAT) in seeking the principal place of residence land tax exemption for his home located in Shoreham, Victoria, despite being a "world-traveller" whose wife lives overseas.

In 2003, the taxpayer was left the property in Shoreham in his mother's will. After moving into the property, he continued his interest of overseas travel, meeting and marrying his now wife, who continues to live in Canada. Broadly, for each of the five tax years in question, the taxpayer spent a couple of months in Australia at the property, with the balance spent mostly in Canada and other overseas destinations. He submitted that he considered the Shoreham property his "home", where he kept "all his personal treasures", among other things. He also noted "significant and communal family ties" in Victoria (including his three children and eight grandchildren in Melbourne) and "financial ties" to Australia.

In finding in favour of the taxpayer, VCAT said that in this day and age people are far more mobile than in the past, and it is not unreasonable that someone would have a base at a particular place to which they intend to return and resume occupation. In this regard, the Tribunal was of the view that the land tax exemption applied to the taxpayer's circumstances.

TIP: Land tax regimes differ from state to state. Please contact our office for assistance or more information.

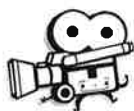
Government Back-flip on Non-concessional Contributions

The government recently abolished the proposed \$500,000 lifetime cap on non-concessional superannuation contributions, which was originally announced in the May 2016 Federal Budget. Instead, the Government have announced that the annual non-concessional contributions cap, which is currently \$180,000 p.a., will be reduced to \$100,000 p.a. from 1 July 2017. The 3 year 'bring forward' rule will correspondingly reduce to \$300,000.

However, superannuation members will not be able to make non-concessional contributions after 1 July 2017 once their total superannuation balance reaches \$1.6 million. (Importantly though, the current \$180,000 cap, or \$540,000 using the 3 year bring-forward, will remain in place until 30 June 2017).

This is one of a number of proposed superannuation changes that are due to be introduced on 1 July 2017. The draft legislation is expected to be released in the coming weeks and we will be consulting with all our SMSF clients who are likely to be affected in due course. In the meantime, if SMSF trustees would like to discuss any aspect of the proposed changes, please contact our office.

Noel's News



Film Review – by Maria Marson

CAPTAIN FANTASTIC

Starring: Viggo Mortensen, George MacKay, Samantha Isler

This movie is about a couple bringing up their six children in the wilderness of America. Isolated from society, Ben and Leslie devote their livelihood educating their children aged from 7 to 18 years to think critically, train them to be physically fit and athletic, guiding them without technology or mod cons and demonstrating the beauty of living with nature.

In the beginning of the movie the audience are made aware that Leslie is away in a hospital and has been for quite some time suffering from Bipolar Disorder. When Leslie suddenly takes her own life, Ben and his children commence a road trip into the outside world for the first time to attend her funeral.

Events surrounding the funeral forces Ben to re evaluate his choices regarding his children's upbringing, education and the outside world.

A moving and meaningful movie.

BRIDGET JONES'S BABY

Starring: Renée Zellweger, Colin Firth, Patrick Dempsey, Emma Thompson

The third instalment of the "Diary" franchise and it does not disappoint.

It begins with Bridget (*Renée Zellweger*) celebrating her 43rd birthday alone with a bottle of red, listening to love songs and contemplating her loveless life.

After her break up with Mark (*Colin Firth*) in Diary 2, Bridget throws herself into her work convinced her love life is doomed. On a weekend away with her work colleague, Bridget meets and has a one night stand with Jack (*Patrick Dempsey*). A few days later Mark re-enters her life and love blossoms again. Things couldn't be better for Bridget until she discovers she is pregnant and must figure out who the father is?

A great scene stealing performance from Emma Thompson as the Gynaecologist.

The movie has a lot of laughs and definitely one for the ladies.



Book Review – Mark Lisle

***Harry Potter and the Cursed Child* Review (Spoiler-free)**

Harry Potter and the Cursed Child is a two-part West End stage play written by Jack Thorne and based on an original new story by Thorne, J.K. Rowling and John Tiffany.

Attempting to write a sequel to the best-selling book series of all time rendering an entirely positive reception is frankly impossible. When combining this with the fact that *Cursed Child*, the play-script sequel to the *Harry Potter* series is a dress-rehearsal play-script, not a novel, Jack Thorne's new release is inevitably going to have it's naysayers. What makes this new release so frustrating then, as a fan of the original series, is how little it resembles Rowling's writing, both in style and quality.

The new characters, who I will not reveal in this piece, so as not to spoil for prospective readers, read as spoilt, ungrateful children, not teenagers, who communicate entirely in privileged rebellion and over-the-top teen angst. This is particularly frustrating when Thorne had a perfectly fine example of how teenagers can communicate without being unbearable in his previous novels. Prepare for writing that does not resemble Rowling's wit, immaculate characterisation or humorous British dialogue. There is a story device that you would have seen being used in the series before, though this time, with much less grace and respect for the original story. Finally, whilst there is a brief feeling of joy in seeing the beloved original characters again, this is quickly quelled, as their dialogue does not resemble their characters, but instead middling fan-fiction written by someone who has skim-watched the films.

Thorne's new release is going to make large profits whether I like it or not. However, if you are a fan of the series, or looking to be one, I can only recommend reading Rowling's much better original series instead.



Restaurant Reviews by Mark Lisle

Grand Hotel - 333 Burnley Street, Richmond

I certainly didn't expect this hotel in the heart of Richmond to contain a fine dining Italian restaurant. What was an even greater surprise was the quality of restaurant.

The ambience is informal, as you would expect from a pub in Richmond, although it is far from casual. The first thing that struck me was the waiting staff. They were helpful, attentive and very knowledgeable in terms of both the food and the wine and, of course, they were Italian. The food was just authentic Italian, not too try-hard, but quality. It was very difficult to choose from the menu but, in the end, I can report that the pasta was exquisite and so was the pork belly. However, I will be going back to sample the other dishes on the menu very soon. The prices are not over the top either, considering the quality of the food and the service.

The wine list is not extensive but has a good range of quality Italian and Australian wines. There's that word again - "*quality*". Everything about this restaurant is quality. Having just spent the best part of three weeks in Italy, the Grand Hotel does not pale in comparison to anything we saw over there. Try it, you will not be disappointed.



Sporting Predictions – as seen by Joshua Laing

AFL Grand Final

The Bulldogs final series has been a fairy tale so far and I think almost everyone who doesn't support Sydney will be going for the Bulldogs. I think the Doggies will ride the wave of support and break their 62 year drought by beating the Swans by 5 points in a hugely emotional Grand Final.

NRL Grand Final

Not a sport I follow closely however it's great to see the Storm in another NRL Grand Final. Given they beat Cronulla in the last round of the season I can't go past the Storm. I think this will be another fairly close one like the AFL and they will win 19 – 14.

Spring Racing Carnival

Given I haven't tipped a winner since Rogan Josh, take the below tips with a grain of salt.

Caulfield Cup -	<i>Old Ivanhowe</i>
Cox Plate -	<i>Winx</i>
Melbourne Cup -	<i>Big Orange</i>

