



R U N D L E S

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HAPPY CHRISTMAS 2016

Personal middle income tax rate cut on the way

The Federal Government has introduced a Bill which proposes to implement its 2016 Budget proposal to increase the third personal income tax threshold that applies to personal income taxpayers. The rate of tax payable on individuals' taxable incomes from \$80,001 to \$87,000 would fall from 37% to 32.5%.

The non-resident tax schedule would also be amended as a result of the Bill, increasing the upper limit of the first income tax bracket to \$87,000. A tax rate of 37% would apply to taxable income between \$87,001 and \$180,000, and the top marginal tax rate of 45% would remain for taxable income over \$180,000.

Shortly following the Bill's introduction in Parliament, the ATO issued new PAYG withholding tax schedules that reflect the lowered personal tax rate in the Bill. Effective from 1 October 2016, employers will be required to lower the amount of tax withheld for affected taxpayers to factor in the new lower tax rate. Any tax overpaid beforehand will be refunded by the ATO on assessment after the end of the 2016–2017 financial year.

Small business tax breaks in the pipeline

A Bill has been introduced in Parliament which proposes to:

- increase the small business entity turnover to \$10 million from 1 July 2016;
- increase the unincorporated small business tax discount from 5% to 16% over a 10-year period;
- increase the turnover threshold to qualify for the lower company tax rate; and
- lower the company tax rate on a schedule over 11 income years, reaching a unified company tax rate of 25% in the 2026–2027 income year.

Small business entities with aggregated turnover of less than \$10 million would be able to access a number of small business tax concessions, including, among others, immediate deductibility of small business start-up expenses, simpler depreciation rules and simplified trading stock rules.

TIP: The \$2 million threshold for the purposes of the small business capital gains tax concessions will be retained.

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The tax discount for unincorporated small businesses – introduced in the 2015–2016 income year – entitles individuals who are small business entities, or who are liable to pay income tax on a share of the income of a small business entity, to a tax offset equal to 5% of their basic income tax liability that relates to their total net small business income. This offset is capped at \$1,000. Although the proposed increases in the offset would increase the amount of offset an eligible individual may claim, the offset would remain capped at \$1,000.

Please contact our office for further information.

Single touch payroll reporting legislative changes

A Bill to establish a new reporting framework, Single Touch Payroll (STP), has been introduced in Parliament. Under the proposed changes in the Bill, “substantial employers” would be required to automatically provide payroll and superannuation information to the Commissioner of Taxation at the time the information is created. A number of related amendments aim to streamline employers’ payroll and superannuation choice processes by allowing the ATO to pre-fill and validate employee information.

Entities with 20 or more employees (substantial employers) would be required to report the following information to the Commissioner of Taxation:

- withholding amounts and associated withholding payments on or before the day by which the amounts were required to be withheld;
- salary or wages and ordinary time earnings information on or before the day on which the amount was paid; and
- superannuation contribution information on or before the day on which the contribution was paid.

The changes are proposed to apply from the first quarter beginning on or after the day the Bill receives Royal Assent.

In general, STP reporting will commence on 1 July 2018 for substantial employers and the related amendments will apply more broadly from 1 January 2017. In some cases, the Commissioner may defer these start dates by legislative instrument.

TIP: The ATO has issued a consultation paper, published on its website, which seeks comments on the ATO’s proposed administration of STP reporting.

Take care with work-related deduction claims, says ATO

The ATO has reminded individuals to make sure they get their deductions right this tax time. Assistant Commissioner Graham Whyte said the ATO has seen “claims for car expenses where logbooks have been made up and claims for self-education expenses where invoices were supplied for conferences that the taxpayer never attended”.

Mr Whyte said that in 2014–2015 the ATO conducted around 450,000 reviews and audits of individual taxpayers, leading to revenue adjustments of over \$1.1 billion in income tax. Mr Whyte said “every tax return is scrutinised”, and if a red flag is raised and the claims seem unusual, the ATO will check them with the taxpayer’s employer. In addition, Mr Whyte reminded taxpayers that this year the ATO has introduced “real-time checks of deductions for tax returns completed online”.

Please contact our office for further information.

ATO eye on SMSFs and income arrangements

The ATO is reviewing arrangements where individuals (at or approaching retirement age) purport to divert personal services income (PSI) to a self managed superannuation fund (SMSF) to minimise or avoid their income tax obligations.

The ATO notes the arrangement it has described in Taxpayer Alert TA 2016/6 and is encouraging taxpayers who have entered into such an arrangement to contact the ATO so it can help resolve any issues in a timely manner.

Where individuals and trustees come forward to work with the ATO to resolve issues, it anticipates that in most cases the PSI distributed to the SMSF by the non-individual entity would be taxed to the individual at their marginal tax rate.

Issues affecting SMSFs will be addressed on a case-by-case basis, but the ATO will take individuals’ cooperation with it into account when determining the final outcome.

TIP: The ATO has said that individuals and trustees who are not currently subject to ATO compliance action and who come forward before 31 January 2017 will have administrative penalties remitted in full. However, shortfall interest charges will still apply. Please contact our office for further information.

Social welfare recipients data-matching program

The Department of Human Services (DHS) has released details of a data-matching program which will enable it to match income data it collects from social welfare recipients with tax return-related data reported to the ATO. The data matching will assist DHS to identify social welfare recipients who may not have correctly disclosed their income and assets. In addition, data DHS receives from the ATO will be electronically matched with certain departmental records to identify people's non compliance with income or other reporting obligations.

DHS expects to match each of the approximately seven million unique records held in its Centrelink database. Based on noncompliance criteria, the DHS anticipates it will examine approximately 20,000 records in the first phase of the project. The category of people who may be affected by the data matching includes welfare recipients who have lodged a tax return with the ATO during the period 2011 to 2014.

Budget superannuation changes in place

The Federal Government has given effect to most of its 2016–2017 budget superannuation proposals. Here are some of the key changes:

Deducting personal contributions

From 1 July 2017 all individuals up to age 75 will be able to deduct personal superannuation contributions, regardless of their employment circumstances. Of course, such deductible contributions would still effectively be limited by the concessional contributions cap of \$25,000.

Pension \$1.6 million transfer balance cap

The total amount of accumulated superannuation an individual can transfer into retirement phase (where earnings on assets are tax-exempt) will be capped at \$1.6 million from 1 July 2017. Those with pension balances over \$1.6 million at 1 July 2017 will be required to "roll back" the excess amount to accumulation phase by 1 July 2017 (where it will be subject to 15% tax on future earnings).

Concessional contributions cap

This cap is to be reduced to \$25,000 for all individuals (regardless of age) from 1 July 2017. The concessional cap will be indexed in increments of \$2,500 (down from \$5,000 increments). Contributions to constitutionally protected funds and untaxed or unfunded defined benefit superannuation funds will be counted towards an individual's concessional contributions cap. However, any excess concessional contributions in respect of such funds will not be subject to tax, but instead limit the individual's ability to make further concessional contributions.

Note that the Government has decided to:

- dump the proposed \$500,000 lifetime cap on non-concessional contributions (which would have been backdated to 1 July 2007) – instead, the lifetime cap will be replaced by a reduced non-concessional cap of \$100,000 per year for individuals with superannuation balances below \$1.6 million;
- not proceed with the proposal to remove the work test for making contributions between ages 65 and 74; and
- defer to 1 July 2018 the start date for catch-up concessional contributions for superannuation balances of less than \$500,000.

Primary producer income tax averaging

Legislation has been introduced in Parliament that proposes to allow primary producers to access income tax averaging 10 income years after choosing to opt out, instead of the opt-out choice being permanent. The Federal Government says this will assist primary producers, as averaging only recommences when it is to their benefit (i.e. they receive a tax offset) and they can still opt out if averaging no longer suits their circumstances. The changes are proposed to apply for the 2016–2017 income year and later income years.

TIP: Primary producers have to meet basic conditions to be eligible for income averaging. Please contact our office for further information.

Research and development tax incentive rates change

The Federal Government has reduced the rates of the tax offset available under the research and development (R&D) tax incentive for the first \$100 million of eligible expenditure by 1.5 percentage points. The higher (refundable) rate of the tax offset has been reduced from 45% to 43.5% and the lower (non-refundable) rate of the offset has been reduced from 40% to 38.5%. Here are some relevant points to note:

- Eligible entities with annual turnover of less than \$20 million, and which are not controlled by an exempt entity or entities, may obtain a refundable tax offset equal to 43.5% of their first \$100 million of eligible R&D expenditure in an income year, and a further refundable tax offset equal to the amount by which their R&D expenditure exceeds \$100 million multiplied by the company tax rate.
- All other eligible entities may obtain a non-refundable tax offset equal to 38.5% of their eligible R&D expenditure and a further non-refundable tax offset equal to the amount by which their R&D expenditure exceeds \$100 million multiplied by the company tax rate.

The changes apply from 1 July 2016.

TIP: AusIndustry and the ATO manage the R&D tax incentive jointly. The R&D tax incentive aims to offset some of the costs of undertaking eligible R&D activities. A company must lodge an application to register within 10 months after the end of its income year. Please contact our office for further information.

SMSF related-party borrowing arrangements

The ATO has issued a taxation determination (TD 2016/16) concerning whether the ordinary or statutory income of a self managed super fund (SMSF) would be non-arm's length income (NALI) under the tax law, and therefore attract 47% tax, when the parties to a scheme have entered into a limited recourse borrowing arrangement (LRBA) on terms which are not at arm's length.

The ATO has also updated a practical compliance guideline (PCG 2016/5) which sets out the Commissioner's "safe harbour" terms for LRBAs. If an LRBA is structured in accordance with the guideline, the ATO will accept that the LRBA is consistent with an arm's length dealing and the NALI provisions (47% tax) will not apply. Trustees who do not meet the safe harbour terms will need to otherwise demonstrate that their LRBA was entered into and maintained consistent with arm's length terms.

TIP: The ATO has allowed a grace period to 31 January 2017 for SMSFs to restructure LRBAs on terms consistent with the compliance guideline's safe harbour terms (or bring LRBAs to an end before that date). Please contact our office for further information.

Travel expense and transport of bulky tools claim denied

An individual has been unsuccessful before the Administrative Appeals Tribunal in a matter concerning certain deduction claims for work-related travel expenses. The individual was a sheet metal worker whose home was located some 60 km from his employer's main work site. The individual made a number of work-related deduction claims. However, after various concessions made by both the individual and the Commissioner of Taxation, the remaining issue between the parties was whether the taxpayer was entitled to a deduction for work-related travel expenses.

The man argued that his employer required him to supply his own tools and that they were too bulky to be transported to work other than by car. He also questioned whether his employer provided secure storage facilities for his tools. In refusing the taxpayer's claim, the Tribunal noted it was the taxpayer's own admission that it was his own personal choice to transport his various hand tools out of security concerns. The Tribunal also said the taxpayer's security concerns were "not supported by objective evidence". The taxpayer's claim was therefore refused.

TIP: The ATO reminds individuals to make sure they get their deductions right. In certain circumstances it will contact employers to verify employees' claims. In this case, the ATO contacted the taxpayer's employer to check his claims, including whether the employer supplied safe storage facilities.

The ATO has cautioned taxpayers against arrangements that seek to minimise tax by creating artificial differences between the taxable net income and distributable income of closely held trusts. Deputy Commissioner Michael Cranston said the ATO is investigating arrangements where trustees are engineering a reduction in trust income to allow taxpayers to improperly gain favourable tax breaks, or sometimes to pay no tax at all.

Although he noted that many people use trust structures appropriately and within the law, Mr Cranston said the ATO has seen some trustees exploit the differences between trust net income and distributable income to have the net income assessed to individuals and businesses that pay little or no tax, and allow others to enjoy the economic benefits of the net income tax-free.

TIP: The ATO has identified problematic arrangements through the Trusts Taskforce's ongoing monitoring and reviews, and will continue to look for similar arrangements using sophisticated analytics. Please contact our office for further information.

GST and countertrade transactions

The ATO has issued a Practical Compliance Guideline which sets out the Tax Commissioner's compliance approach, in the context of GST, to entities that enter into countertrade transactions as part of carrying on their enterprise. "Countertrade" refers to the direct exchange of things by one entity for things provided by another entity, and does not include transactions where any of the consideration is monetary.

Each entity to a countertrade makes a supply and an acquisition. The Commissioner is aware of various practical problems in the context of these transactions and notes that the compliance and administrative costs may be unnecessarily burdensome where such transactions have no net revenue effect. Accordingly, the Guideline seeks to apply a practical compliance approach for certain countertrade transactions that are GST-neutral.

TIP: The Practical Compliance Guideline is only applicable in relation to GST – not for any other purpose or in relation to any other tax obligations and entitlements. It also only applies in specified circumstances, including where the countertrade transactions account for no more than approximately 10% of the entity's total number of supplies.

Companies held to be resident and liable to tax in Australia

In a long-running saga, the High Court has unanimously dismissed the appeals of four corporate taxpayers. The Court confirmed the taxpayers were Australian residents for income tax purposes, and therefore liable to tax in Australia on the profits they made from share trading activities on the Australian Stock Exchange.

In making this decision, the Court rejected the taxpayers' contention that because Justice Perram had in the first case found that the directors of each taxpayer were resident abroad, and because meetings of those directors were held abroad, then Justice Perram and the Full Federal Court should have held that the central management and control of each company was exercised abroad, and therefore that the companies were not residents of Australia for income tax purposes.

The High Court held that, as a matter of long-established principle, the residence of a company is a question of fact and degree to be answered according to where the company's central management and control actually occurs. Moreover, the Court emphasised the answer was to be determined by reference to the course of the company's business and trading, rather than by reference to the documents establishing its formal structure and other procedural matters.

The High Court further held that the fact the boards of directors of the companies were located in overseas countries was insufficient to locate the companies as "foreign residents" in circumstances where (as found in the first case) the boards of directors had abrogated their decision-making in favour of a Sydney-based accountant, and only met to mechanically implement or rubber-stamp decisions that he made in Australia.

Payment was assessable as "deferred compensation"

The High Court has unanimously dismissed a taxpayer's appeal and held that payments of US\$160 million made to him pursuant to an incentive "profit participation plan" after termination of his employment was income according to ordinary concepts. In particular, the Court found that the payments were "deferred compensation" for the services the taxpayer performed in his employment.

At the same time, the Court dismissed the taxpayer's claim that the amount was assessable as a capital gain on the basis that it did not represent the proceeds for the future right to receive a proportion of company profits he was entitled to.

ATO data-matching programs continue

The ATO has advised that it will continue with the following data-matching programs.

Share transactions

Data about share transactions will be acquired for the period 20 September 1985 to 30 June 2018 from various sources, including stock transfer companies. The ATO will collect full names and addresses, purchase and sale details, and other information. The program aims to ensure that taxpayers are correctly meeting their tax obligations in relation to share transactions. It is estimated that records relating to 3.3 million individuals will be matched.

Credit and debit cards

Data about credit and debit card transactions will be acquired for the 2015–2016 and 2016–2017 financial years from various financial institutions. The ATO will collect details (such as name, address and contact information) of merchants with a credit and debit card merchant facility and the amount and quantity of the transactions processed. The program seeks to identify businesses that may not be meeting their tax obligations. It is estimated that around 950,000 records will be obtained, including 90,000 matched to individuals.

Online selling

Data will be acquired relating to registrants who sold goods and services to an annual value of \$12,000 or more during the 2015–2016, 2016–2017 and 2017–2018 financial years. The ATO said data will be sought from eBay Australia and New Zealand Pty Ltd. The data will be used to identify those apparently operating a business but failing to meet their registration and/or lodgment obligations. It is estimated that between 20,000 and 30,000 records will be obtained.

Tax debt release applications refused

The Administrative Appeals Tribunal (AAT) has recently refused the applications of two individuals who sought to be released from their tax debts under the tax law.

Case 1

An individual suffering from Parkinson's disease had received income protection policy payments and sought to be relieved from the related tax debts, which totalled \$130,416. He said he was unable to dispose of his home or an investment property to pay the debts, as there were mortgages over the properties in favour of his wife.

The individual also argued that selling the properties would compound his illness and make it more difficult to meet his living needs. Although the AAT accepted that serious illness was a consideration, after reviewing the circumstances it held that the taxpayer would not suffer serious hardship if he was required to pay his tax liability. The AAT said the taxpayer did not make proper provisions to meet his tax liabilities and preferred to pay his other debts. Accordingly, relief was not granted.

Case 2

A Sunshine Coast real estate agent sought to be relieved from his tax debts, which totalled \$437,681 as at 11 August 2016. He argued he had an outstanding compliance history and that his circumstances were the result of a catastrophic financial event in 2005, among other things. The Commissioner pointed to the taxpayer's "unusually high level of discretionary spending, including on holidays, dining out and entertainment, which could be reduced". The AAT said the taxpayer had a "poor compliance history" and agreed with the Commissioner's description of his discretionary spending. The AAT was of the view that the taxpayer "simply gave priority to other matters and ignored his tax obligations". The AAT accordingly refused the application for relief.

Noel's News



Film Review – by Jordan Lisle

Fantastic Beasts and Where to Find Them

Starring: Eddie Redmayne, Colin Farrell, Katherine Waterston, Dan Fogler,

This movie is the latest adventure into J.K. Rowling's wizarding world. A spin-off from the well-known Harry Potter movie franchise, the most refreshing part about this movie was that it takes on its own storyline and characters, whilst still offering occasional references to the Harry Potter movies for the more diehard fans.

Set in the 1920's, the film follows Eddie Redmayne who is perfectly cast as Newt Scamander, a young, awkward and enthusiastic wizard. Newt travels the world searching for weird and wonderful magical creatures, of which he keeps thousands living in his magical suitcase.

The adventure really begins when this suitcase gets mixed up with that of Jacob (a non-magical human) played by Dan Fogler. The magical creatures were the most enjoyable part of this movie, the CGI ensures they are visually very impressive and they all have their own unique personalities that make them endearing to the audience.

This looks like being another successful movie franchise for J.K. Rowling and this film is well worth seeing for both Harry Potter fans and non-Harry fans alike. **7.5/10.**



Film Review – by Maria Marson

THE FENCER

(Showing at Palace Cinemas with English Subtitles)

Starring: Mart Avandi, Ursula Ratasepp, Liisa Koppel, Joonas Koff

The story is based on the legendary Estonian world champion Fencer, *Endel Nelis*.

The film is set in the early 1950's in a small Baltic town of Estonia invaded and taken over by the USSR. As the film begins we are reminded that for a period during the war, Germany occupied Estonia and forced young Estonian men to join the German army. In post war era the Russians sent anyone who wore a German uniform to a labour camp.

Living in Leningrad, Endel moves to the small town of Haapsalu to avoid being caught and sent to a labour camp. He takes up a teaching position as a physical education instructor at the local school. Endel quickly discovers that the kids are keen to learn but are frustrated because there's no equipment available.

Whilst becoming a role model and father figure to many of whom are orphaned he begins to teach the kids the art of fencing.

Seeing them gradually gain confidence he trains a group to take part in a national competition to be held in Leningrad. Endel risks his own safety to accompany these orphaned kids to the competition.

It is an intriguing movie building to a suspenseful climax.



Restaurant Reviews by Mark Lisle

Sagra

256 Glenferrie Rd, Malvern

Conservative Glenferrie Road Malvern needed something like Sagra. This is a 4 storey modern Italian restaurant/bar/art gallery with a very cool ambience. There is an open kitchen in the middle of the restaurant, interesting artworks and images hanging on the walls and a great rooftop bar.

We have been there twice and the food has been of a high quality both times. The menu is interesting with authentic European dishes but it also lends itself to casual dining. Some of the items on the menu are quite pricey but not over the top.

The wine list is not extensive and I think it is a little over-priced. I calculated 250+% mark-ups on RRP for some wines that are nothing out of the ordinary. I don't think the wine list does justice to the menu.

The service was fine – friendly and attentive. Sagra is open for breakfast, lunch and dinner, or you can just have a drink and a snack at the bar. Well worth a visit.



Sporting Predictions – as seen by Brad Roach

Tennis

International Tennis comes to Melbourne in January with the best tennis players competing for the 2017 Australian Open title. Andy Murray will take out the men's title with Angelique Kerber to take out the women's. Nick Kyrgios will bow out in the semi's.

Cricket

A three test series has just begun between Australia and Pakistan after the Aussies were defeated 2-1 to South Africa. Australia will be too good for Pakistan on the Australian pitches winning the series 2-1.

The Twenty20 Big Bash will be much more entertaining. After narrowly missing out on the title in the previous few years the Melbourne Stars will defeat the Melbourne Renegades in the final.



FORTHCOMING NUPTIALS

Congratulations to
Mark Lisle and Deborah Tarrant
for their January wedding.

Wishing you both a lifetime of happiness.

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



***OUR OFFICE WILL BE CLOSED FROM
MIDDAY 22 DECEMBER 2016
AND REOPENING
TUESDAY 3 JANUARY 2017***

