



RUNDLES

CHARTERED ACCOUNTANTS

the report

tax news | views | clues

Spring 2015

Small business company tax rate cut

Parliament has passed legislation which will implement a 2015 Budget measure to reduce the company tax rate from 30% to 28.5% for companies that are small business entities with an aggregated turnover of less than \$2 million. The company tax rate for corporate unit trusts and public trading trusts that are small business entities will also be reduced to 28.5%. For all other companies that are not small business entities, the corporate tax rate will remain at 30%.

Importantly, and also announced in the Budget, the maximum franking credit that can be allocated to a frankable distribution will be unchanged, so the same rate of 30% will continue to apply to all companies.

The amendments will apply for the first income year beginning on or after 1 July 2015 and for subsequent income years.

Accelerated depreciation write-off for SMEs

Legislative amendments to implement a 2015 Budget measure to support small businesses are now in place. The amendments allow a short-term accelerated depreciation write-off up to \$20,000 (up from the \$1,000 threshold) for assets acquired by small businesses. The increased threshold of \$20,000 will apply only to assets first acquired at or after 7.30 pm, legal time in the ACT on 12 May 2015, and first used or installed ready for use on or before 30 June 2017. From 1 July 2017, the threshold will revert to the \$1,000 threshold.

The rules around asset eligibility do not change. That is, if an asset was eligible for immediate deductibility under the \$1,000 threshold it will continue to be deductible under the new \$20,000 threshold.

The ATO has confirmed that both new and old/second-hand assets remain eligible.

If the entity is registered for GST, then the GST exclusive amount is taken to be the cost of the asset. Where the entity is not registered for GST, the GST inclusive amount is taken to be the cost of the asset.

An eligible small business can claim an immediate deduction for any software costing less than \$20,000, purchased off the shelf, that is used exclusively in the business. An eligible small business can also claim an immediate deduction for the cost of developing software for use exclusively in its business, where that cost is less than \$20,000. An exception applies if the entity has previously chosen to claim deductions for in-house software under the software development pool rules. In this case the costs need to continue to be allocated to that pool.

TIP: Remember to keep records of purchases to substantiate claims. The ATO will monitor the use of the accelerated depreciation. In this regard, the ATO has said, if "small businesses exhibit behaviours that indicate a high level of risk, they can expect a higher level of interaction from the ATO".

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

The legislative amendments also allow primary producers to claim an immediate deduction for capital expenditure on water facilities and fencing assets, and to deduct capital expenditure on fodder storage assets over three years. The accelerated depreciation write-off for primary producers will apply to assets that an entity starts to hold, or to expenditure an entity incurs, at or after 7:30 pm, by legal time in the ACT, on 12 May 2015.

TIP: The ATO has confirmed that eligible farmers will be able to choose whichever rules benefit them the most, and that this can be decided on an asset-by-asset basis.

R&D tax incentive rate reduction back in spotlight

In the 2015 Budget, the Government reiterated its intention to change the rates of assistance under the R&D tax incentive to 43.5% (down from 45%) for eligible entities with a turnover under \$20 million per annum and not controlled by a tax exempt entity, and to 38.5% (down from 40%) for all other eligible entities. This would apply from 1 July 2014. The Government has introduced legislation proposing to make the necessary changes.

Registration is a critical first step in accessing the R&D tax incentive. The deadline for lodging an application for registration is 10 months after the end of a company's income year.

With effect from 1 July 2014, a \$100 million threshold applies to the R&D expenditure for which companies can claim a concessional tax offset under the R&D Tax Incentive. For any R&D expenditure amounts above \$100 million, companies will still be able to claim a tax offset at the company tax rate.

TIP: The ATO is working closely with AusIndustry to identify taxpayers who may be involved in aggressive R&D tax arrangements. Taxpayers should make sure their claims are attributed to activities consistent with their AusIndustry registrations, and expenses (eg labour costs) were actually incurred on R&D activities.

Dependent spouse tax offset to be abolished

The Government has proposed legislative amendments to abolish the dependent spouse tax offset (DSTO) and expand the dependent (invalid and carer) tax offset (DICTO). Under the changes:

- a taxpayer who has a spouse who is genuinely unable to work due to invalidity or carer obligations is eligible for DICTO (worth up to \$2,471 (indexed)) if the taxpayer contributes to the maintenance of their spouse and meets certain income tests and other eligibility criteria; and
- taxpayers eligible for the zone tax offset (ZTO), overseas forces tax offset (OFTO) or overseas civilians tax offset (OCTO) can receive a further entitlement of 50% or 20% of their DICTO entitlement as a component of ZTO, OFTO or OCTO, depending on where they reside.

The amendments are proposed to generally apply to the 2014–2015 income year and to all later income years.

Age Pension changes on the way

The Government has proposed legislation to give effect to several changes affecting the Age Pension. The assets test free areas will be increased to \$250,000 for a single homeowner and \$375,000 for a homeowner couple. The assets test threshold for non-homeowners will be increased to \$200,000 more than homeowner pensioners, ie \$450,000 (single) and \$575,000 (couple). However, the assets test taper rate at which the Age Pension begins to phase out will be increased from \$1.50 of pension per fortnight to \$3.00 of pension for each \$1,000 of assets over the relevant assets test threshold. Those whose pension is cancelled will automatically be issued with a Commonwealth Seniors Health Card (CSHC) or a Health Care Card. The changes are proposed to take effect from 1 January 2017.

Work-related and rental property claims on ATO's watch list

Tax time is in full swing and the ATO has highlighted areas of concern for individuals during tax return lodgment time. High on the ATO's watch list is work-related expense claims that are significantly higher than expected. In particular, the ATO will be paying particular attention to claims that have already been reimbursed by employers and expenses that are, in fact, private. These items are not deductible.

TIP: You are entitled to claim deductions for some expenses that are directly related to earning your income. The expenses must not be private, domestic or capital in nature. If the expense is both private and work-related, you can claim a deduction for the work-related portion.

The ATO will also keep a keen eye on rental property deductions. The ATO will be playing close attention to:

- excessive deductions claimed for holiday homes;
- husbands and wives splitting rental income and deductions inappropriately for jointly owned properties;
- claims for repairs and maintenance shortly after the property was purchased; and
- interest deductions claimed for the private proportion of loans.

TIP: You can claim expenses relating to your rental property but only for the period your property was rented or available for rent (eg advertised for rent). If part of your property is used to earn rent, you can claim expenses relating to that part of the property. You will need to work out a reasonable basis to apportion the claim. Please contact our office for assistance.

Franked distributions funded by capital-raising under scrutiny

The ATO has cautioned companies about raising capital to fund franked distributions. The ATO is reviewing arrangements where companies raise new capital to fund franked distributions and release accumulated franking credits to shareholders.

In a typical case, the ATO is seeing companies issue rights to shareholders and use funds raised to make franked distributions via special dividends or an off-market share buy-back. The ATO said these arrangements are distinct from ordinary dividend reinvestment plans involving regular dividends.

ATO Deputy Commissioner Tim Dyce said the distributions are unusually large compared to ordinary dividends and occur at a similar time, and in a similar amount, to the capital raised. "So, a potentially large amount of franking credits is released with minimal net changes to the company's economic position. There is also minimal impact on the shareholders, except in some cases they may receive refunds of franking credits and in the case of buy-backs they may also get improved capital gains tax outcomes," he added.

The ATO considers that the arrangements may not be compliant with the tax law. In particular, the ATO has warned of the potential application of the general anti-avoidance rules. It has also warned that penalties may apply to participants.

"Contrived" dividend arrangements used by SMSFs flagged by ATO

The ATO is investigating arrangements where a private company with accumulated profits channels franked dividends to a self-managed super fund (SMSF) instead of to the company's original shareholders. As a result, the original shareholders escape tax on the dividends and the original shareholders (or individuals associated with the original shareholders) benefit as members of the SMSF from franking credit refunds to the SMSF.

The ATO was concerned that contrived arrangements are being entered into by individuals (typically SMSF members approaching retirement) so that dividends subsequently flow to, and are purportedly treated as exempt from income tax, in the SMSF because the relevant shares are supporting pensions. The ATO also warned the arrangement has features of dividend stripping which could lead the ATO to cancel any tax benefit for the transferring shareholder and/or deny the SMSF the franking credit tax offset.

Lump sum finalisation payment taxable

An individual has been unsuccessful before the Administrative Appeals Tribunal (AAT) in a matter concerning the tax treatment of a lump sum finalisation payment. The Tax Commissioner considered the payment was assessable as ordinary income. The taxpayer disagreed.

In 1995, the individual was diagnosed with a number of illnesses and was deemed unfit for work. She was paid monthly benefits under her employer's salary continuance policy, which she declared as assessable income. When that scheme discontinued, she commenced participation in a government scheme which continued the monthly payments. In 2008, she was informed that the Commonwealth intended to finalise its obligations and pay a final lump sum in July

2008. Under a deed of release, the scheme made a final payment of just over \$2 million to the taxpayer, less an amount of \$931,119.40 (being tax withheld and remitted to the ATO).

The AAT concluded the final payment was “income according to ordinary concepts” under the tax law. It was therefore assessable income to be taken into account in assessing the taxpayer’s taxation liabilities for the year ended 30 June 2009.

“Nomad” had continuity of association with Australia

An individual has been unsuccessful before the AAT in arguing that he had “let go” of Australia in 1999 to pursue his “nomadic” working life abroad and that his base of operations was in the United Kingdom.

The taxpayer was born in the United Kingdom, and worked as a diver and diving supervisor for overseas companies at many places around the world.

However, the AAT held he was a resident of Australia for the 2006 to 2011 income years for tax purposes. The AAT noted that the taxpayer’s physical, emotional and financial ties to Australia in those years were very strong. In particular, he jointly owned a home in Australia with his wife of over 23 years and his emotional ties to her were “clearly the most significant in his life”.

The AAT also held the taxpayer did not satisfy the rules to have his foreign sourced income treated as exempt income, nor was he entitled to any foreign tax offset as he had not produce evidence of any foreign tax paid on his overseas earnings.

The AAT therefore affirmed amended tax assessments which increased the taxpayer’s tax liability by around \$300,000 for the relevant income years.

The taxpayer has appealed to the Federal Court against the decision.

Small business tax discount on the way

In a surprise – but welcome – move in the 2015 Federal Budget, the Government announced a small business tax discount. The Government said that, with effect from 1 July 2015, individual taxpayers with business income from an unincorporated business that has an aggregated annual turnover of less than \$2 million will be eligible for a small business tax discount. The discount will be 5% of the income tax payable on the business income received from an unincorporated small business entity. The discount will be capped at \$1,000 per individual for each income year, and delivered as a tax offset through the individual’s end-of-year tax return.

Example: *A person running a business as a sole trader has an annual turnover of \$300,000 and taxable income of \$75,000. Under the current law, the business would pay tax, at the owner’s marginal tax rate, of around \$16,000 in total. Under the proposed new law, the \$16,000 tax bill on the business income would be reduced by 5%, or \$800. While there is no change in the owner’s tax rate, under the new law the owner would pay only \$15,200 tax.*

Legislation to implement the small business tax discount is currently awaiting formal enactment.

Ride-sharing provider challenges ATO’s GST view

Uber BV has lodged an application in the Federal Court to challenge the ATO’s view on GST in relation to ride-sharing drivers.

In May 2015, the ATO released information on its website providing its view of the tax obligations of people providing services in the sharing economy. The ATO was of the view that people who provide ride-sourcing (or ride-sharing) services were providing “taxi travel” under the GST law, and were therefore required to register for GST regardless of turnover, charge GST on full fare amounts, lodge BASs and report income in their tax returns. The ATO had given ride-sourcing drivers until 1 August 2015 to obtain their ABN and be registered for GST.

However, in a company statement, Uber argued that the ATO’s position unfairly targets Uber’s driver-partners. In the meantime, the ATO has maintained its view that people who provide ride-sourcing services are providing “taxi travel” under the GST law, and that it expects all ride-sourcing drivers to be registered for GST.

TIP: According to the ATO, although ride-sourcing drivers need to account for the GST on full fare amounts, they can also claim GST credits for relevant business expenses. The ATO says drivers must report income earned from providing ride-sourcing services; however, they can also claim deductible business costs. Please contact our office for assistance.

Crowdfunding for small proprietary companies: consultation

Crowd-sourced equity funding (or equity crowdfunding) is an innovative form of fundraising that allows a large number of individuals to make small equity investments in a company.

The Government is looking at ways to facilitate equity crowdfunding and has released details of its proposed regulatory framework for public companies. However, a key part of the Government's public consultation is to also examine whether its proposed regulatory framework for public companies should be extended to proprietary companies.

The Government notes that proprietary companies are subject to limitations under the Corporations law on the way they can raise funds. These limitations make it difficult for proprietary companies to effectively use equity crowdfunding to raise funds from a large number of small shareholders. Accordingly, the Government is seeking views on way it could amend the law to make capital raisings by small proprietary companies more flexible. Public consultation closed on 31 August 2015.

SMSFs in pension phase need to exercise care

The ATO is of the view that most trustees of self managed super funds (SMSFs) do the right thing. However, it has identified a number of issues concerning SMSFs in pension phase, noting the growing number of people expected to receive a pension in the next 10 years.

The following gives a snapshot of some key issues identified by the ATO:

- **Setting up and starting a pension:** In the pension establishment phase, a fundamental and critical question that should not be overlooked is whether the member has reached preservation age. The ATO has reminded trustees that the legislated rise in the preservation age came into effect from 1 July 2015 – this affects people born after 30 June 1960.
- **Paying a pension:** One of the most common reasons for an SMSF in the pension phase not being entitled to applicable income tax exemptions under the exempt current pension income (ECPI) provisions is that the trustee has failed to pay the required annual minimum pension amount to a member.

Ceasing a pension: The ATO is starting to see a range of issues related to what happens in the unexpected event of a pensioner's death. For example, is the nominated reversionary beneficiary entitled to receive a death benefit pension under the terms of the SMSF's deed and the law?

TIP: The ATO is starting to see liquidity problems associated with real property exacerbated for SMSFs in pension phase where the asset has been acquired under a limited recourse borrowing arrangement (LRBA). As the income of the SMSF is diverted to meeting the loan obligations of the fund, the ATO has found there can be insufficient funds remaining to make the required pension payments. There is also an added level of complexity to LRBAs involving related parties where the trustees fall foul of the arm's-length rules in an effort to try to overcome their liquidity issues. If you have any concerns, please contact our office for further information.

ATO data-matching: immigration visa holders

The ATO has announced that it will acquire names, addresses and other details of visa holders, their sponsors and migration agents for the 2013–2014, 2014–2015, 2015–2016 and 2016–2017 financial years from the Department of Immigration and Border Protection (DIBP). The purpose of the data-matching program is to ensure that taxpayers are correctly meeting their taxation obligations. It is estimated that records relating to one million individuals will be obtained.

The ATO has been data-matching visa data from the DIBP (and its predecessors) against ATO data holdings for a number of years. The ATO said this electronic data-matching has been very effective in assisting to mitigate compliance risks. According to the ATO, empirical evidence from earlier data-matching programs has confirmed an elevated level of risk within the subset of taxpayers who are first-time lodgers with DIBP links.

Rundles Mailhouse Administrative Service

Are you aware of Rundles Mailhouse Administrative Service? It is ideal for SMSF's but can also be used for other investment portfolios. In summary the service works as follows:

- All investment mail comes via our office (ie. bank statements, share registry statements, income statements, invoices, etc.);
- We file or action the correspondence as appropriate;
- Where the correspondence requires consideration from you we will forward to you or your investment manager accordingly;
- By the end of the financial year, we will usually have all the information and source documents we need to complete the annual financial statements and tax return – you don't have to do anything.

Our standard cost for this service is \$275 per quarter (including GST). Please contact Maria Marson of our office should you wish to enquire further.

Noel's News



Film Review – by Corey Lisle ***The Gift***

Starring: Jason Bateman, Rebecca Hall, Joel Edgerton

The Gift, written and directed by Australia's own Joel Edgerton, follows newlywed couple Simon (Jason Bateman) and Robyn (Rebecca Hall), whose lives are thrown into a harrowing tailspin when Gordo (Joel Edgerton), an acquaintance from Simon's past, continues to bring strange gifts to their door and threatens to reveal a scandalous secret from their childhood. Never doubting his audience's intelligence, Edgerton has created a smart, tense and gripping entry into the thriller genre.

To say anymore about the film's plot would be too much of a giveaway, as this is truly a film you need to know nothing about before witnessing it. It's hard to believe this is Edgerton's first ever project as director, as his beautifully framed and choreographed slow-moving camerawork conveys a tone of fear and expectation. He also masterfully uses these slow-panning shots, as well as his incredibly written screenplay, to maintain the film's expertly crafted slow pace, revealing information about characters slowly as the film progresses and keeping audiences continually on the edge of their seats throughout. If the film suffers at all, it's in its use of unnecessary jump-scares, a cheap trope of lesser grade horror films that the quality of this film would suggest it is above.

Where this film really shines in its performances is with Edgerton showing he is a jack-of-all-trades in his portrayal of Gordo, blending a friendly nature with an unsettling awkwardness that is clearly inspired by *Psycho*'s Norman Bates, without copying it. Hall is also excellent in playing the film's moral core, yet the clear hero of the cast is Jason Bateman. Having previously never stretched his acting potential in comedy, Bateman's Simon is perfectly subtle, his snarky comments and looks hurt his wife enough to demonstrate his flawed nature, whilst his cynical view of their situation maintains his likeability to the audience.

As I mentioned, Edgerton has created a slow-burning thriller, the pace of which demands the audience's patience, rewarding them with a beautifully directed, acted and scripted film with a devastatingly chilling finale. 4/5 stars.



Restaurant Reviews by Mark Lisle

“GG”

150 Clarendon Street, East Melbourne

GG is a modern European restaurant on Clarendon Street, East Melbourne, only a couple of hundred metres from the MCG.

I've been there a couple of times recently and thoroughly enjoyed it both times. There are some great sharing plates that are ideal for entrées, as well wood-fire pizzas, pasta dishes and some good-sized mains. Our favourites were the lamb ribs, arancini, chicken parma and the rotisserie. The wine list is diverse with a good range of local and imported wines and beers to suit most budgets.

The atmosphere is casual, with a great outlook over Fitzroy Gardens. GG also caters for functions with private and semi-private areas. It is ideal for group bookings but just as good for small groups, or even just a drink at the bar. Put it on your list.



Book Review – Mark Lisle

The Cuckoo's Calling and The Silkworm – by Robert Galbraith (aka JK Rowling)

I've just finished these books, which are JK Rowling's first venture into crime novels. The books' main characters are private detective Cormoran Strike, a war-hero son of a rock-star turned private eye, and his determined young assistant Robin Ellacott. Both characters are compellingly engaging. However, it is the absorbing plots and Rowling's superb writing style that make these books such compulsive reading.

I'm not sure why JK Rowling chose to write these books under a pseudonym (perhaps so people would judge the books on their merits rather than her reputation) but she proves that she is equally at home writing about murder and sleuths as she is with wizards and witches.

I think it is better to read the books in order (ie. Cuckoos Calling first) to fully appreciate the characters' evolution but the storylines are different so it isn't necessary. I understand there is now a third book in the series called, *Career of Evil*, which is due for release in October. I'll certainly be reading it and you will too, if you read the first two.



Sporting Predictions – as seen by Brad Roach

AFL

Hawthorn and West Coast will battle it out for the 2015 premiership. Hawthorn have been premiership favourites for much of the year and will take out this year's premiership making it three in a row. Jordan Lewis will win the Norm Smith Medal. The winner of the Brownlow Medal will be Nate Fyfe with Patrick Dangerfield and Matt Priddis to take out the minor placing's.

Horse Racing

The Spring Racing Carnival is fast approaching. The winner of the major races will be:

Cox Plate – Contributor

Caulfield Cup – Hartnell

Melbourne Cup – Fame Game

Rugby League

The Sydney Roosters have been the dominant team in the NRL all season. Their form will continue throughout the finals series which will see them defeat the North Queensland Cowboys 16-10 in the Grand Final.