



RUNDLES

CHARTERED ACCOUNTANTS

Rundles Report

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Autumn 2018

ATO guidelines: profit allocation within professional firms

The ATO has become aware that its guidelines on Everett assignments and the allocation of profits within professional firms are being misinterpreted for some higher-risk arrangements, including the use of related-party financing and self managed superannuation funds (SMSFs).

The guidelines have been suspended from 14 December 2017 to allow the ATO to consult with stakeholders on replacement guidelines.

Anyone considering new arrangements beginning after the cut-off date should contact the ATO to discuss the arrangement risk profile and the possibility of a private ruling.

Arrangements beginning before the cut-off date that comply with the guidelines and do not exhibit high risk factors shouldn't require action, but arrangements with high risk factors may be subject to ATO review.

TIP: The ATO encourages anyone who is uncertain about how the law applies to their existing circumstances "to engage with us as soon as possible".

Housing affordability measures now law

Legislation has been passed to implement the 2017–2018 Federal Budget housing affordability measures. The following will start on 1 July 2018:

- the First Home Super Saver (FHSS) Scheme, which allows individuals to use specific amounts from their super to buy or construct a first home; and
- the option for individuals aged 65+ to make "downsizing" contributions of up to \$300,000 to their super from selling a home they have owned for at least 10 years.

TIP: An exemption from meeting the FHSS Scheme "first home" requirement will be available for people suffering financial hardship. "Financial hardship" criteria are likely to include circumstances where someone has limited savings, is currently renting and had a past interest in a home that was in a cheaper real estate market or when the person was in a relationship that has since broken down.

Fringe benefits tax: employees' private use of vehicles

The ATO has issued guidance for employers on determining an employee's private use of a vehicle.

Draft Practical Compliance Guideline PCG 2017/D14 should provide more certainty and transparency about the circumstances where the ATO won't apply compliance resources to investigating whether private vehicle use meets the car-related FBT exemptions.

Eligible employers who rely on this guideline won't need to keep records to prove that an employee's private use of a vehicle is minor, infrequent and irregular.

TIP: The guideline includes specific eligibility conditions for employers and their employees' vehicle use. Talk to us about whether the new guidance applies to your FBT circumstances.

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Tax consequences of trust vesting

The ATO has issued a long-awaited ruling on trust vesting, including changing a trust's vesting date and the CGT and income tax consequences of vesting.

TIP: A trust's "vesting date" is the day when the beneficiaries' interests in the trust property become fixed. The trust deed will specify the vesting date and the consequences of that date being reached. Vesting does not, of itself, ordinarily cause the trust to come to an end or cause a new trust to arise. In particular, the underlying trust relationship continues after vesting while the trustee still holds property for the takers.

The key points in the draft ruling are that:

- before vesting, it may be possible to extend the vesting date (by applying to a court or by the trustee exercising a power to nominate a new vesting date);
- it is too late to change the vesting date once it has passed (and the ATO says it is unlikely that a court would agree to do so); and
- continuing to administer a trust in a way that is inconsistent with the vesting terms can have significant CGT and income tax consequences.

Disclosing business tax debt information to credit agencies

The Federal Government has released draft legislation and a draft legislative instrument that, when passed, will authorise the ATO to disclose a business's tax debt to registered credit reporting bureaus where the business has not effectively engaged with the ATO to manage the debt.

The draft legislation intends to place tax debts on a similar footing as other debts, to encourage timely payment or engagement with the ATO for businesses that want to avoid having their debt information affect their creditworthiness. Disclosure to credit reporting bureaus will only be permitted if the ATO has given the taxpayer at least 21 days' notice beforehand.

Taxing employee share scheme dividend equivalent payments

The ATO has made a new determination that dividend equivalent payments made under an employee share scheme (ESS) are assessable to an employee as income when they receive the payment for or in connection with services they provide as an employee.

A "dividend equivalent payment" is a cash payment to an employee participant and beneficiary of an ESS funded from dividends on which the trustee has been assessed in previous income years because no beneficiary of the trust was entitled to the income at the time.

A trustee that makes a dividend equivalent payment under an ESS must withhold an amount from the payment, even though the trustee is not the employee's employer.

TIP: The ATO offers a safe harbour from such payments being treated as income under specific circumstances. Get in touch with us to talk about whether your situation makes you eligible.

The new determination applies to dividend equivalent payments paid under the terms and conditions attached to ESS interests granted on or after 1 January 2018.

Superannuation integrity changes

The Government has released a consultation paper and exposure draft legislation to give effect to the following superannuation taxation integrity measures it announced in the 2017–2018 Federal Budget:

- the non-arm's length income (NALI) rules in s 295-550 of the *Income Tax Assessment Act 1997* for related-party superannuation fund transactions will be expanded from 1 July 2018 to also include expenses not incurred that would normally be expected to apply in a commercial arm's length transaction (eg reduced interest expenses, brokerage, accountancy fees or legal costs); and
- a member's share of the outstanding balance of a limited recourse borrowing arrangement (LRBA) will be included in the member's "total superannuation balance" for new LRBAs entered into on or after 1 July 2018.

The measures are designed to ensure that related-party transactions with super funds and LRBAs can't be used to circumvent the reduced contribution caps that apply from 1 July 2017. The changes should generally not affect LRBAs entered into with unrelated third parties for commercial rates of interest (and other expenses).

Guidance for SMSFs on transfer balance reporting

The ATO has released further guidance on when SMSFs need to report events affecting their members' transfer balance accounts (by making a transfer balance account report, or TBAR) for the purposes of the \$1.6 million pension cap.

From 1 July 2018, SMSFs that have any members with a total superannuation balance of \$1 million or more must report events impacting that member's transfer balance account within 28 days after the end of the quarter in which the event occurs.

SMSFs where all members have total super balances of less than \$1 million can choose to report events which impact their members' transfer balances at the same time that the fund lodges its annual return.

The guidance also covers reporting requirements for retirement phase income streams and commutations (including commutation authorities).

Bill to implement housing affordability CGT changes

As part of the 2017–2018 Budget, the Federal Government announced a range of reforms intended to reduce pressure on housing affordability. Legislation has now been introduced into Parliament that proposes to:

- remove the entitlement to the capital gains tax (CGT) main residence exemption for foreign residents; and
- modify the foreign resident CGT regime to clarify that, for the purpose of determining whether an entity's underlying value is principally derived from taxable Australian real property (TARP), the principal asset test is applied on an "associate inclusive" basis.

The Bill also proposes to amend the tax law to provide an additional discount on CGT for affordable housing. The discount of up to 10% will apply if a CGT event happens to an ownership interest in residential property used to provide affordable housing.

TIP: The main residence exemption means that CGT doesn't apply for a capital gain or loss that an individual makes from selling their main residence. A CGT discount applies if the dwelling was their main residence for only part of the time they owned it, or they partly used it to produce assessable income.

Changes to small business CGT concessions

Treasury has released draft legislation to make sure that taxpayers will only be able to access the small business CGT concessions for assets that are used (or held ready for use) in the course of a small business or are an interest in a small business.

The draft also proposes additional conditions to be satisfied from 1 July 2017 when applying the small business CGT concession for capital gains related to a share in a company or an interest in a trust.

TIP: A range of tax concessions are available for small businesses. Talk to us to find out how your business could benefit.

Bill to change residential property GST arrangements

A Bill has been introduced into Parliament that, when passed, will require purchasers of new residential premises and new subdivisions of potential residential land to pay the goods and services tax (GST) on the purchase directly to the ATO as part of the settlement process from 1 July 2018.

TIP: Under the current law, the supplier of the property (eg the developer) is responsible for paying the GST to the ATO when lodging a business activity statement (BAS). This can happen up to three months after settlement.

The new measure was announced in the 2017–2018 Federal Budget. It is intended to speed up the GST payment process, and to deal with the problem of some developers dissolving their business and setting up a new entity to avoid paying GST (a form of "phoenix" tax avoidance).

Moving to combat the black economy

The Black Economy Taskforce was established in 2017 “to develop an innovative, forward-looking whole-of-government policy response to combat the black economy in Australia, recognising that these issues cannot be tackled by traditional tax enforcement measures alone”. In May 2017 the taskforce made its initial recommendations, which it based on foreign jurisdiction experiences, consultation with stakeholders and anecdotal evidence it had received.

TIP: The black economy includes people who don't correctly report and meet their tax obligations, and people who operate entirely outside the tax and regulatory system.

The Government accepted a number of the taskforce's recommendations, and has now introduced a Bill into Parliament, proposing to combat the black economy by:

- prohibiting the production, distribution and possession of sales suppression tools, which are typically used to remove or alter transaction information recorded by point-of-sale (POS) systems;
- prohibiting the use of electronic sales suppression tools to incorrectly keep tax records; and
- requiring entities that have an ABN and that provide courier or cleaning services to report to the ATO (from 1 July 2018) information about transactions that involve engaging other entities to undertake those services for them.

Corporate tax avoidance: latest ATO targets

The ATO has provided an update on its latest focus areas and the compliance projects it is undertaking to reduce corporate tax avoidance. These include:

- investigating possible manipulation of the thin capitalisation rules, including 27 taxpayers' asset revaluations totalling \$78 billion;
- looking into arrangements that move intellectual property assets and rights offshore to multinational entities' related parties;
- focusing on the treatment of oil and gas industry labour costs associated with high-value asset construction;
- examining the arm's length conditions operating in pharmaceutical industry arrangements;
- identifying tax professionals and advisers who are promoting unacceptable tax planning; and
- looking at the tax affairs of various major e-commerce players.

Social security means testing of lifetime retirement income streams

The Department of Social Services (DSS) has released its proposed means testing rules for pooled lifetime retirement income streams.

The pension standards were amended from 1 July 2017 to allow for more tax-exempt lifetime superannuation income stream products that enable pooling risk to manage longevity risk. Lifetime pensions and annuities that meet these new standards qualify concessional tax treatment.

The DSS proposes to consider the following amounts when assessing such pooled lifetime income streams as part of social security means testing:

- income test: 70% of all income paid from the income stream product; and
- assets test: 70% of the purchase price of the product until the person reaches the age of their life expectancy at the time they made the purchase, and 35% from then on.

TIP: Under the new rules, deferred super income stream products would receive the same asset test assessment as products where payments begin immediately.

ATO now issuing excess transfer balance determinations

The ATO has advised that it is now sending out excess transfer balance (ETB) determinations to individuals who have exceeded their superannuation transfer balance cap and not taken steps to remove the excess amount.

TIP: The transfer balance cap, currently set at \$1.6 million, is a limit on the total amount of super that can be transferred into retirement phase. You can make multiple transfers as long as the total amount transferred remains below the cap.

Self managed superannuation fund (SMSF) members that had exceeded their transfer balance cap by \$100,000 or less on 1 July 2017 had until 31 December 2017 to remove the excess capital from retirement phase. If they didn't do so, they will now have to remove the excess capital and ETB earnings, and also pay ETB tax.

Windfarm grant was an assessable recoupment

The Full Federal Court has dismissed a taxpayer's appeal and held that a Commonwealth grant of almost \$2.5 million for the establishment of a windfarm was an assessable recoupment (*Denmark Community Windfarm Ltd v FCT* [2018] FCAFC 11).

In May 2011, the taxpayer was given a renewable energy grant for 50% of the project costs it incurred in constructing two wind turbines. The grant was paid in instalments on the completion of identified project milestones.

The ATO made a private ruling that the grant would be assessable income. The taxpayer argued against the ruling, but the Full Federal Court dismissed the taxpayer's appeal.

Fringe Benefits Tax (FBT)

The FBT year ends on 31 March 2018 and our established FBT clients will be receiving their FBT questionnaires soon. If you are unsure whether your business is FBT compliant, download a copy of our 2018 FBT checklist or contact our office to request a hard copy to be sent to you.

Noel's News



Restaurant Review by Mark Lisle

Riserva Wine – 395 Wattletree Road, Malvern East

Sleepy Malvern needed a place like Riserva. Located just opposite Central Park, Riserva is a sophisticated, European style restaurant and wine bar. A few have come and gone over the years but the locals will be hoping that this one is here to stay.

Whether you just want to have a drink and graze at the wine bar or settle in for lunch or dinner, Riserva has it covered. You can even just pop in to grab an interesting bottle of wine to bring home.

The menu is not extensive, although there are a number of small sharing plates and there is always something from the "specials" that is appealing. The charcuterie is also very good.

The wine list is extensive and everything on the list is sourced from Europe. There are no Australian or New Zealand options, which may disappoint some people. It is also worth mentioning that there are not too many cheap options on the wine list. Being entirely European, there are a lot of wines that you won't have heard of but the waiters are very knowledgeable and helpful in this regard. In fact, the service generally is excellent.

The meal prices at Riserva are certainly not over the top but the wine prices are likely to get you if you settle in. We love Riserva but I appreciate that it won't be everyone's cup of tea. Try it for yourself.



Film Review – by Matthew Balcam

“Black Panther”

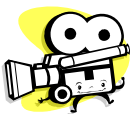
Black Panther focuses on the fictional African country ‘Wakanda’ and its new king T’Challa (Chadwick Boseman). Wakanda poses as a third world country, but is actually the most technologically advanced country on the planet thanks to its unique mineral ‘Vibranium’.

Black Panther starts shortly after Captain America – Civil War, (but don’t worry if you missed it, the movie works as a stand alone), with T’Challa returning home to Wakanda to be confirmed as its new king.

The costumes and imagery are fantastic, blending a tribal African style with a science fiction tech, to come up with some truly brilliant creations. Cloak shields and armoured Rhinos are amazing.

The whole cast is great but particularly noticeable is Killmonger (Michael B. Jordan), he delivers a stellar performance where you can’t help feeling sorry for him and hating him in equal measure. Shuri (Letitia Wright) is also particularly notable, playing the comic relief as T’Challa’s younger sister and the country’s technological prodigy and provides most of the films laughs. Indeed the weakest performance is probably from Chadwick Boseman, but it isn’t the fault of Boseman, but rather of the character, T’Challa, who is somewhat uninteresting and bland. This is a flaw in the otherwise fantastic movie only because he is the main focus of the film. But thankfully, his stellar supporting characters more than make up for this.

Black Panther is a stellar film and a welcome spice up to the standard Marvel Heroes films that we have been heartily supplied with over the last few years. **(8/10)**



Film Review – by Niall Byrant

“Red Sparrow”

Starring: Jennifer Lawrence, Joel Edgerton, a lot of non-Russians

Went along to see the colourful animal film this week, no not Black Panther but Red Sparrow.

It stars Jennifer Lawrence and is an old fashioned spy drama/thriller set in modern times in Russia. Jennifer plays a Russian Prima ballerina cum spy, under trying circumstances with the drama unfolding as to will she or won’t she survive, who is the mole, and whose side is she on.

Plenty of thrills and spills as per most spy films such as the Bourne series. I enjoyed the film and I thought Jennifer was great but if you’re not a fan of hers then I wouldn’t bother as the whole film is set up for her to do her thing. There are a few other well known names in the cast, but pretty much everyone who is not Russian, playing a Russian and Joel Edgerton an Aussie playing an American. **(6.5/10)**



Sporting Predictions – as seen by Evan Thiveos

AFL

The 2018 AFL season is almost underway with supporters of all teams excited as this will be the closest contested season in recent times. About a dozen teams look likely to be top 8 contenders. My top 8 for this season is Adelaide, GWS, Geelong, Sydney, Richmond, Port Adelaide, Essendon and Melbourne. The grand final will be played out between Richmond and Adelaide with the Crows taking revenge for last year's loss. Looking ahead to the Brownlow Medal, the top three vote getters will be Dustin Martin, Josh Kelly and Tom Mitchell. Lance Franklin will win the Coleman Medal.

If you would like to take part in the Rundles Footy Tipping Competition or One Tip Competition in 2018, please check out our website for all of the rules and regulations, and contact our office to sign up.

GOLF

The climax of the golfing calendar is almost upon us with the US Masters not far away. Dustin Johnson has had a great year and will be tough to beat, with Tiger Woods and Jason Day rounding out the top three in what will be a close finish.

SOCCER – A LEAGUE / UEFA CHAMPIONS LEAGUE

The A-League competition is approaching the end of the 2017-2018 season. It'll be great to see a local side win it, however, Sydney FC will be the A-League premiers and champions beating Melbourne City FC 3-1 in the final. The Champions League is in the quarter final stages and the hot favourites are Manchester City and Barcelona, which is no surprise considering how well both teams have performed in their domestic competitions. Barcelona will beat City 2-0 in Kiev in the 26 May final.

