



# RUNDLES

CHARTERED ACCOUNTANTS

## client report

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*Merry Christmas 2015*

### Excessive deduction claims on holiday homes on ATO hit list

The ATO is increasing its focus on holiday home investors and, in particular, whether they are correctly claiming deductible expenses. A key concern is when people make claims for expenses when the property was not available for rent. The ATO has recently advised that it will be sending letters to taxpayers in approximately 500 postcodes across Australia, reminding them to only claim the deductions they are entitled to, for the periods the holiday home was rented out or was genuinely available for rent.

**TIP:** Holiday home investors should be aware that the ATO appears to be taking a broad approach in monitoring rental deductions. Where relevant, it may be prudent for holiday home investors to take this opportunity to review the rules surrounding holiday home tax deductions to ensure that any risks or issues are addressed in a timely manner. It may also be a good idea to review records now so that you are prepared should the taxman come knocking. If you have any questions about this issue, please contact our office.

### Payroll tax grouping – know the rules

For payroll tax purposes, businesses may be grouped with other businesses if there is a link between the companies. Businesses may be deemed linked in several ways. One of the most common ways is where two or more businesses are controlled by the same person or persons. However, there are specific exclusions under the payroll tax grouping rules which could apply for a business depending on the circumstances. This will require making an application to the relevant state or territory revenue authority.

When a group exists, only a single tax-free threshold will apply to the whole group. That is, the separate businesses themselves will not each have the benefit of the tax-free thresholds. Each member of the group will be liable for any outstanding payroll tax of the other group members. Therefore, it is important for businesses to identify whether they could be grouped for payroll tax purposes.

**TIP:** The potential eligibility for exclusion from the payroll tax grouping rules should be assessed. Furthermore, as business conditions may change and as part of the overall management of a business, it may be prudent to regularly examine your business's payroll tax obligations.

### No GST credits for mining accommodation

The Full Federal Court has dismissed a taxpayer's appeal from an earlier decision which held it was not entitled to input tax credits for acquisitions relating to providing accommodation to employees and contractors working in the Pilbara.

[www.rundles.com.au](http://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

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The taxpayer, Rio Tinto Services Ltd, was the representative member of the Rio Tinto Ltd GST group, which carried on a large-scale mining enterprise in outback Australia. The group provided and maintained residential accommodation for its workforce in various locations, comprising some 2,300 houses and apartments. This was operated at a considerable loss, for example, in 2010 the taxpayer received \$6.1 million in rent but the associated costs exceeded \$38.8 million.

The case was conducted as a test case for GST paid in October 2010 on expenditure including construction and purchase of new housing, repairs, cleaning and landscaping. The taxpayer claimed it was entitled to input tax credits of nearly \$600,000 for acquisitions made in providing and maintaining residential accommodation for the group's workforce in the Pilbara region. It argued the housing for its workers were a necessary part of its mining operations.

The Full Federal Court said it was clear from the facts that all of the acquisitions related wholly to making supplies of rental residential accommodation. Although the supplies of accommodation were for the broader business purpose of carrying on the taxpayer's mining operations, it said this did not alter the fact that the acquisitions all related to supplying premises by way of lease, which were input taxed supplies.

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## **ATO's proportionate compliance approach to SMSFs**

From 1 July 2014 the ATO has three new regulatory compliance powers to deter and address contraventions of the superannuation law by trustees of self-managed super funds (SMSFs). These three new powers include the ability of the ATO to issue education directions, rectification directions and administrative penalties. The new laws were introduced to give the ATO more flexible and proportionate powers to deal with the various levels of noncompliant behaviour by trustees.

It is important for trustees to understand the ATO's compliance approach to administering the SMSF sector. A key message that the ATO has been communicating to all trustees is for them to rectify a breach as soon as it is identified. According to ATO Assistant Commissioner, SMSF Segment, Superannuation, Kasey Macfarlane, in these circumstances, the ATO would be "unlikely to apply further sanctions unless other factors are identified, such as if the same or similar contraventions frequently arose".

Ms Macfarlane said the ATO uses "the new powers and penalties to drive compliance, not to increase revenue". "So while you can expect to see us actively using the directions powers, in a large percentage of cases our application of SMSF administrative penalties will be more judicious, via favourable remission requests, for first offences," she said.

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## **Find your small lost superannuation accounts**

A Bill has been introduced into Parliament which contains legislative amendments to increase the account balance threshold below which small lost member accounts will be required to be transferred to the Commissioner of Taxation, ie from \$2,000 to \$4,000 from 31 December 2015, and from \$4,000 to \$6,000 from 31 December 2016.

**TIPS:** Moving all your super from multiple accounts into one account (known as "consolidating your super") might help you to save on fees and make managing your super easier.

There may be sound reasons for maintaining a separate small superannuation account. It may be prudent to assess those reasons and, if those reasons are still valid, to take steps to ensure that you remain an active fund member.

Individuals are able to claim back their superannuation from the Commissioner at any time. Interest, calculated in accordance with the Consumer Price Index (CPI), has been payable on unclaimed superannuation money repaid since 1 July 2013.

Please contact us for further information.

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## **Unbundling phone and internet expense claims for work purposes**

Individuals can claim deductions for mobile, home phone and internet expenses that have been incurred for work purposes. However, correct apportionment for work use is a key issue. According to the ATO, as there are many different types of plans available, taxpayers need to determine their work use using a reasonable basis.

For example, phone and internet services are often bundled. When a taxpayer is claiming deductions for work-related use of one or more services, they need to apportion their costs based on their work use for each service. If other household members also use the services, the taxpayer needs to take into account that use in their calculations.

**TIP:** If the taxpayer has a bundled plan, the ATO says they can identify their work use for each service over a four-week representative period during the income year. This will allow the taxpayer to determine their pattern of work use, which can then be applied to the full year. Please contact our office for assistance.

## **Student loan debt recovery from overseas**

As part of the 2015 Federal Budget, the Government announced that Australians living and working overseas who have a Higher Education Loan Program (HELP) or Trade Support Loan (TSL) debt would soon be required to repay that debt in line with the obligations that apply for debtors who live and work in Australia.

The repayment obligations are expected to apply from 1 July 2017, based on income earned in the 2016–2017 financial year. The repayment obligations would only commence once the individual's income reached the minimum repayment threshold. People heading overseas for more than six months would be required to register with the ATO, while those already overseas would have until 1 July 2017 to register.

**TIP:** The Government is intending to facilitate reciprocal arrangements with foreign governments. That is, the Government intends to share details of individuals to allow foreign governments to identify if their citizens with student loan debts are living and working here in Australia. At this stage New Zealand and the UK have been flagged for reciprocal arrangements.

**TIP:** Individuals can make voluntary repayments at any time to reduce their HELP debts. Currently, if you make a voluntary HELP repayment of \$500 or more, you get a 5% bonus. If your HELP debt balance is less than \$500 and you make a voluntary repayment to pay out the debt, you also get a 5% bonus. Voluntary payments are in addition to compulsory repayments.

## **SMSF trustees warned to plan for cognitive decline**

The ATO has highlighted the issue of cognitive decline, noting that dementia is on the rise and that it is important for trustees of self managed super funds (SMSFs) to have plans to ensure that financial matters will be effectively managed, if and when trustees no longer have the capacity to manage their funds.

"SMSFs are in reality usually managed by one trustee and require a high level of financial decision-making. While many trustees remain perfectly capable of effectively managing their financial affairs well past retirement age, there is a risk that some with diminished capacity to effectively manage their fund may nevertheless continue to do so. Most don't have a plan for what to do if they get to this point", said Kasey Macfarlane, ATO Assistant Commissioner, SMSF Segment, Superannuation.

In this regard, Ms Macfarlane said, it was essential that trustees "agree in advance about decision points and exit decisions, to have a Will and appoint an enduring guardian and power of attorney".

## **Tax debt release application refused**

The Administrative Appeals Tribunal (AAT) has refused a couple's application to be released from their tax debts after finding the couple (the taxpayers) would not suffer serious hardship if they were required to satisfy the liability. The tax debt the taxpayers sought to have released amounted to some \$25,000. The taxpayers argued they should be released from the tax debts because their financial position was due to "serious family difficulties and problems", which had distracted them from their tax affairs.

Although the AAT was sympathetic towards to the taxpayers, it concluded they had not discharged the onus of proving that they would suffer serious hardship if they were required to pay the relevant tax debts. The AAT reached this conclusion after calculating the taxpayers' fortnightly income and expenses. In this regard, the AAT noted the taxpayers were making more than the required minimum mortgage repayments and could draw down on their home loan.

Even if it were a case of serious hardship, the AAT said, it would not exercise the discretion to waive the debt. Among other things, the AAT noted that one of the taxpayers was a beneficiary in the estate of her mother and stood to receive approximately \$200,000.

**TIP:** Serious hardship exists when payment of a tax debt would leave you unable to provide for basic living necessities for yourself and dependants. The Tax Commissioner has the discretion to release you from eligible tax debts; however, even if the Commissioner is satisfied that serious hardship would result from payment of the tax debt, he is not obliged to exercise the discretion in your favour.



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## Retiring partner's individual interest in net income of partnership

According to a recent ATO Taxation Determination, where a retiring partner receives an amount representing his or her individual interest in the partnership net income, that amount is assessable under section 92 of the *Income Tax Assessment Act 1936*. This is the case even if the partner retires before the end of the income year or the payment is received in a subsequent income year. Furthermore, the way the payment is labelled or described will not change the ATO's conclusion that the receipt represents the partner's share of partnership net income and needs to be brought to account under section 92.

The ATO notes that a partner's individual interest in the net income of a partnership is essentially a question of fact in each case, to be determined by reference to the partnership agreement, the partnership's accounting records and any other relevant documents. The ATO notes that its approach in the Determination is a departure from several private rulings, in which it took such receipts into account under the capital gains tax (CGT) rules. The ATO says that an amount representing an individual interest in partnership net income may also represent capital proceeds from a CGT event; however, any capital gain that would otherwise arise is reduced to the extent that it is assessable under other provisions.

**TIP:** The Taxation Determination applies to assessments made after 3 June 2015. The ATO says it will not seek to disturb favourable assessments made before that date.

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## ATO targeting ride-sourcing drivers and eBay online sellers

The ATO has announced that it will acquiring details of ride-sourcing drivers from ride-sourcing facilitators. The data will be matched electronically with ATO data holdings to identify people. The ATO said the aim of the data-match is to identify taxpayers that can be provided with tailored information to help them meet their tax obligations, or to ensure their compliance with the tax law. The ATO estimated that records relating to between 10,000 and 15,000 individuals will be matched.

**TIP:** The ATO has affirmed that people who provide ride-sourcing services are providing "taxi travel" under the GST law. The ATO has previously advised that it expects all drivers involved in providing ride-sourcing services to be registered for goods and services tax (GST). Please contact our office for information and assistance.

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The ATO is also acquiring online selling data from eBay relating to registrants who sold goods and services to a value of \$10,000 or more during the period 1 July 2014 to 30 June 2015. The data requested includes information that will enable the ATO to match online selling accounts to taxpayers, including names, addresses and contact information, as well as information on the number and value of transactions processed for each online selling account. It is estimated that records relating to between 15,000 and 25,000 individuals will be matched.

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## Tax negotiation limited to known debt amounts

Two company taxpayers have been unsuccessful before the Federal Court in seeking to set aside statutory demands issued by the ATO.

The matter essentially involved two individuals who carried on property development activities through several entities (including the taxpayers) and their recollections of an alleged "global deal" with the ATO at a meeting on 10 April 2014 to resolve various debt recovery disputes – including security arrangements – while objections and appeals were on foot. The taxpayers contended that, after the meeting, the ATO sought demands that were contrary to the "deal" (this included a demand for a security in the amount of \$8 million in relation to a related trust) and made "threats" to issue statutory demands. The statutory demands against the two taxpayers were issued in September 2014.

The Federal Court dismissed the taxpayers' applications to set aside the statutory demands. The Court said it did not doubt that the individual representing the taxpayers held a "genuine subjective belief" that he and the ATO had entered into a binding legal agreement at the April 2014 meeting that went beyond the terms of the Deeds of Agreement, which were subsequently executed. However, it considered the representative's subjective belief was not supported by either objective documentary evidence or by the evidence of the ATO representatives who attended the meeting, which it preferred. Among other things, the Court accepted the ATO's evidence that the negotiations involved only "established debts" reflected in a spreadsheet that was used at the meeting and did not include further tax liabilities, including those of the trust.

**TIP:** The above case demonstrates that to avoid confusion among negotiating parties, particularly in relation to future treatment of liabilities, agreements as to arrangements and the terms must be reached and agreed to by the parties in a subsequent written Deed of Agreement.

## **CGT roll-over for small business restructures on the way**

The Government has released exposure draft legislation that proposes to provide roll-over relief for small businesses that change their legal structure. The proposed measures were announced in the 2015–2016 Federal Budget, and will apply to the transfers of assets occurring on or after 1 July 2016. Public consultation closed on 4 December 2015.

The proposed measures will provide an optional roll-over where a small business entity transfers a business asset to another small business entity without changing the ultimate economic ownership of the asset. The roll-over can also apply to affiliates or entities connected with the small business entity for assets they hold that are used by the small business entity.

The roll-over will apply to gains and losses arising from the transfer of capital assets, depreciating assets, trading stock or revenue assets between entities as part of a small business restructure. Discretionary trusts may be able to access the roll-over if the assets continue to be held for the benefit of the same family group.

**TIP:** The proposed new roll-over is in addition to roll-overs currently available where a sole trader or partner in a partnership transfers assets to, or creates assets in, a company in the course of a business restructure. Note also that, with any proposed "tax relief", the devil is in the detail. Please contact our office for further information.

## **ATO starts issuing "certainty" letters**

The ATO has commenced contacting more than half a million individual taxpayers to let them know that their recently submitted tax returns "are shipshape and will not be subject to further review". The ATO said people who receive one of its "certainty" letters (also known as "A-OK" letters) can be assured that the ATO is happy with their tax returns, and has closed its books permanently on their returns, providing there is no evidence of fraud or deliberate avoidance.

The letter is being trialled with a sample of people who meet certain criteria. This includes having broadly simple tax affairs, a taxable income of under \$180,000, and a good lodgement and compliance history. Depending on the success of the trial, the ATO said it aims to expand the program to more taxpayers for Tax Time 2016.

**TIP:** Despite the aim to provide "certainty", it remains to be seen how the letters will operate in practice, particularly if the Commissioner can change his position on the issued letter if taxpayers amend their 2015 tax return or if the Commissioner relies on the concept of fraud or evasion to invalidate the certainty letter.

## **Government rejects SMSF borrowing ban recommendation**

Direct borrowings by superannuation funds via limited recourse borrowing arrangements (LRBAs) are safe (at least for the next three years), following the Government's decision to reject the Murray Financial System Inquiry recommendation to ban or restrict LRBAs. This is welcome news for trustees of self-managed superannuation funds (SMSFs) who have faced uncertainty about the future of such borrowing arrangements, which have become popular for investments in direct property and shares.

In releasing its response, the Government said that it did not agree with the recommendation. While the Government noted there are "anecdotal concerns" about LRBAs, it said the data did not justify policy intervention at this time. However, the Government said it will commission a report on leverage and risk in three years' time. According to the Government, this timing will allow recent improvements in ATO data collection to wash through the system. The report will be used to inform any consideration of whether changes to the borrowing rules might be appropriate at a future date.

**TIP:** Despite the Government's "green light" for LRBAs, a decision to establish an SMSF and invest in property using an LRBA is not one to be taken lightly. It would be prudent to obtain professional tailored advice on any possible LRBA issues that should be considered before committing to purchase a property via an SMSF.

## **Car expenses and FBT concessions on entertainment**

A Bill is currently before Parliament that introduces two important changes. Key details are as follows.

### **Work-related car expenses**

The Bill proposes to repeal the "12% of original value method" and the "one-third of actual expenses method". Taxpayers will continue to be able to choose to apply the "cents per kilometre method" (for up to 5,000 business kilometres travelled), or the "logbook method", depending on which method in their view best captures the actual running costs of their vehicle.

The Bill also proposes to provide a streamlined process for calculating the "cents per kilometre method" by providing a single rate of deduction. That is, the current three rates based on vehicle engine capacity will be replaced with a single rate of deduction. In the 2015–2016 income year, the rate will be set at 66 cents/km. The changes are proposed to apply from 1 July 2015.

**TIP:** Note that for 2014-2015 the lowest of the 3 rates is 65c. Drivers of cars with engines larger than 1600cc will see their deduction rates reduced by 13%

### **FBT concessions on salary packaged entertainment benefits**

The Bill proposes amendments to the law governing fringe benefits to introduce a separate grossed-up cap of \$5,000 for salary sacrificed meal entertainment and entertainment facility leasing expenses for certain employees of not-for-profit organisations, and all use of these salary sacrificed benefits will become reportable. The changes are proposed to apply from 1 April 2016.

**TIP:** Note that organisations affected include public and not-for-profit hospitals, public ambulance services, public benevolent institutions (except hospitals) and health promotion charities. It may be prudent to discuss with your adviser as to whether the above changes apply to your circumstances.

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



***OUR OFFICE WILL BE CLOSED FROM  
MIDDAY 23 DECEMBER 2015  
AND REOPENING  
MONDAY 4 JANUARY 2016***

# Noel's News



## **Movie Reviews - Maria Marson**

### ***"SPECTRE"***

***Starring: Daniel Craig, Lea Seydoux, Ralph Fiennes, Christoph Waltz***

Summary: A cryptic message from Bond's past sends him on a trail to uncover a sinister organisation. While M (Ralph Fiennes) battles political forces to keep the secret service alive, Bond (Daniel Craig) peels back the layers of deceit to reveal the terrible truth behind "Spectre".

Having really loved "Skyfall", I was very much looking forward to the next instalment of the Daniel Craig "Bond" series introducing the new "M" character (previously played by Judy Dench).

I found the film to be boring and running time of 148mins too long. In spite of its highly impressive technical visuals and thrilling action scenes, Spectre was a major disappointment as the follow up to the phenomenal "Skyfall".

But for the real "Bond" fans, this movie will not disappoint.

### ***"THE DRESSMAKER"***

***Starring: Kate Winslet, Liam Hemsworth, Hugo Weaving, Judy Davis***

Summary: It stars Kate Winslet as a femme fatale in the role of the dressmaker, Myrtle "Tilly" Dunnage, who returns to the small Australian town of Dungatar with her sewing machine to take care of her ailing, mentally unstable mother and seek revenge for the wrongs made against her as a child.

I loved this Australian comedy drama.

Kate's Aussie accent was great and I thought Judy Davis' performance as Kate's mother Molly, was the highlight of the movie. Judy is unrecognisable at first as her character plays a weather beaten, dirty "hag". The movie thrives on the renewed bond between mother and daughter and the laughs and tears as they rediscover their relationship.

The film also includes Shane Bourne, Rebecca Gibney, Shane Jacobson and Julia Blake just to name a few. This is a really enjoyable movie to watch. I personally recommend it.



## **Restaurant Review - Mark Lisle**

### ***Tonka – 20 Duckboard Place, Melbourne***

You won't just stumble across this place, it's in one of those tiny little lanes at the top end of the City (near the corner of Flinders and Exhibition Streets). When you do find it though, you will be in for a surprise. *Tonka*, definitely has that WOW factor and it has nothing to do with toy trucks. I would describe it as "Trendy Indian", although I don't think you have to be a lover of Indian food to love this restaurant. We just allowed the waitress to choose a selection of tasting plates for us and we loved them all. There is definitely an Indian flavour to the dishes but they are all very different to what you will have seen at other restaurants. *Tonka* lends itself to dining with friends as the sharing plates are so interesting, as well as being delicious.

We just walked in off the street but I think we were lucky to get it. I would highly recommend booking. *Tonka* is a hidden gem!



## **Book Review - Mark Lisle**

### ***The Casual Vacancy – J.K. Rowling***

By now you might be starting to think I have some sort of weird crush on J.K. Rowling. Truth be known, I have not read any of the *Harry Potter* series but I have loved her other books. *The Casual Vacancy* is nothing like the *Cormorant Strike* series but I found it equally as compelling.

It is about a pretty little town in England called Pagford and centres around the death of Barry Fairbrother, which creates a "casual vacancy" on the Parish Council. Doesn't sound like an exciting plot but the book is full of surprises. Rowling is obviously very creative but it is her writing style that gets me in.

Those of you who have read her other books will know what I mean. Read this book – you won't be disappointed.



## ***Sporting Predictions – as seen by Brad Roach***

### ***Tennis***

The Australian Open hits off early in the new year and hopefully we will see some fresh faces emerge to win the major titles. The Australian public will get behind Nick Kyrgios to take out the men's final whilst Simona Halep will be victorious in the women's final.

### ***Cricket***

After taking care of business against New Zealand, Australia will easily account for the West Indies 3-0 in the series currently in progress.

The Twenty20 Big Bash will be much more entertaining. After falling short in the previous few years, the Melbourne Stars will defeat the Perth Scorchers in the final.

### ***American Football***

The 2016 Super Bowl is set to take place in early February at the home of the San Francisco 49ers. Whilst Jarryd Hayne and the 49ers will be there as supporters, the New England Patriots will be victors in Super Bowl 50.