

the report

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March 2013

Tasmanian bushfires – lodgement and payment deferral

For victims affected by the Tasmanian bushfires of January 2013, the ATO announced that it will make arrangements to defer lodgment and payment of certain monthly and quarterly activity statements. The arrangements are automatic, which means taxpayers who reside in certain identified postcodes will not have to apply for a deferral.

Taxpayers who are located outside of the identified postcodes and who have been affected by a natural disaster are encouraged to contact the ATO for further assistance.

The Tasmanian State Revenue Office has also announced an extension of the time to pay land tax bills for persons affected by the bushfires.

SMSF investment in property requires care

The ATO has warned trustees of self managed superannuation funds (SMSFs) to exercise care in ensuring that arrangements entered into to invest in property are properly implemented, particularly those involving limited recourse loans.

The ATO is concerned about arrangements that do not comply with the superannuation law. It warned that such arrangements may not be simple to rectify. Further, it added that unwinding an arrangement may involve a forced sale of the asset, which could cause a substantial loss to the fund.

TIP: Given the complexity involved, a trustee should obtain detailed advice in relation to a borrowing arrangement. It is vital to plan ahead to mitigate any adverse tax or stamp duty consequences.

ATO data-matching programs

The ATO has announced data-matching programs to identify instances where taxpayers may not be meeting their tax obligations. The ATO says it will collect data from various banks and credit card companies relating to credit and debit cards sales of entities for the period 1 July 2011 to 30 June 2012. This will assist in identifying circumstances requiring ATO administrative action.

Records relating to approximately 900,000 merchants will be matched. The ATO says it will also collect from state revenue offices and other government agencies the names and addresses of individuals and entities transacting with real property in order to identify non-compliance with the tax law. Records relating to over 10 million individuals will be matched.

Deductions for rental properties allowed

In a recent decision, the Administrative Appeals Tribunal (AAT) allowed a taxpayer's claim for rental deductions in respect of two properties for the 2008 income year.

The taxpayer owned the properties with her two sons as joint tenants and for part of the year, the properties were rented to her ex-husband and one of her sons. The taxpayer, in her 2008 tax return, declared a 50 per cent share of the rental income. She also claimed a 50 per cent share of the rental deductions.

The Tax Commissioner argued the tenancies were not commercial and therefore the deductions claimed were not allowable. However, the AAT found that there was no evidence that the taxpayer was assisting her ex-husband or her son. Further, the AAT noted the rent charged by the taxpayer did not differ greatly from the figures presented by the Commissioner. In conclusion, the AAT held the rental income was assessable and the expenses incurred were deductible.

Foreign income assessable

The AAT has found that a taxpayer was a resident of Australia and therefore affirmed the Tax Commissioner's decision to assess the taxpayer's foreign income earned for the 2006 to 2008 income years.

The taxpayer migrated to Australia in 2005 with his family on a business migration permanent visa. He worked as a pilot, which required him to be away from Australia for extended periods of time.

The taxpayer argued that he was a foreign resident and should not be taxed on the income. However, the AAT said this was a case where the taxpayer was "clearly an Australian resident for tax purposes". Among other things, the AAT took into account the taxpayer's desire to live in Australia as stated in his permanent resident visa application, that his family lived in Australia and that he stayed in hotels when working overseas.

The AAT also noted that the taxpayer held an Australian driver's licence, retained private health insurance in Australia, had Australian bank accounts and owned an investment property in Australia.

Mistaken belief does not revoke excess super tax bill

A taxpayer has been unsuccessful before the AAT in arguing that her "mistaken belief" as to the timing of a superannuation contribution was a "special circumstance" that warranted reallocating excess superannuation contributions to an earlier financial year.

The taxpayer was under the mistaken belief that an employer contribution made under a salary sacrifice agreement before 28 July 2009 would be treated as a concessional contribution for June 2009 and therefore allocated to the 2008–2009 year. She argued that the timing of the contribution was beyond her control. She also claimed that the superannuation law could not have been intended to adversely affect women in her situation who have had child caring responsibilities.

Although the AAT was sympathetic, it nevertheless upheld the Tax Commissioner's decision not to reallocate the contribution because it found that the taxpayer's "mistaken belief" as to the timing of concessional contributions did not, in its view, constitute the "special circumstances" that are required under the superannuation law in order to reallocate a contribution.

TIP: This case highlights the need for individuals to know when their super contributions are being paid into their super fund by their employer. Individuals should also consider checking their salary sacrifice arrangements to see if there is an agreement as to when salary sacrifice amounts will be transferred by their employer to their super fund.

Taxman's new power to address super law contraventions

The Government has proposed to establish what it calls a fairer administrative penalty regime for trustees of SMSFs for certain contraventions of the superannuation law. Administrative penalties would range from \$850 to \$10,200. Broadly, the new regime will give the Tax Commissioner another way to encourage recalcitrant SMSF trustees to remedy defects quickly, rather than rely purely on existing heavy-handed enforcement powers.

The changes also propose to give the Tax Commissioner a new power to issue SMSF trustees with "rectification directions" and "education directions" for superannuation law contraventions. A rectification direction may require the person to take a specified action to "rectify" the contravention and to provide the ATO with evidence of the person's compliance with the direction. An education direction may require a person to undertake a specified approved course of education within a specified time frame and to provide the ATO with evidence of completion of the course.

If implemented, the new regime will apply from 1 July 2013.

No splitting of rental income for couple

The Administrative Appeals Tribunal (AAT) has refused a husband's argument that he could split his rental income with his (now estranged) wife even though the commercial property was registered under his name only.

The taxpayer had lodged tax returns on the basis that the property was shared equally between him and his wife. However, the Commissioner formed the view that as the property was in the husband's name only, the rental income from that property belonged to him alone.

The husband claimed that the property was an asset of a "tax law partnership" between him and his wife. He also argued that the property was a "joint marital asset" held by them on a 50/50 basis, that the property was purchased from joint marital funds, and that both he and his wife each applied the income from the property for their own use.

However, the AAT was not satisfied with the evidence presented before it. It noted the absence of the wife from giving evidence, as well as a lack of written documentation, to prove there was a partnership. The AAT found that there was no evidence to show that the property was "jointly owned" or that the couple was in receipt of income jointly.

Winery losses cannot offset other income

A taxpayer has been unsuccessful before the AAT in seeking a discretion under the tax law to allow her to offset losses from a winery business against her other income.

The taxpayer had sought for the discretion to cover the income years ending 30 June 2010 to 30 June 2018. She argued, among other things, that it was acceptable commercial practice in the winery business to stagger the plantation of vines over such a period.

However, the AAT sided with the Commissioner and held that the vines could be planted and become productive within five years. It therefore held that the taxpayer was unable to satisfy the "commercial" test for the discretion.

TIP: Under the tax law, an individual conducting a business (either alone or in a partnership) may offset losses from the business against income from other sources, such as wages, but only if certain tests are met.

If the individual does not meet any of the tests, the individual may seek the Tax Commissioner's discretion to allow him or her to claim the loss. Note that there are exceptions for primary producers and artists under the rules.

Property developers denied GST margin scheme

The AAT has affirmed GST assessments levied at two property developers associated with the sale of real property between 2008 and 2009. The taxpayers had purchased property, which was eventually subdivided and on-sold. They used the "margin scheme" to calculate GST on their sale.

However, the AAT affirmed the Commissioner's assessments that the margin scheme could not apply in the circumstances as there was no agreement in writing between the vendor and developers that the margin scheme was to apply to the original property transaction.

TIP: The use of the margin scheme can provide a lower GST cost to the supplier of property than would normally be the case under the general GST rules. However, in addition to meeting various eligibility requirements, there must be an agreement in writing between the supplier and recipient that the margin scheme is to apply.

Superannuation top-up brings on 93% tax

The AAT has affirmed an individual's excess superannuation contributions tax liability. On 27 June 2008, the individual's employer made a "top-up" superannuation contribution to a clearing account. However, the funds were not allocated to the individual's superannuation account until 23 July 2008.

The AAT considered that the payment could not be said to have been "made" in the 2008 income year. This resulted in a \$69,665 excess superannuation contributions tax liability for the individual, representing an effective tax rate of 93%!

The AAT also decided that there were no "special circumstances" in this case to warrant the Commissioner's discretion under the tax law to reallocate the amount to the 2008 year. The AAT said that the imposition of a tax under the tax laws – even a large tax such as the effective 93% tax rate in this case

– is not in itself “special circumstances”. There must be some “special circumstances” that exist beyond that in order to warrant the Commissioner’s discretion.

TIP: This case highlights the importance of managing the timing of all concessional contributions against an individual’s contribution caps for each financial year.

In doing so remember that the concessional contributions cap has been frozen at \$25,000 for 2012–2013 and 2013–2014, regardless of age.

GST and residential premises

The ATO has issued a suite of rulings on:

- how GST applies to supplies of residential premises;
- how GST applies to supplies of commercial residential premises and supplies of accommodation in commercial residential premises; and
- how GST applies to supplies of long-term accommodation in commercial residential premises.

In-house fringe benefits – rule changes on the way

The Government has recently said that the existing fringe benefits tax (FBT) concessions in the law were not intended to allow employees to purchase goods and services (usually sold by the employer to the public) from their pre-tax income through salary packaging arrangements. According to the Government, these employees are receiving tax-free, non-cash remuneration benefits for goods and services, while other employees who do not have access to such salary packaging arrangements must pay for the goods and services from their after-tax income.

The Government has introduced a Bill into Parliament in order to deal with this issue. It proposes to remove the concessional treatment for such “in-house fringe benefits” accessed by way of a salary packaging arrangement.

If implemented, the changes will apply to all salary-sacrifice arrangements entered into on or after 22 October 2012. For pre-existing arrangements, the new measures will not apply until 1 April 2014 – but the renewal of, or changes to, an arrangement will trigger the new provisions.

TIP: This proposed change means that employees will lose their ability to pay for in-house benefits with pre-tax salary without their employer incurring FBT.

However, it is essential to note that the concessional treatment of in-house benefits will be retained where the benefits are not provided via salary sacrifice.

Goods taken from private stock

The ATO has updated the amounts the Commissioner will accept for 2012–2013 as estimates of the value of goods taken from trading stock for private use by taxpayers in certain specified industries.

For example, for a restaurant/cafe (licensed), the Commissioner will accept \$4,350 (excluding GST) for each adult or child over 16 years of age. Note that the ATO intends to adjust the values annually.



Film Review – by Peter Davison

Great Expectations – Director Mike Newell – Starring Robbie Coltrane

I wonder if my disappointment with this version of the Charles Dickens novel would be as intense if I had not read the book, although many years ago, and so come to this screening with my own expectations, which of course were not fulfilled.

I also wonder if a viewer of this movie who had not read the book would be able to keep up with the story line, which seemed very rushed to me. Perhaps it must be so, in order to cram such a big story into a standard movie time slot?

While I could not fault the quality of the imagery or acting within the film, the result for me was a shallow rendition of the original story. It failed to convey the depth of emotions such as sorrow, anger, tragedy, & reconciliation that I recall from the novel.

I also came away suspicious of the tidy endings. But upon revisiting the novel to prepare this review I was surprised to learn that they were not a contrivance of the script writer!

Maybe this movie will be the catalyst to getting me to read the novel again? No; that is too great an expectation.



Restaurant Review – by Mark Lisle

Kerabu – 151 Burke Road, Glen Iris.

Kerabu is a Malaysian restaurant, although there are also Thai and other Asian dishes on the menu. In any case, the cuisine is a level above your average suburban Asian restaurant. We have been there several times and have never been disappointed. It is BYO and licensed, the service is attentive, if not always impeccable, and the prices are reasonable, but it is the food that will get you coming back again and again. Our favourites are the sesame crusted duck, the Thai duck salad and the Javanese eye fillet. I would suggest requesting a downstairs table as the décor upstairs is not as good. Give it a try.

Donovan's – 40 Jacka Boulevard, St Kilda.

You can't beat quality. Donovan's is a Melbourne institution and you can immediately see why. The menu, the wine list, the service, and, of course, the bay views are all first class. We went there for lunch on New Years Day and the thing that struck me was that the beachside aspect makes it almost a casual dining experience. The prices are not casual though so probably best recommended for "special" occasions.



Book Review – by Lana Trounce

Jack Reacher – One Shot by Lee Child

If you have not read any Jack Reacher novels, he is a retired Military Police Officer who is always in the right place at the wrong time.

In this novel he is after a sniper who has gunned down 5 people in cold blood but as he finds out there are more twist and turns than he first realises.

An easy entertaining read with lots of excitement and not too complicated.

They have made a movie starring Tom Cruise as Jack Reacher, which is not a good match, as Jack Reacher is about 6'5" tall and blonde whereas Tom Cruise is short and dark.



Sporting Predictions – as seen by Brad Roach

AFL

The 2013 AFL season has kicked off with up to eight teams a realistic chance to win the premiership. My top 8 at the opening of the season is Hawthorn, Fremantle, Sydney, Geelong, Collingwood, West Coast, Richmond and Essendon. The grand final will be played out by Hawthorn and Fremantle with Hawthorn to be the eventual winners. Looking ahead to the Brownlow Medal, the top three vote getters will be Trent Cotchin, Gary Ablett and Nathan Fyfe.

GOLF

The next major golf championship is the US Masters to be held at Augusta. Tiger Woods has recently become the number one ranked player in the world again and he will also celebrate his 15th major title win here. I also expect Rory McIlroy and Matt Kuchar to be in contention. Best placed Aussies to be Jason Day and Adam Scott.

SOCCER – A LEAGUE

The A-League finals are about to commence for the 2012-2013 season. Well done to the Western Sydney Wanderers on winning the minor premiership in their first year. Celebrations will be short lived however as the Central Coast Mariners will defeat the Wanderers 2-1 in the grand final.