

# client report

tax news | views | clues

Autumn 2015

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## **Borrowing by superannuation funds under scrutiny**

Late last year, the Murray Financial System Inquiry called on the Government to restore the general prohibition on direct borrowings by superannuation funds.

The review was of the view that there was an emerging trend of superannuation funds using limited recourse borrowing arrangements (LRBAs) to purchase assets, and that over time growth in direct borrowing would pose risks to the financial system.

The Inquiry, chaired by David Murray, recommended that the current superannuation borrowing exception in the super rules should be removed on a prospective basis. Importantly, it was recommended that superannuation funds with existing borrowings should be permitted to maintain those borrowings. However, funds disposing of assets purchased via direct borrowings would be required to extinguish any associated debt at the same time.

The Government is expected to respond to the recommendations in the near future.

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## **Bitcoin and ATO approach to past transactions**

The ATO has finalised a number of its rulings (a GST Ruling and several Income Tax Determinations) relating to the application of the tax laws for Bitcoin and similar cryptocurrencies.

The ATO says all these rulings have application to tax periods before their date of issue (ie 17 December 2014) as they discuss laws that were already operative. However, it notes the Tax Commissioner will not generally apply compliance resources to tax periods that started before 1 October 2014 for goods and services tax (GST), or 1 July 2014 for other tax issues, for taxpayers that can show they have made a genuine attempt to determine the tax treatment of Bitcoin and have then adopted a consistent position regarding the tax treatment of Bitcoin in those past tax periods.

Some key points on the ATO's view on Bitcoin:

- Transacting with Bitcoin is akin to a barter arrangement, with similar tax consequences.
- Bitcoin is neither money nor a foreign currency, and the supply of Bitcoin is not a financial supply for GST purposes. Bitcoin is, however, an asset for capital gains tax (CGT) purposes.
- The records you require in relation to Bitcoin transactions are as follows:
  - the date of the transaction;
  - the amount in Australian dollars;
  - what the transaction was for; and
  - who the other party was.

**TIP: If you receive Bitcoin for goods or services you provide as part of your business, you will need to record the value in Australian dollars as part of your ordinary income. This is the same process as receiving non-cash consideration under a barter transaction. The value in Australian dollars will be the fair market value which can be obtained from a reputable Bitcoin exchange.**

## **Are your superannuation savings goals on track?**

Superannuation should never be a “set and forget” strategy. With the new calendar year here, now is a good time to review your circumstances and perhaps set some new goals to help boost retirement savings.

There have been a few changes to superannuation which applied from 1 July 2014 and it is important to understand how they may apply to you. The following are some considerations.

### **Making extra contributions**

The general concessional contributions cap is \$30,000 for 2014–2015 (up from \$25,000 for 2013–2014). For people aged 50 and over, there is a higher concessional contributions cap of \$35,000 for 2014–2015.

### **Checking super savings**

It is a good habit to check your superannuation balance regularly. In addition to getting to know your super better, you may also want to protect your super from identity crime. For example, you may want to change passwords for accounts that can be viewed online.

### **Consolidating multiple super fund accounts**

You may want to consider consolidating multiple super fund accounts. This may help avoid paying multiple super fund fees, reduce paperwork, and make it easier to keep track of your superannuation. Be aware however, that it may also reduce your existing insurance covers.

Keep all your statements in a safe place, especially if you do need to maintain multiple accounts.

### **Salary sacrificing super**

You may want to ask your employer about salary sacrificing super. Or you may want to consider reviewing an existing arrangement with your employer.

**TIP: Professionally tailored advice should be obtained before implementing a new retirement savings strategy. Please contact our office to discuss your circumstances.**

## **GST treatment of credit card surcharges – GSTR 2014/2**

The ATO has issued a Ruling which explains the goods and services tax (GST) treatment of a surcharge imposed by a merchant on a customer in respect of a credit card transaction concerning supplies of goods or services by the merchant to the customer.

According to the Ruling, a credit card surcharge imposed by the merchant on the customer for a credit card transaction forms part of the consideration for the supply of the goods or services made by the merchant. The merchant will need to take into account the credit card surcharge that is connected with the supply of the goods or services when calculating the correct amount of GST.

The Ruling covers a number of scenarios involving credit card surcharges. The ATO provides the following basic example of a credit card surcharge imposed by a merchant on a customer for a purchase of a shirt, being a taxable supply:

***Anna purchases a shirt with a price of \$55. A sign at the store's counter states that a surcharge of 3% of the price will be imposed if payment is made by credit card. When Anna pays for the shirt using her credit card, the merchant imposes a surcharge of \$1.65 on the sale. The price of the shirt is \$56.65 as the \$1.65 surcharge forms part of the consideration for the shirt. The GST payable in respect of the sale is \$5.15, being 1/11th of the GST inclusive price of \$56.65.***

Note the ruling also discusses the ATO's view on the GST treatment of surcharges imposed on debit card transactions.

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## **Tax Inspector's proposed new complaint-handling powers**

The Inspector-General of Taxation is about to obtain new powers to be able to hear tax complaints from individuals. The Government has introduced a Bill into Parliament which proposes to amend the law to transfer the tax investigative and complaint-handling powers of the Commonwealth Ombudsman to the Inspector-General of Taxation, and to merge those powers with the Inspector-General's existing powers of conducting system reviews of the ATO.

According to the Government, the Inspector-General is well-suited to have the sole jurisdiction to investigate individual complaints about the administration of taxation law matters, in addition to the current systemic function. It said that, under the changes, the Inspector-General will be given all of the powers and functions necessary to comprehensively investigate and handle complaints relating to the administration of taxation laws (of both a systemic and individual nature).

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## **Small business tax review finds first steps for improvement**

The results of a review into tax impediments affecting the success and growth of small businesses has been released by the Government. The review focused on small business tax reform and, in particular, simplifying processes and cutting excessive red tape. In releasing the review findings, the Minister of Small Business, Bruce Billson, said the ATO has already begun implementing most of the administrative recommendations identified in the review.

Mr Billson said the removal of tax impediments for small businesses will make it easier for businesses to start, enable established businesses to grow, and provide greater security for small business owners in retirement. He said the review findings will feed into the Government's broader considerations on small business taxation and was particularly timely ahead of the Government's release of the Tax White Paper.

The Small Business Minister also highlighted the review's recommendations concerning superannuation, and accepted that superannuation penalties on small businesses can be harsh, with disproportionate outcomes. Mr Billson said the Government will ensure that penalties for paying super late or for short-paying super by a small amount would reflect the nature of the breach. He proposed that these changes would take effect from 1 July 2016 and that the Government will consult with stakeholders on implementation details.

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## **Valuation reports for tax purposes could be easier**

A review examining the ATO's administration of valuation matters has found room for improvement. The review was undertaken by the Inspector-General of Taxation, Ali Noroozi. In his 129-page report, the Inspector-General identified inherent difficulties associated with the nature and associated costs of valuations. Given these issues, the Inspector-General made a range of recommendations to the ATO aimed at taking a more practical and transparent approach to assessing taxpayer valuations and developing administrative safe harbours.

According to the Inspector-General, disputes between taxpayers and the ATO may be purely attributable to the differing professional judgment of each party's valuer. In these circumstances, and given the nature of the self-assessment regime, the Inspector-General was of view that the taxpayer's valuation should be accepted notwithstanding that it is not exactly the same as the ATO's valuation. In this regard, the Inspector-General recommended that the ATO provide guidance to its compliance officers to assist them in determining when to accept a taxpayer's valuation. The Tax Office agreed with this recommendation, and many others aimed at reducing disputes.

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## **Employee share scheme tax law changes on the way**

The Government says it will improve the taxation arrangements for employee share schemes. According to the Minister of Small Business, Bruce Billson, the proposed changes to the tax law are designed to increase the international competitiveness of the country's tax system and allow innovative Australian firms to attract and retain high-quality employees.

A key change proposed is to reverse some of the changes made in 2009 to the point at which rights issued as part of an employee share scheme are taxed for employees of all corporate tax entities. Another key change is to provide employees of certain small start-up companies with further concessions when acquiring certain shares or rights in their employer. These further concessions would be an income tax exemption for the discount received on certain shares and

the deferral of the income tax on the discount received on certain rights, which would instead be taxed under the capital gains tax (CGT) rules.

The ATO has also commenced consultations with stakeholders on how to streamline the process of establishing and maintaining an employee share scheme.

**TIP: The tax law amendments are proposed to commence on 1 July 2015. This could mean swift passing of legislative amendments through Parliament. Companies should keep a watch on the progress of the legislation.**

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## ATO code of settlement

A code of settlement has been developed by the ATO. The code sets out the ATO policy on the settlement of tax and superannuation disputes, including disputes involving debt. It states that settlement negotiations or offers can be initiated by any party to the dispute and can occur at any stage including prior to assessments being raised.

The ATO notes that when deciding whether or not to settle, it will consider all the following factors:

- the relative strength of the parties' position;
- the cost versus the benefits of continuing the dispute; and
- the impact on future compliance for the taxpayer and broader community.

According to the ATO, settlement would not generally be considered in situations where there is a contentious point of law which requires clarification, or when it is in the public interest to litigate, or when the taxpayer's behaviour is such that the ATO needs to send a strong message to the community.

**TIP: According to the code, a settlement agreement provides a reasonable basis for treating similar issues in future years unless it is specifically stated that it is not to apply to future years or transactions, or the taxpayer's circumstances change materially, or the law remains either unclear or amended. However, the Code states the ATO can provide greater certainty to a taxpayer for future years if required.**

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## Court confirms tax on transfer of land to joint-venture trust

A corporate trustee (the taxpayer) has been unsuccessful before the Full Federal Court in a tax matter concerning the transfer of land owned by the taxpayer to a joint-venture trust. The taxpayer had purchased the land in 1995 and began discussions with other adjoining lot owners in 1997 with the idea of commercially developing the combined lots and selling them off. In 1998, a joint venture agreement and the joint-venture trust were created among the landholders, and the land was transferred to the trust.

The ATO assessed the land transferred to capital gains tax (CGT). The taxpayer argued there was no taxing event under the CGT rules, or that there were exemptions to the rules that applied. Essentially, the taxpayer argued there had been no change in the beneficial ownership of the land. However, in disagreeing with the taxpayer, the Full Federal Court confirmed that the transaction effecting the transfer of the land from the taxpayer to the joint-venture trust for the purpose of redevelopment was taxable under the CGT rules and that the specific exemptions under those rules did not apply.

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## Personal services income when no service is provided

The ATO has determined that a payment received by a personal service entity (PSE) from a service acquirer during a period the service provider is not providing services to the acquirer until further called upon is personal services income (PSI) under the tax rules. The ATO says there may be circumstances where a payment made by a service acquirer to a PSE during a period in which the service provider is not called upon to do anything is not PSI because the payment appears to be in consideration for doing nothing. However, the ATO says such a view is "clearly not in accord with the intention of the legislature given the alienation measure is targeted at salary like payments".

The following example illustrates the ATO's view:

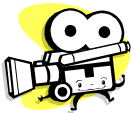
A sole director/shareholder ("Jim") provides his expertise and skills to a client company for a flat monthly contractual fee that is non-contingent. During a specified period, a dispute arises

between Jim and the client company which results in no work being performed for the period. However, Jim is still paid the monthly contractual fee. According to the ATO, the monthly fee during the dispute period is considered to be personal services income under the tax rules notwithstanding that the client company did not call upon Jim to undertake further services.

### **FBT Season is upon us.**

We have already sent checklists out to our clients with known FBT obligations, so we won't clutter this newsletter with more of the same. Please contact our office if you need a copy of our FBT checklist, or go to our website **[www.rundles.com.au](http://www.rundles.com.au)**.

# Noel's News



**Film Review – by Mark Lisle**

## ***Birdman (or The Unexpected Virtue of Ignorance)***

*Starring: Michael Keaton, Edward Norton, Emma Stone, Naomi Watts*

This film has been highly acclaimed, winning Oscars and Golden Globe awards, so I was looking forward to finally seeing it. It has a great cast and they are all great in the movie but I found the whole experience somewhat unfulfilling. Birdman is the story of an actor (Michael Keaton), who was famous for playing the part of an iconic superhero, but is now trying to launch his own Broadway play, in an attempt to reinvent himself and resurrect his career. To me, the storyline was soft and the actors spend the whole movie trying to rescue the plot. They actually do a superb job at it and, when it's all said and done, is probably the reason why this film is worth seeing.

The film begins with Michael Keaton's character, Riggan, levitating in his dressing room. You know, actually hovering 3 feet above the ground – in mid-air. So, straight away, I'm thinking this movie has "jumped the shark" in the first 5 minutes. There are some other super natural scenes in the movie that, in my opinion, detract from the storyline. Much has been made of the notion that Michael Keaton (who played one of the earlier Batmans) may be acting out his own real life story. That is an obvious comparison to draw - at the very least it is a smart piece of casting.

My favourite character in the movie was Mike (Edward Norton) who is Riggan's co-star in the play. He is brilliant, egotistical, troubled and flawed in character but somehow likeable and certainly very watchable. Other reputable actors such as Emma Stone, Naomi Watts and Zach Galifianakis do their reputations no harm in this movie. I cannot blame the actors for my unfulfillment.

Lovers of this movie refer to the fact that it is filmed as "one single shot" (which I don't even really understand) and marvel over the many layers in the story (I couldn't even detect one decent layer). All I was really hoping to achieve from this movie was an understanding of the "unexpected virtue of ignorance", because I figured I have plenty of that resource and was hoping to find that I had plenty of unexpected virtue. Alas, I didn't even achieve that.

This movie has probably almost finished screening at the cinemas but, if you haven't seen it already, I'm sure you will have no trouble catching it on one of the many other forums that are available these days. Don't be put off by my opinion, people who are far more expert in these matters than me have given the movie the highest possible marks. So, judge for yourself.



## ***Restaurant Review – by Mark Lisle***

### ***Rare Steakhouse***

*Uptown:- 61 Little Collins St, Melbourne*

*Downtown:- 42-44 King St, Melbourne*

If you are looking for top quality steaks or seafood but would rather not pay the exorbitant prices that are charged at some establishments around town, *Rare Steakhouse* is your place. It is not just steaks. They do have other dishes, which are also very good, but you don't go to a steakhouse to have the gnocchi. The décor in both restaurants is very nice and the service has been very attentive on the occasions I have been there. The wine list is very comprehensive and, once again, not over the top pricewise. *Rare* has been compared to *Squires Loft*. I would rate it a notch above *Squires Loft* (which I quite like) on all levels but, most importantly, I think the steaks are better.

Both *Rare Steakhouse* restaurants are open for lunch and dinner. Perfect for a business lunch or an evening with friends.



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

### ***AFL***

The 2015 AFL season is underway with supporters of all teams having high expectations for the performance of their teams. My top 8 at the opening of the season is Hawthorn, Port Adelaide, Sydney, North Melbourne, Geelong, Fremantle, Essendon and Richmond. The grand final will be played out by Hawthorn and Port Adelaide with Port Adelaide winning a close encounter. Looking ahead to the Brownlow Medal, the top three vote getters will be Nathan Fyfe, Gary Ablett and Ryan Griffen. Lance Franklin will win the Coleman Medal.

### ***GOLF***

The next major golf championship is the US Masters to be held at Augusta. Jimmy Walker will win his first US Masters from Rory McIlroy and Jordan Speith. Jason Day will be the best placed of the Australians.

### ***SOCCER – A LEAGUE***

The A-League competition is approaching the end of the 2014-2015 season. The Melbourne Victory will be the A-League premiers over Sydney FC 2-1.