

client report

tax news | views | clues

Merry Christmas 2014

Mining tax gone but watch for associated tax changes

The mining tax has been repealed. However, in order to pass the legislation through the Senate, the Government made a deal with the Palmer United Party and Senator Muir to defer the abolition of:

- the Income Support Bonus to 31 December 2016;
- the Schoolkids Bonus to 31 December 2016 (and restrict the Bonus to families earning less than \$100,000 per annum); and
- the Low Income Super Contribution to 30 June 2017.

The Government also agreed to freeze the superannuation guarantee rate at 9.5% for seven years. Under the changes, the rate will increase to 10% from 1 July 2021 and by 0.5% per year from 1 July 2022 until it reaches 12% for the year beginning 1 July 2025.

No other changes were made to the legislation, meaning the abolition of the associated measures such as loss carry-back (from 1 July 2013 for 30 June balancing companies), and geothermal expenditure deduction (from 1 July 2014), will proceed.

The reduction of the instant asset write-off threshold for small businesses (from \$6,500 to \$1,000), and the discontinuation of the accelerated depreciation arrangements for motor vehicles, will also go ahead (from 1 January 2014).

TIP: The abolition of the loss carry-back, the reduction of the instant asset write-off threshold for small businesses and the discontinued accelerated depreciation for cars apply retrospectively. Taxpayers who have made these claims for the 2013–2014 year are now required to amend their returns. The ATO has indicated that it will *not* impose penalties on those taxpayers who amend their returns if the amendments are lodged within “reasonable time”. Also, in light of the superannuation changes, individuals may want to consider reviewing their retirement savings strategy. Please contact our office for further information.

Professional firms and profit distribution under scrutiny

The ATO is investigating arrangements involving the allocation of profits from a professional firm carried on through a partnership, trust or company, where the income of the firm is not personal services income. Firms which could be affected include, but are not limited to, those that provide architectural, engineering, financial, legal, and medical services.

In particular, the ATO wants to take a closer look at arrangements where practice income is treated as being derived from a business structure, even though the source of that income remains, to a significant extent, from the provision of professional services by one or more individuals.

The ATO said it was concerned that the general anti-avoidance rules under the tax law could apply to a scheme which is designed to ensure that the individual practitioner professional is not directly rewarded for the services they provide to the business, or receives a reward which is substantially less than the value of those services. The ATO further indicated that the lower the effective tax rate achieved by the scheme, the higher the risk of attracting the Commissioner's attention.

Rental property deductions – avoid common errors

The ATO has warned landlords that it is increasing its focus on rental property deductions. The ATO has identified a number of common errors made by rental property owners. Key errors include claiming rental deductions for properties that are not genuinely available for rent, or incorrectly claiming deductions for properties only available for rent part of the year, such as a holiday home.

TIP: If a property is only available for rent for part of a year, a partial deduction reflecting when the property was available for rent could be available. The correct apportionment needs to be made with the relevant documentation to substantiate the claim. Contact our office for further information.

Data-matching offshore bank accounts

The ATO is widening the breadth of data it obtains on individuals from financial institutions, possibly revealing hidden or undisclosed offshore income. The ATO has recently announced a data-matching program targeting offshore bank accounts. Under the program, the ATO will collect account details of bank customers from various financial institutions to identify Australian resident taxpayers with offshore bank accounts which may indicate evidence of undeclared income and/or gains.

Settlement for damages subject to capital gains tax

The Administrative Appeals Tribunal (AAT) has held that an individual was liable to capital gains tax on a settlement payment of \$350,000 received in respect of litigation she pursued for damages for breach of contract and negligence. The litigation was in relation to an agreement to facilitate the retirement of a partner of a law firm and to hand over the clients to another solicitor. The AAT was of the view that the taxable assets in question were the various claims made in her statement of claim. It also held the individual had failed to establish any relevant cost base for legal expenses, which meant she could not reduce the amount to be taxed on.

In making its decision, the AAT said it was clear law that damages received by way of settlement of a legal claim could be subject to capital gains tax. It also affirmed the Commissioner's decision to impose an administrative penalty of 50% of the shortfall amount for "recklessness". The AAT noted the taxpayer took no steps to seek independent legal advice in relation to whether tax may be payable on the amount, as well as her failure to keep records as required by tax law.

Bitcoin tax guidance from the ATO

The ATO has released its views on the tax treatment of Bitcoins. Users of Bitcoins and businesses transacting with Bitcoins should be aware that the ATO has confirmed that it does not consider Bitcoins to be money or a foreign currency – rather, the ATO considers Bitcoins to be property. This means, the ATO will treat Bitcoin transactions as barter transactions, with similar tax consequences.

Taxpayers will need to keep transaction records such as the date of the transaction, the amount in Australian dollars (taken from a reputable online exchange), what the transaction was for, and who the other party was (eg their Bitcoin address).

TIP: If you are considering transactions involving Bitcoins and other crypto-currencies, it would be prudent to seek advice on how the transaction would be treated for tax purposes. If you have any questions, please contact our office.

Offshore income tax “amnesty” nearing its end

The deadline to take advantage of the ATO’s initiative to allow eligible taxpayers to come forward and voluntarily disclose unreported foreign income and assets with reduced penalties is nearing. The ATO has urged taxpayers with offshore assets to declare their interests ahead of a global crackdown on people using international tax havens.

The Tax Commissioner Chris Jordan earlier this year announced the initiative to allow eligible taxpayers to come forward and voluntarily disclose unreported foreign income and assets. In announcing the initiative, known as “Project DO IT: disclose offshore income today”, the Commissioner warned that it provides a last chance opportunity for those who haven’t declared their overseas assets and income, to come back into the tax system before 19 December 2014, to avoid steep penalties and the risk of criminal prosecution for tax avoidance.

TIP: It should be emphasised that Project DO IT covers both “inadvertent” and “intentional” actions to hide offshore income and/or gains. The ATO has advised that where taxpayers may be unsure as to their eligibility for the initiative, they can contact the ATO’s Project DO IT team to discuss the issue and this can be done anonymously. Please contact our office for further information.

Subsidy to encourage employers to hire mature workers

The mature age worker tax offset will be abolished by the Government from the 2014–2015 income year and later income years. However, a new expenditure program being delivered by the Department of Employment, Restart, will provide alternative support by way of subsidy of up to \$10,000 to employers who hire mature age job seekers.

The Restart program offers a wage subsidy of up to \$10,000 (including GST) to eligible employers of mature age job seekers. The job seekers must be 50 years of age or older, and have been unemployed and receiving income support for six months or more. To receive the full payment, a business must employ the same employee for at least 30 hours per week for an ongoing period of two years. The Restart wage subsidy can also be claimed on a pro-rata basis if you hire a mature age worker part time, for at least 15 hours a week.

Tax claims for R&D costs mostly allowed

The AAT has mostly allowed a company’s deduction claims for research and development (R&D) expenditure at the 125% premium rate, but disallowed other claims in respect of overlapping expenditure.

Over an extended period, the taxpayer conducted various plant trials to test possible ways to improve its copper and lead concentrators and its copper smelter. The taxpayer sought to deduct a considerable part of its expenditure incurred during those plant trials at the premium rate of 125% as “research and development expenditure”.

The Commissioner refused most of the taxpayer’s claims arguing they were not deductible at the premium rate because they were “feedstock expenditure”, which is expressly excluded from the statutory definition of “research and development expenditure” under the tax law. The Commissioner also argued that, due to an overlap of the taxpayer’s R&D activities at its Mt Isa copper concentrator and Mt Isa smelter, certain expenditure became “feedstock expenditure” and was not deductible at the 125% rate.

The AAT allowed most of the taxpayer’s claims, but accepted the Commissioner’s arguments on the overlap issue.

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

Compensation for providing domestic help taxable

The AAT has affirmed a decision of the Commissioner that a payment made to an individual for compensation for domestic assistance was assessable as ordinary income under the tax law.

In 1997, the taxpayer’s husband suffered a serious injury while white-water rafting during a team-building exercise organised by his employer. The husband was unable to work and the taxpayer gave up full time work to become a carer.

In 2012, the husband lodged a claim for compensation for domestic assistance under the *Workers Compensation Act 1987* (NSW) in respect of the domestic assistance provided by the taxpayer. The Workers Compensation Commission awarded the taxpayer a lump sum of around \$179,000.

The AAT said there was no basis that the compensation payment could be described as a loss of income earning capacity as argued by the taxpayer – rather, it was of the view that the payment was to ensure that the taxpayer was provided with a sufficient payment to cover her loss of income.

Perfecting a security interest over corporate property

A security interest in corporate property must be registered on the Personal Property Securities Register (PPSR) as soon as possible.

A recent Federal Court decision involving a loan from a self-managed super fund (SMSF) to a company which was later placed into voluntary administration has highlighted the importance of understanding the new Personal Property Securities regime. The Federal Court held the SMSF trustee was merely an unsecured creditor in relation to the commercial loan to the company after finding that its security interest had not been registered on the PPSR in time to avoid the interest vesting in the company (in liquidation).

TIP: The take-home message from the case is that a failure to register a security interest on the PPSR within 20 business days of the creation of a security agreement over corporate property leaves the lender/mortgagor in the hands of the gods in terms of later perfecting the security. For corporate property, a failure to register within 20 business days means that the security interest must have been registered at least six months before the administration or winding up of the grantor company.

Inbound tour operators to contact the ATO

The ATO has issued a statement on a Full Federal Court case in which the ATO Commissioner was successful in arguing that a supply made by an Australian inbound tour operator (ITO) to overseas customers was fully subject to GST.

Although the decision relates to specific facts, the ATO said the Commissioner remains of the view that the decision applies to all ITOs that:

- transact as principal (and not as an agent of a non-resident travel agent); and
- are engaged by non-resident travel agents to enter into contracts with Australian providers for the provision of products to non-resident tourists.

The ATO was of the view that, under the Court's reasoning, the supplies made by the ITOs to their non-resident travel agent clients are properly characterised as supplies of promises to ensure products are provided, and the supplies are wholly taxable.

TIP: The Commissioner has requested that all ITOs that have transacted as principal and have an outstanding amount due to the ATO to contact the ATO within 28 days of the publication of the statement (ie by 10 December 2014) to discuss payment of the amount owed. ITOs that consider that they are not affected by the decision on the basis that they operate as an agent are also asked to contact the ATO within the 28-day period.

Crowdfunding could have GST implications, says ATO

The ATO has released information on its views on the GST treatment of crowdfunding. Crowdfunding involves using the internet and social media to raise funds for specific projects or particular business ventures. Typically the promoter of the project or venture will engage an intermediary to operate an online platform that allows the promoter to connect to potential funders. Various models are used to attract funding.

For example, in a "donation-based" model, where funders receive nothing apart from having their contribution to a project or business venture acknowledged by the promoter, the promoter will have no GST liability. However, the intermediary will be treated to have made a taxable supply of services to the promoter that is subject to GST. But in this case, the promoter will be entitled to a GST credit for the services he or she acquires from the intermediary.

Couple refused small business tax concession

The AAT has recently affirmed a decision of the Tax Commissioner refusing a couple's request to apply a capital gains tax concession in relation to the sale of their business.

The husband and wife were the sole shareholders and directors of a private healthcare company which they had sold, via their shareholding, for some \$14 million in the 2007 income year.

They claimed they were entitled to the tax concession in respect of the capital gain they made on the sale of their shares. In particular, they claimed they satisfied that relevant asset test to be eligible for the concession on the basis that the company had a liability just before the sale to pay them eligible termination payments totalling some \$2.75 million.

In rejection of the couple's argument, the AAT confirmed that the eligible termination payments paid to the couple were not to be taken into account for the purposes of the relevant asset test in determining whether they qualified for the small business CGT concession. The couple have appealed to the Federal Court against the decision.

Employee share scheme reform on the way

The Government is reforming the taxation of employee share schemes to bolster entrepreneurship in Australia and support innovative start-up companies. It said the changes to the tax treatment of employee share schemes that were introduced by the former Government in 2009 have effectively brought to a halt the use of such schemes for start-up companies in Australia.

The Government said it would unwind those 2009 changes, beginning with reversing the changes made to the taxing point for options, to ensure that employees may opt to have "discounted" options taxed when they are exercised (ie converted to shares), rather than upon acquisition by the employee. This change would apply to employees of all companies.

The Government also announced that it will allow employee share scheme options or shares that are provided to employees at a small discount by eligible start-up companies not to be subject to upfront taxation, provided that the shares or options are held by the employees for at least three years.

Options issued to employees by eligible start-up companies under certain conditions will have the employee's taxation events deferred until the sale of the shares. In addition, shares issued to employees by eligible start-up companies at a small discount will have those discounts exempted from tax for the employees.

The Government will also extend the maximum time for tax deferral on discounted options and shares issued to employees by eligible start-up companies from the current seven-year period by a further eight years – that is, a 15-year deferral period.

The Treasurer is expected to consult widely on the draft legislation. The legislation is proposed to come into effect from 1 July 2015.

***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 2014
AND REOPENING
MONDAY 5 JANUARY 2015***

Noel's News



Film Review – by Mark Lisle

Boyhood

Starring Ellar Coltrane, Patricia Arquette, Ethan Hawke and Lorelei Linklater

This movie tracks the life of a young boy, Mason, and his family, over a 13 year period from age 5 to 18. Amazingly, the film was actually made over 12 years with the same cast. We see the story unfold over those years through the eyes of Mason but the other family members are equally as interesting. All the main characters have their ups and downs but I think it is Mason's father, Mason Snr., that steals the show. This film will resonate strongly with parents of boys, or just parents generally, and kids as well. A great movie for all the family.

Interstellar

Director: Christopher Nolan (The Dark Knight Trilogy)

Starring: Matthew McConaughey, Anne Hathaway, Jessica Chastain and Michael Caine

Whether you're a sci-fi fan or not, Interstellar is a must see.

With Earth finally coming to an end (due to climate change) a team of explorers undertake the most important mission in human history; to travel through a wormhole discovered near Saturn, which leads to other galaxies with earth-like planets that can sustain the human race and save us from extinction.

The film begins with Cooper (McConaughey), a former NASA pilot and engineer, and his daughter discovering a 'ghost' which leads them to a secret base. There they discover what remains of NASA and Cooper is eventually convinced to captain the ship on this extraordinary voyage.

During the mission, even though Cooper is literally galaxies away, he makes every attempt to stay in contact with his family and to ensure his return; however, there are no guarantees. As you can imagine, the crew face many challenges on their mission, not only do they need to conserve oxygen and fuel, but the planets on which they're attempting to land have different relative times. For example, every hour they spend on one planet in a different galaxy, can be the equivalent to seven years back on earth. Their mission becomes a race against the clock before humanity ages them out of existence.

To really enjoy the film, don't think too much about the science behind it all, just run with it, and any questions you have during the film will be answered at the end, hopefully leaving you as satisfied as I was. Visually, it is a knockout, and even though the running time is 169 minutes, it didn't feel too long. Matthew McConaughey again delivers with a wonderful performance.

Oscar number two? Not out of his reach.



Restaurant Review – by Mark Lisle

Charcoal Grill On The Hill 289 High Street, Kew

This is a steakhouse for steak lovers – non-steak eaters need not apply. In the genre of Vlado's (Richmond) and Stefan's (Balwyn), they know their steaks are great and they don't go to a lot of effort with other dishes or sides. You can get a pork or chicken fillet but they are almost token gestures. There are no sides offered but all main courses come with very plain cos lettuce, shredded cabbage and French fries. Having said all that, the steaks are superb! Most 300g steaks are around the \$50 mark but you can pay up to \$109 for a Wagyu grade 9+ porterhouse. All of our party thoroughly enjoyed their steaks. The entrees are slightly more varied than the mains - my favourite was the duck sausage but there was also oysters and smoked salmon on the entrée menu. The wine list is extensive but probably weighted a bit too much towards the higher end for my liking.

A good restaurant for a special occasion like a family birthday – Happy 18th Corey!



Sporting Predictions – as seen by Brad Roach

Cricket

The nation is mourning the passing of a young and talented cricketer in Phillip Hughes. Phillip was well respected on and off the field and will be sadly missed by his family, friends, teammates and cricket supporters around the globe. R.I.P. # 408.

A very busy summer of cricket ahead with a 4 test series between Australia and India, the domestic Twenty 20 Big Bash and the One Day World Cup event which will be held in Australia and New Zealand. Results as follows:

- Australia to defeat India in the test series 2-1
- Melbourne Stars to defeat the Perth Scorchers in the Twenty 20 Big Bash final
- Australia to defeat South Africa in the One Day World Cup final

Tennis

The Australian Open hits off early in the new year and hopefully we will see some new and exciting players emerge to compete against the likes of Nadal, Djokovic and Serena Williams. For interest value I will be hoping for Wawrinka and Kvitova to be crowned champions but the eventual winners will be Djokovic and Sharapova.

STOP PRESS!!

Borrowing by SMSFs under threat

In his final report under the Financial System Inquiry (FSI), David Murray has recommended removal of the provisions of Section 67A of the SIS Act, which allows borrowing by superannuation funds in limited circumstances. This has been widely expected by financial industry commentators.

Readers may remember that the current rules around Limited Recourse Borrowing Arrangements (LRBA) were introduced in 2007 to empower superfunds to participate in the sale of T3. (Nobody previously recognised that there were borrowing breaches by any superannuation fund that participated in T1 or T2!)

Murray has recommended that these LRBA rules be withdrawn and that superfunds return to the pre 2007 “superfunds cannot borrow” regime.

If this recommendation is adopted, it will no longer be allowable for superannuation funds to hold property via direct gearing. The Treasurer has said “The Government intends to consult with industry and consumers before making any decisions on the recommendations. This consultation will occur up until 31st March 2015.”

With the sale of Telstra ‘done & dusted’ and the sale of MediBank completed without the use of Instalment Warrants, there seems little reason for the Government to reject Murray’s recommendation. If you have been considering the use of a LRBA to acquire a property (or other eligible asset) within your SMSF you should move quickly. Established arrangements will be ‘grandfathered’, but your window of opportunity appears to be closing rapidly.