

# the report

## tax news | views | clues

WINTER 2013

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### **Tax certainty for beneficiaries of superannuation death benefits**

The Government has released draft regulations that propose to give effect to an earlier announcement made in October 2012 that it will provide certainty to the beneficiaries of superannuation death benefits. The changes will allow the tax exemption for earnings on assets supporting superannuation income streams to continue following the death of a fund member who was in the pension phase until the deceased member's benefits have been paid out of the fund. If implemented, the changes will apply from 1 July 2012.

The proposed changes appear to be a response to industry concern with the Tax Commissioner's draft ruling on superannuation income streams issued in 2011. In that draft ruling, the Commissioner took the position that a superannuation income stream ceases as soon as the member in receipt of the income stream dies, unless a dependent beneficiary of the deceased is automatically entitled to receive an income stream.

According to the Commissioner's preliminary view, tax would generally apply to a fund's investment earnings, including realised capital gains, following the death of a pension member. However, the proposed new regulations will ensure that this is not the case.

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### **Disposal date critical for CGT small business concessions**

In a recent decision, the Administrative Appeals Tribunal (AAT) decided that a taxpayer's interest in a business was disposed of when a "heads of agreement was executed", and not when the formal contract of sale was executed.

An agent had testified that it was long-standing practice in the industry for an intending purchaser and vendor to enter into an "in-confidence" period of exclusivity during which the intending purchaser would use professional advisers to carry out due diligence.

Despite evidence suggesting that the industry did not regard the heads of agreement as a binding contract, the AAT was of the view that the parties to the heads of agreement had agreed to the sale and purchase of the business in question. As a result, as it was found that it was the date of the heads of agreement that was the applicable date of the transaction for CGT purposes.

As a result, the taxpayer was not entitled to access the CGT small business concessions because he did not satisfy the relevant test for the concessions just before that date.

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## Car expenses – Rates per kilometre for 2012–2013

The Government has announced the “cents per kilometre” rates for calculating tax deductions for car expenses for the 2012–2013 income year. Note that they are unchanged from 2011–2012 and are as follows:

- Small car (non-rotary engine up to 1600cc, or rotary engine up to 800cc): 63c/km.
- Medium car (non-rotary engine 1601–2600cc, or rotary engine 801–1300cc): 74c/km.
- Large car (non-rotary engine 2601cc and above, or rotary engine 1300cc and above): 75c/km.

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## LAFHA reasonable amounts for food and drink 2013

With the changes to the living-away-from-home rules (effective from 1 October 2012) affecting employees who are required by their employers to live away from home for work, greater care needs to be taken in assessing the fringe benefits tax (FBT) implications of living-away-from-home allowances (LAFHAs). With a narrower scope for eligibility for concessional treatment and increased substantiation requirements, the level of risk is greater.

The Commissioner has recently determined the amounts that he considers reasonable for food and drink expenses incurred by employees receiving a LAFHA fringe benefit for the FBT year commencing on 1 April 2013. Broadly, if an employee's food or drink expenses exceed the amount the Commissioner considers reasonable, the employee will have to substantiate all the expenses incurred, or the employer will be liable for FBT on the amount of LAFHA paid to the employee that is in excess of the reasonable amount.

**TIP: The new rules will require careful consideration when planning for and preparing the 2013 FBT return – this may include identifying whether the transitional rules apply, obtaining evidence if substantiation is required, and checking contracts to see if food and drink is clearly identified. Where food and drink is greater than the ATO reasonable amounts, future restructuring should be contemplated. Please contact our office for further information.**

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## Tax anti-avoidance law to be amended

In response to a number of high profile cases lost by the Tax Commissioner, the Government has introduced legislation into Parliament that proposes to ensure the effective operation of the income tax general anti-avoidance law. In those cases, the taxpayers successfully argued that the income tax general anti-avoidance law did not apply as tax was a legitimate consideration in commercial decision-making, and where the tax cost of a transaction was considerable the taxpayer would have done nothing. The changes, once enacted, will apply retrospectively from 16 November 2012.

The changes aim, among other things, to rectify what the Government considers to be perceived weaknesses in the “tax benefit” concept, which have reduced the effectiveness of the law in countering tax avoidance arrangements. Broadly, the amended law will continue to apply where a taxpayer enters into a scheme with a sole or dominant purpose of obtaining a tax benefit. However, in considering, alternative postulates (ie what the taxpayers might otherwise have done), tax costs will be disregarded under the amended law.

Consequently, it will be necessary to compare the scheme entered into with other ways of achieving the same commercial outcome, regardless of the tax cost. Eliminating the defence that the taxpayer would otherwise have done nothing will broaden the potential application of the rules significantly.

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## Superannuation

- The ATO has reminded taxpayers to consider the superannuation contributions caps and the timing of when contributions are made when planning their tax affairs, in order to avoid excess contributions tax.
- Eligible individuals who breach the concessional contributions cap by up to \$10,000 will be given a once-only option for the excess contributions to be refunded without penalty.

- A member of an accumulation fund (or whose benefits include an accumulation interest in a defined benefit fund) may be able to split with their spouse superannuation contributions.
- A tax offset of up to \$540 is available for a resident taxpayer in respect of eligible contributions made by the taxpayer to a complying superannuation fund or a retirement savings account for the purpose of providing superannuation benefits for the taxpayer's low-income or non-working resident spouse (including a de facto spouse).
- Taxpayers aged 50 years or over should review their transition to retirement pensions and salary-sacrificing arrangements to take into account the reduction in the concessional cap from \$50,000 to \$25,000 for 2012–2013 and 2013–2014. However, note that the Government proposes to increase the concessional contributions cap to \$35,000 for seniors.
- For eligible individuals, a government low income superannuation contribution of up to \$500 will be available.

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## Fringe benefits tax

- The living-away-from-home (LAFH) rules have been significantly overhauled. While the rules remain in the FBT regime, there is an increased requirement to ensure LAFH payments are properly tracked, categorised and substantiated.
- The four rates used in the statutory formula method for determining the taxable value of car fringe benefits are being replaced with a single statutory rate of 20%. Taxpayers should review contracts for changes to a "pre-existing commitment".
- The Government has proposed amending the FBT law to remove the concessional FBT treatment for in-house fringe benefits accessed by way of salary-packaging arrangements.

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## Individuals

- For 2012–2013 and later income years, the dependent spouse tax offset will only be available to those born on or before 1 July 1952.
- The Government has announced that it will remove the 50% CGT discount for foreign residents on capital gains accrued after 7.30pm (AEST) on 8 May 2012. However, the CGT discount will remain available for capital gains that accrued prior to this time where foreign residents choose to obtain a market valuation of assets as at 8 May 2012.

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## Cap on work-related self-education deductions

The Government has announced that it will introduce a \$2,000 per-person cap on tax deduction claims for work-related self-education expenses. The cap is proposed to apply from 1 July 2014.

In making the announcement, Treasurer Swan said that without a cap, "it's possible to make large claims for expenses such as first class airfares, 5-star accommodation and expensive courses". However, the Treasurer said the Government "will consult with employees and employers to better target this concession while still supporting essential training".

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## ATO data-matching programs

The ATO has recently announced the following new data-matching programs:

- **Employers and WorkCover** – the ATO will request and collect names and addresses of employers from state and territory WorkCover sources for the 2011 to 2013 financial years. It says the data will be matched to identify employers who might not be complying with their registration, lodgment and payment obligations under tax law.
- **Student and temporary work visa holders** – the ATO will collect details of student and temporary work visa holders between the period 1 January 2012 to 30 June 2014 from the Department of Immigration and Citizenship for the 2012, 2013 and 2014 income years. The information will be matched to identify non-compliance with tax obligations.
- **Online sellers** – the ATO will collect information of sellers who have made sales of \$20,000 or more in the 2010–2011 income year through various online selling websites. It says records will be matched to identify non-compliance with lodgment, payment and correct reporting obligations under tax law, including undeclared income and goods and services tax (GST) obligations.

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## ASIC warns of property spruikers focusing on SMSFs

The Australian Securities and Investments Commission (ASIC) has warned people to be aware of property spruikers who might be encouraging them to set up a self managed superannuation fund (SMSF) in order to gear into real property.

The warning comes with the release of ASIC's review of financial advice provided in the SMSF sector. According to ASIC, the majority of advice reviewed was adequate. However, it noted a number of areas requiring improvement, including the need to better inform investors of the risks associated with investments.

**TIP: Investors should take care when considering advertisements pushing property purchases through SMSFs. A number of key considerations, such as legal obligations, risks and alternatives, should be taken into account before making a decision to invest in property via an SMSF. Please contact our office if you have any questions.**

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## Major superannuation reforms announced

The Government has recently made a number of important announcements affecting superannuation. A key proposal announced is that the Government will change the superannuation law to cap tax-free earnings at \$100,000. That is, the tax exemption for earnings on superannuation fund assets supporting income streams will be capped at \$100,000 per annum per person from 1 July 2014. A tax rate of 15% will apply to fund earnings above \$100,000. According to the Government, the measure would affect around 16,000 individuals who have around \$2 million in their superannuation funds and an estimated rate of return of 5%.

However, the Government confirmed that withdrawals will continue to remain tax-free for those aged 60 years and over. Presumably, the proposals will be subject to public consultation before implementation.

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## "Holiday home" included in tax concession test

A taxpayer company has been unsuccessful before the Administrative Appeals Tribunal (AAT) in a claim to secure the capital gains tax (CGT) concessions for small businesses.

In this case, the AAT affirmed the Commissioner's decision that the taxpayer did not satisfy the "maximum net asset value" test for the purposes of qualifying for the concessions. The AAT found that the individual who controlled the company could not exclude from the test his interest in a Queensland property, which he claimed was used for "personal use and enjoyment".

**TIP: The small business CGT concessions are intended to offer small business taxpayers a range of unique tax concessions. However, despite being targeted towards taxpayers who typically have less complicated affairs, the rules are riddled with complexities that may not appear obvious at first glance.**

**Each concession has its own particular rules. However, there are two basic conditions for the relief – either the taxpayer is a small business entity (SBE) or is a partner of a partnership that is an SBE, or the taxpayer satisfies the maximum net asset value test. If you have any questions, please contact our office.**

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## Small business benchmarks catch out florist

The AAT has recently dismissed an appeal by a florist against the Tax Commissioner's decision to issue income tax and GST assessments following an ATO audit of her florist business.

The taxpayer had reported that the cost of goods sold in her business represented 83% of her reported business income. The ATO had selected the taxpayer for audit because this figure was outside what it considered to be the industry benchmark range of between 44% and 54%.

In this case, the taxpayer was unable, due to a lack of evidence, to prove to the AAT that the assessments were excessive.

**TIP: The Tax Commissioner has warned that businesses operating outside the relevant benchmarks could be subject to ATO review and/or audit, and where the businesses do not have adequate records to substantiate their performance, the ATO will make a default assessment using the appropriate small business benchmark.**

**Businesses may want to consider reviewing their record-keeping practices and assess whether they are at risk of an audit. Please contact our office for further information.**

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## **FBT rates and thresholds 2013–2014**

The ATO has announced important fringe benefits tax (FBT) rates and thresholds for the 2013–2014 FBT year that commenced on 1 April 2013. Some of the key rates and thresholds include the following:

- The benchmark interest rate is 6.45% per annum. (It was 7.40% per annum for the 2012–2013 FBT year.)
- The record-keeping exemption threshold is \$7,779. (It was \$7,642 for the 2012–2013 FBT year.)

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## **GST tax invoice information requirements**

The ATO has released a Ruling setting out the minimum information requirements for a tax invoice under the GST law. The Ruling also explains the circumstances in which it is not necessary for the supplier to give a tax invoice, and the circumstances in which an input tax credit is attributable to a tax period without the recipient being required to hold a tax invoice for a creditable acquisition.

However, the Ruling states that the recipient must have records to explain its entitlement to an input tax credit for a creditable acquisition.

**TIP: In certain situations, it may be difficult to ascertain whether a document is a “tax invoice” that complies with the requirements of the GST law. For example, a “quote” given by a professional or tradesperson to a single recipient would generally not qualify as a “tax invoice”.**

**However, the Tax Commissioner has made a determination to waive the tax invoice requirement to cover particular situations such as “offer documents and renewal offers”. Please contact our office for further information.**

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## **Tax planning**

There are many ways in which taxpayers can take advantage of tax planning initiatives to manage their taxable incomes. In order to maximise these opportunities, taxpayers need to start the year-end tax planning process early. Of course, when undertaking tax planning, taxpayers should be cognisant of the potential application of anti-avoidance provisions. However, if done correctly, tax planning can provide possible tax savings.

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### ***Deferring income***

- Income received in advance of services to be provided will generally not be assessable until the services are provided.
- Taxpayers who provide professional services may consider, in consultation with their clients, rendering accounts after 30 June to defer the income.
- A taxpayer is required to calculate the balancing adjustment amount resulting from the disposal of a depreciating asset. If the disposal of an asset will result in assessable income, a taxpayer may want to consider postponing the disposal to the following income year.
- Consider whether the criteria for classification as a small business entity are satisfied to access various tax concessions such as the simpler depreciation rules and the simpler trading stock rules.
- Individuals operating personal services businesses should ensure that they satisfy the relevant test to be excluded from the personal services income regime, or seek a determination from the Commissioner.

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### ***Maximising deductions***

#### ***Business taxpayers***

- Debtors should be reviewed prior to 30 June to identify and to write off any bad debts.
- A deduction may be available on the disposal of a depreciating asset if a taxpayer stops using it and expects never to use it again. Therefore, asset registers may need to be reviewed for any assets that fit this category.
- Review trading stock for obsolete stock for which a deduction is available.

### ***Non-business taxpayers***

- A deduction for personal superannuation contribution is available where the 10% rule is satisfied.
  - Assets costing \$300 or less may qualify for an immediate deduction, subject to certain conditions.
  - Outgoings incurred for managed investment schemes may be deductible.
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### ***Companies***

- Companies should ensure that all dividends paid to shareholders during the relevant franking period (generally the income year) are franked to the same extent to avoid breaching the benchmark rule.
  - Loans, payments and debts forgiven by private companies to their shareholders or associates may give rise to unfranked dividends that are assessable to the shareholders or associates. Shareholders and entities should consider repaying loans and payments on time or have appropriate loan agreements in place.
  - Companies should consider whether they have undertaken eligible research and development (R&D) activities that may be eligible for the R&D tax incentive.
  - Companies should carefully consider whether any deductions are available for any carry forward tax losses, including analysing the continuity of ownership and same business tests.
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### ***Trusts***

- Taxpayers should review trust deeds to determine how trust income is defined. This may have an impact on the trustee's tax planning.
  - Trustees should consider whether a family trust election (FTE) is required to ensure any losses or bad debts incurred by the company will be deductible and to ensure that franking credits will be available to beneficiaries.
  - If a trust has an unpaid present entitlement to a corporate beneficiary, consideration should be given to paying out the entitlement by the earlier of the due date for the lodgment of the trust's income tax return for the year and the actual lodgment date, in order to avoid possible tax implications.
  - Avoid retaining income in a trust because the income may be taxed at 46.5%.
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### ***Capital gains tax***

- A taxpayer may consider crystallising any unrealised capital gains and losses in order to improve their overall tax position for an income year.
- Eligible small business entities can access a range of concessions for a capital gain made on a CGT asset that has been used in a business, provided certain conditions are met.

# Noel's News



## ***Film Review – by Corey Lisle***

### ***“The Great Gatsby”***

***Stars: Leonardo DiCaprio, Tobey Maguire, Carey Mulligan and Australia's Joel Edgerton and Isla Fisher.***

The Great Gatsby is set in 1929 New York where mid-westerner Nick Carraway (Maguire) is lured into the lavish life of his neighbour, Jay Gatsby (DiCaprio). Soon after, Carraway sees through the cracks of Gatsby's rich, party-boy lifestyle and a shocking discovery awaits.

The film is about 45 minutes too long, with a runtime of 2 hours and 22 minutes. Baz Luhrmann's visual effects are undeniably impressive, yet it all feels somewhat excessive. All the performances are fine. However, there is noticeable "over-acting" at some points. One actor who this is a problem for in the film is Carey Mulligan, though it appears that this exaggerated acting is almost necessary to be heard over the loudness of Baz Luhrmann's style.

The music choice of modern songs in an olden day setting is something that has split a lot of the audience with this film and, in my opinion, is yet another distraction that causes the film to feel overdone. I should also point out that if you are not a fan of Maguire's acting style, you should probably give this one a miss.

Overall Gatsby is a glamorous visual feast for the eyes but this detracts from the film's story and the subtleties present in F Scott Fitzgerald's novel. If you are not a Baz Luhrmann fan, it may not be worth your time.



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

### ***“The Atlantic”***

***Crown Entertainment Complex, Southbank***

*The Atlantic* first opened a couple of years ago and I had heard a lot about it but only ate there for the first time a few weeks ago. This is an authentic seafood restaurant so, if you don't like seafood, don't bother reading this review. *The Atlantic* prides itself on sourcing the finest produce and providing the ultimate seafood culinary experience. It is a claim that is difficult to dispute. The décor, ambience, service and cuisine can only be described as first class. The wine list is not extensive but covers most tastes and is not over-priced.

I am not a huge fan of oysters but I noted the fine selection of oysters from all over Australia. Apart from oysters, there is an impressive range of seafood dishes, including shellfish, fish on or off the bone, wood fired, roasted or steamed. There are a few non-seafood dishes as well but why would you bother coming to this restaurant if you want a steak? We dined at the restaurant but there is also the *Oyster Bar*, which is open from 12pm to 1am and has a snack-type menu (still impressive).

Like all restaurants at Crown, *The Atlantic* is not cheap. However, the prices are not over the top and, as a venue for a special occasion, it represents good value.



## **Book Review – by Mark A Lisle**

### **“Rundles Tax Guide 2013”**

To be released in the coming weeks, the *Rundles Tax Guide 2013* is a must read for business owners, bookkeepers, tax practitioners, engineers and lovers of tax generally. Apart from being a pocket-sized comprehensive summary of the Australian Taxation system, the *Rundles Tax Guide 2013* is also choc full of other goodies such as 2013-14 budget announcements, developments to watch in 2013/14, current tax rates and a tax calendar. But don't rush out to buy this little gem in your favourite book store as it is only available through Rundles and it is free. The Rundles Tax Guide 2013 would make the perfect gift for that special “hard to buy for” person in your life. Contact Lana to pre-order your copy. Be early to avoid disappointment, conditions\* apply.

#### **\*Conditions:**

- *Not available in hardback*
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## **Sporting Predictions – as seen by Brad Roach**

### **Tennis**

The next major tennis championship is Wimbledon. Novak Djokovic will win the men's title while Maria Sharapova will win the women's title. Sadly, no Australian to progress past the fourth round.

### **Cricket**

The first of 5 test matches to be played on English soil commences in a little over 3 weeks. I am currently less 'bullish' about the Australian test team than I was 6 months ago. A 4-0 loss to India, in India, will do that. Add to that a poor start in the Champions Trophy and some off field antics by David Warner, the English and the English Press are loving it. Other than Michael Clarke who is currently injured, it is hard to find where the runs will come from. England will win the series 3-1, but hopefully I am very wrong.

### **AFL – Mid Season Review**

As we approach the half way mark of the season there appears to be 4 teams with a realistic chance of claiming this years AFL premiership. Hawthorn, Geelong, Sydney and Fremantle. My top 4 has not altered since my prediction pre season, but the order has. Hawthorn will again play Sydney in the grand final and I predict the same result as last year, a win to the Swans.