



December Newsletter

Landlords, the ATO and rental deductions

One in seven taxpayers in Australia is a property investor. Each year residential landlords claim a total of around \$5 billion in rental losses. Accordingly one can understand the Australian Tax Office's (ATO) close scrutiny of the deductions claimed by landlords. But a recent case before the Administrative Appeals Tribunal (AAT) demonstrates how far the ATO will go to test the boundaries of what is, and isn't, tax deductible.

The case involved a taxpayer who owned a property in country NSW. The owner stated that the property was available for rent but she had been unable to find tenants. As a result, the property did not derive any income for a number of years.

The owners had incurred the costs of interest on the property loan, maintenance costs, and rates, which they claimed as a deduction. However the Tax Commissioner had a different view and denied the deductions treating them as being of a private or capital nature.

The central issue was whether the property was genuinely available for rent. If it was not available for rent then the expenses incurred by the taxpayer were not deductible. If the property was available for rent, then the expenses were deductible. This is because you must show that the expenses were incurred in gaining or

producing income, even if no income was actually produced in that income year.

What's interesting in this case is how far the ATO will go. The ATO used electricity and telephone records to argue that the taxpayer had been living in the property and that it was not genuinely available for rent. Fortunately for the taxpayer, the AAT accepted that she had only lived in the property while carrying out repairs and maintenance work.

So, even if a property is not deriving rental income during the relevant income year, taxpayers may still be entitled to deductions for interest expenses, council and water rates and other holding costs. The key issue is whether the property is genuinely available for rent and whether continuing efforts are being made to improve the property to attract renters.

ATO compliance activities

The ATO has highlighted a number of areas that it will focus on in its compliance activities this year. This includes:

- incorrect claims for work-related expenses. In particular, the ATO says it will focus on claims made by plumbers, IT managers and defence force personnel. Taxpayers must keep written records for all their work-related expenses if their claims total more than \$300;

- unrecorded and unreported cash transactions in the café and plastering industries. Note, the ATO is stepping up its use of third party information, such as information from suppliers, to identify under-reporting of income;
- incorrectly treating employees as contractors, particularly in the construction industry. In addition, the ATO notes that from 1 July 2012, businesses that make payments to contractors in the building and construction industry are required to report the payments to the ATO each year;
- treatment of private company profits, particularly in relation to loan arrangements; and
- superannuation obligations of employers, with a focus on cafés and restaurants, real estate businesses and carpentry businesses in home building or construction.

ATO Focus on Lodgement Dates

The Tax Office, likely through a desire to increase government cash flow, is putting greater pressure on Tax Agents to lodge client returns by their due dates.

If a tax agent does not lodge at least 85% of their client's returns by the 15th of May the following year, they will be required to lodge all client tax returns by 31st October for the next financial year.

Whilst we have a good lodgement history, we ask that you provide your tax, superannuation and business records to us with sufficient time, ie. the earlier the better.

Tax Certainty for Deceased Estates

The government will amend the law to allow the tax exemption for earnings on assets supporting superannuation pensions to continue following the death of a fund member in the pension phase until the deceased member's benefits have been paid out of the fund. This change will have effect from 1 July 2012.

The super law requires the benefits of a deceased member to be paid out of the fund as soon as practicable following the member's death. The continuation of the earnings tax exemption beyond the death of a member will be subject to this existing requirement.

This change will benefit the beneficiaries of deceased estates by allowing super fund trustees to dispose of pension assets on a tax-free basis to fund the payment of death benefits.

Reduce the risk of investment fraud

Unfortunately some people try to gain financial advantages from others good nature and may inappropriately seek other's financial information.

Other than having a healthy sense of skepticism we suggest if something is too good to be true then it probably is just that.

Two basic methods of reducing your risk of financial or investment fraud are:

- to hang up on unsolicited phone calls offering overseas investments; and
- to check that any company they are considering investing in has a valid Australian Financial Services Licence by visiting the MoneySmart website.

Further, keep strict control on providing your bank and Tax File Number details. Unsolicited requests, eg a generic email from what might be your bank are most likely fraudulent. Remember banks predominantly provide written or face to face communication. If in any doubt don't give your information out.

For more information, and to report suspected fraud to the Australian Securities & Investments Commission:

- visit the MoneySmart website
- phone 1300 300 630
- speak to local police.

Any information, such as company name, location and contact details, will assist with investigations.

GST changes to hire purchase arrangements

From 1 July 2012, if you account on a cash basis (which most businesses do and can be verified by looking at your BAS to see which method GST attribution you use), you can claim a GST credit upfront on purchases made under hire purchase agreements instead of waiting until each instalment payment is made.

You will be able to claim your GST credits for purchases made under hire purchase agreements, entered into on or after 1 July 2012, as though you account on a non-cash basis.

This treatment also applies if there are other GST consequences that relate to the relevant hire purchase agreement. For example, you will be treated as though you account on a non-cash basis when determining if a bad debt adjustment arises in respect of the relevant acquisition.

The team at Price Roberts & Co wish you a happy and safe Christmas and goodwill for 2013.