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Practice Update

Please read this update
and contact this office
if you have any queries

MARCH 2010

End of the 2009/10 FBT Year

The end of the 2009/10 fringe benefits tax (FBT) year, 31 March, is rapidly approaching and that means, after this date, FBT returns will soon be due for lodgment.

Where we usually prepare the FBT return for your business, we ask that you collect all relevant FBT records relating to any benefits provided, such as:

- ◆ motor vehicles;
- ◆ car parking;
- ◆ entertainment;
- ◆ expense payments; and
- ◆ living away from home allowances;

together with travel diaries, employee declarations, etc.

Editor: Please call if you need to make an appointment or discuss the records needed. The following is some general information about FBT as it may apply to you and your business.

FBT rate

The FBT rate of tax for the year ended 31 March 2010 is 46.5%.

Minor benefits exemption

Fringe benefits with a taxable value of less than \$300 may be exempt from FBT if they are provided on an irregular and infrequent basis.

For a benefit to qualify for this exemption, the benefit must have a GST-inclusive taxable value of less than \$300.

Entertainment – what is it and when are you caught for FBT?

Editor: Entertainment is always a problem for FBT purposes because it relates to the provision of food and drink which sometimes is not liable to FBT – travel – and sometimes is – staff parties.

The following are some examples of what is entertainment:

- ◆ restaurants where family and clients are entertained;
- ◆ food and drinks provided at a staff social function;
- ◆ entertainment and drinks provided to employees on Friday nights;
- ◆ the cost of taking staff and their partners out to lunch; and
- ◆ cost of taxis and limousines to and from entertainment venues.

An employer who has provided meal entertainment fringe benefits may work out the taxable value of their meal entertainment under one of these three methods:

- 50/50 split method;
- 12 week register method; or
- actual expenditure incurred on meal entertainment method.

Editor: If you think that you may have provided 'entertainment benefits', the method we can help you choose to determine the FBT taxable value can substantially reduce the FBT payable.

Sophisticated 'phishing' scam promises tax refunds

The Assistant Treasurer has warned Australians of a new email phishing* scam using the lure of a tax refund to try to steal private information.

Note(): **Phishing:** To request confidential information over the Internet under false pretences to fraudulently obtain credit card numbers, passwords, or other personal data.*

"This particular scam is quite sophisticated and uses convincing fakes of what could be easily mistaken for Australian Tax Office web pages," he said.

"The email claims to be from the ATO and shows a fake Tax Office email address as the sender."

The email uses the Tax Office logo and includes the words 'Tax refund' in the subject heading.

The email asks people to enter their email, name and date of birth to search for any refund owing, which then directs them to a bogus Tax Office website and asks for personal and credit card details.

"Anyone who has already entered their credit card information into the bogus site should immediately report it to their credit card provider."

Taxpayer gets no deduction for misappropriated funds

Editor: This is more of a story about being careful of whom you hand your money over to, to invest, than it is about this taxpayer getting no deduction for funds that were stolen.

This taxpayer was silly, but his poor decision ended up costing him much more than the \$3.3 million that he handed over to a con man.

The Full Federal Court has held that the taxpayer was not entitled to a deduction of \$3,287,749 in respect of monies from the sale of shares which had been subsequently misappropriated *even though the taxpayer was assessed on the profit on sale of the shares.*

The Facts

In his 2002 return, the taxpayer included a net capital gain of \$2.3 million from the sale of Microsoft shares.

In July and August 2001, he had instructed a US stockbroker to sell those shares and transfer the proceeds to a Hong Kong bank nominated by a Mr Heffernan – a supposedly reputable and highly successful securities trader and fund manager.

The funds were misappropriated and in his 2002 return, he claimed deductions totalling \$4,972,671 which included the sum of \$3,287,749 in respect of the misappropriation of monies received from the sale of shares.

The Law

Under tax law, to be able to claim a deduction, the money that was misappropriated must be the same money that was included in the taxpayer's assessable income.

In this case, the monies (the proceeds from the sale) were transferred from the stockbroker to another person as a totally separate investment. The link was broken when the funds left the stockbroker's hands, and the Court had no option but to disallow the deduction.

Rental properties – travel expenses

Editor: The following is about claims by taxpayers with rental properties and demonstrates how we can help you with those claims.

What travel expenses can taxpayers with a rental property claim?

Taxpayers can claim:

- ◆ preparing the property for new tenants (except for the first tenants);
- ◆ inspecting the property during or at the conclusion of tenancy;
- ◆ undertaking repairs, where those repairs are a consequence of the damage or wear and tear incurred while being rented out;
- ◆ maintenance of the property, such as cleaning and gardening, while it is rented or available for rent;
- ◆ collecting the rent; and
- ◆ visiting their agent to discuss their rental property.

Domestic travel requiring an overnight stay

A rental property may be located so far from where a taxpayer lives that it would be unreasonable to expect them not to stay near the property overnight when making an inspection.

If this is the sole reason for the trip, they are entitled to claim a deduction for travel expenses incurred in travelling to the rental property.

Where an overnight stay is involved, they would be entitled to claim for meals and accommodation.

Please Note: Many of the comments in this publication are general in nature and anyone intending to apply the information to practical circumstances should seek professional advice to independently verify their interpretation and the information's applicability to their particular circumstances.