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Practice Update

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DECEMBER 2008

FBT tip for Xmas time

When holding Christmas parties, employers are generally liable to pay fringe benefits tax (FBT) on the cost of food and drink (meal entertainment) which is provided to employees and their families*.

Note (*): FBT does not apply to meal entertainment provided to clients and suppliers.

However, if the employer calculates its FBT on the 'actual' basis (i.e., rather than the 50/50 formula method), then it may be able to ***completely eliminate*** this FBT liability using the 'minor benefits exemption'.

Generally speaking, if the value of the Christmas party provided to an employee or family member is less than $300 per head, it may be exempt from FBT as a 'minor benefit'. This can also apply to gifts made to employees and family members.

Surprisingly, for the purposes of the $300 minor benefit threshold, the following tips should be considered:

- where a benefit is provided to both an employee and their family member (e.g., a spouse), the benefits are applied ***separately*** to the $300 threshold; and
- where a gift is associated with a Christmas party (e.g., it is provided at the party), each benefit (i.e., the gift and the party) is applied separately to the $300 threshold.

However, note that no deduction can be claimed for ***entertainment*** benefits provided to employees, where the minor benefit exemption applies.

Example

An employer holds an external Christmas party for employees only.

The cost of food and drink per person is $260.

Employees with spouses are given a gift voucher (for their spouse), to the value of $150.

Assuming the actual method is adopted:

- for all employees attending the party – FBT is not payable on the food and drink because each separate benefit is less than $300 (i.e., the benefits are not aggregated); and
- for employees with a spouse – no FBT is payable on the voucher.

As a result, no deduction is allowed for the entertainment, however, the voucher *is* deductible*.

Note(*): No deduction is allowed for any GST input tax credit that can be claimed.

Christmas gifts

Editor: Clients often ask what are they allowed to give away as Christmas gifts. Well briefly . . .

The following types of gifts are ***not*** considered to be entertainment and are therefore deductible:

- a Christmas hamper, a bottle of whisky, wine, etc.; and
- gift vouchers, a bottle of perfume, flowers, a pen set, etc.

Examples of ***entertainment*** gifts include tickets for sporting events or the movies, and holidays.

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exemption applies) and a tax deduction is allowed.

- gifts to clients, suppliers, etc. – no FBT, and a tax deduction is allowed.

Taxpayer's legal expenses for employment dismissal deductible

The Federal Court has held that a taxpayer was entitled to deductions for the legal expenses he incurred in proceedings before the Industrial Relations Commission to recover income contractually due to him when his employment was terminated.

The Tax Office argued that the taxpayer was pursuing a lump sum payment as relief for termination of his employment contract (which would be a capital payment, making the legal expenses non-deductible), and not recovery of lost income, but the Court rejected this argument:

"The payment in a lump sum of the sum which would otherwise be income received by way of regular payments, does not of itself, in my view change the character of the payment."

Changes to tax law increase costs

The Assistant Treasurer has released the Board of Taxation's study on small business tax compliance costs which confirms that smaller businesses have proportionately greater compliance costs than larger ones.

The study also found that changes to tax laws, even beneficial ones, still impose compliance costs in understanding those changes.

Hopefully, the study will lead to less red tape for small businesses (and others) as, among the 31 findings, it is recommending:

- changes to inconsistent definitions and thresholds for concepts such as 'employee' and 'salary and wages'; and
- reducing complexity for businesses that have to cope with regulations imposed where they operate across state and territory borders.

Medicare levy surcharge update

Editor: The Government has compromised to get its Medicare levy surcharge thresholds Bill passed, which finally became law on 31 October 2008.

The Government has increased the Medicare levy surcharge threshold to $70,000 for individuals (with annual indexation) and to $140,000 for families (to be twice the individual rate in future years).

Editor: Taxpayers whose income exceeds the threshold normally only have to pay the Medicare levy surcharge if they (and their dependants) do not have private patient hospital cover for the full year.

However, transitional arrangements will apply so that taxpayers who obtain private health cover before 1 January 2009 can avoid the surcharge for the period 1 July to 31 December 2008.

Claiming a rebate for a dependant receiving a super pension

A taxpayer who contributes to the maintenance of a dependant (e.g., a spouse) may be entitled to a dependant tax offset or rebate. However, the amount of the rebate may be reduced depending on the separate net income (SNI) of the dependant.

Broadly, SNI is the ordinary income of the dependant, less expenses which are regarded, according to ordinary accountancy and commercial principles, as a direct charge against the income.

The ATO has confirmed that, when calculating the SNI of a dependant who is receiving an account-based pension (ABP), the SNI can be reduced by a proportionate amount of the personal superannuation contributions made during the accumulation phase of the pension.

Tax return processing delays

The Tax Office has advised that, since they are currently receiving a greater number of income tax returns than usual for this time of year, they are experiencing some processing delays.

Their focus is on finalising original income tax returns, so there will be delays in the processing of amendment requests and in returning calls about the progress of returns during this time.

They will action original returns in the order they are received, unless there is genuine hardship.

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.

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