ML|Partners Pty Ltd

COMBINING ACCOUNTING & WEALTH MANAGEMENT

AYR: 145 Edwards Street (07) 4783 3944 AYR 4807
HOME HILL: 96/98 Eighth Avenue (07) 4782 2733 HOME HILL 4806

Practice Update

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

October - December 2018

Christmas (and other) parties

With the well-earned December/January holiday season on the way, many employers will be planning to reward staff with a celebratory party or event. However, there are important issues to consider, including the possible FBT and income tax implications of providing 'entertainment' (including Christmas parties) to staff and clients.

FBT and 'entertainment'

Under the FBT Act, employers must choose how they calculate their FBT meal entertainment liability, and most use either the 'actual method' or the '50/50 method'.

Under the **actual method**, entertainment costs are normally split up between employees (and their family) and non-employees (e.g., clients and suppliers).

Such expenditure on employees is deductible and liable to FBT. Expenditure on non-employees is ***not*** liable to FBT and ***not*** tax deductible.

Using the 50/50 method instead?

Rather than apportion meal entertainment expenditure on the basis of actual attendance by staff, etc., many employers choose to use the more simple 50/50 method.

Under this method (irrespective of where the party is held or who attends) – 50% of the total expenditure is subject to FBT and 50% is tax deductible.

However, the following traps must be considered:

- even if the function is held on the employer's premises – food and drink provided to employees is not exempt from FBT;
- the minor benefit exemption* cannot apply; and
- the general taxi travel exemption (for travel to or from the employer's premises) also cannot apply.

(*) Minor benefit exemption

The minor benefit exemption provides an exemption from FBT for most benefits of 'less than $300' that are provided to employees (and their family/associates) on an infrequent and irregular basis.

The ATO accepts that different benefits provided at, or about, the same time (such as a Christmas party and gift) are **not** added together when applying this threshold.

However, entertainment expenditure that is FBT exempt is also not deductible.

*And 'less than' $300 means **no more than** $299.99! A $300 gift to an employee will be caught for FBT, whereas a $299 gift may be exempt.*

Example: Christmas Party

An employer holds a Christmas party for its employees and their spouses – 40 attendees in all.

The cost of food and drink per person is $250 and no other benefits are provided.

If the actual method is used:

- For all 40 employees and their spouses – ***no FBT*** is payable (i.e., by applying the minor benefit exemption), however, the party expenditure is ***not tax deductible***.

If the 50/50 method is used:

- The expenditure is $10,000, so $5,000 (i.e., 50%) ***is liable to FBT*** and ***tax deductible***.

Christmas gifts

With the holiday season approaching, many employers and businesses want to reward their staff and loyal clients/customers/suppliers.

Again, it is important to understand how gifts to staff and clients, etc., are handled 'tax-wise'.

Gifts that *are not* considered to be entertainment

These generally include, for example, a Christmas hamper, a bottle of whisky or wine, gift vouchers, a bottle of perfume, flowers, a pen set, etc.

Briefly, the general FBT and income tax consequences for these gifts are as follows:

- gifts to employees and their family members – ***are liable to FBT*** (except where the 'less than $300' minor benefit exemption applies) and ***tax deductible***; and
- gifts to clients, suppliers, etc. – ***no FBT***, and ***tax deductible***.

Gifts that *are* considered to be entertainment

These generally include, for example, tickets to attend the theatre, a live play, sporting event, movie or the like, a holiday airline ticket, or an admission ticket to an amusement centre.

Briefly, the general FBT and income tax consequences for these gifts are as follows:

- gifts to employees and their family members – ***are liable to FBT*** (except where the 'less than $300' minor benefit exemption applies) and ***tax deductible*** *(unless they are exempt from FBT)*; and
- gifts to clients, suppliers, etc. – ***no FBT*** and ***not tax deductible***.

Non-entertainment gifts at functions

What if a Christmas party is held at a restaurant at a cost of less than $300 for each person attending, and employees with spouses are given a gift or a gift voucher (for their spouse) to the value of $150?
Actual method used for meal entertainment

Under the actual method, for employees attending with their spouses, **no FBT** is payable, because the cost of each separate benefit (being the expenditure on both the Christmas party and the gift) is less than $300 (i.e., the benefits are not aggregated).

No deduction is allowed for the food and drink expenditure, but the cost of each gift is **tax deductible**.

50/50 method used for meal entertainment

Where the 50/50 method is adopted:

- 50% of the total cost of food and drink ***is liable to FBT*** and ***tax deductible***; and
- in relation to the gifts:
  - the total cost of all gifts ***is not liable to FBT*** because the individual cost of each gift is less than $300; and
  - as the gifts are not entertainment, the cost is ***tax deductible***.

We understand that this can all be somewhat bewildering, so if you would like a little help, just contact our office.

Single Touch Payroll legislation passed by Senate

Legislation enacting the implementation of the Single Touch Payroll regime for employers with 19 or fewer employees was passed by the Senate on the 5th December 2018. This law will come into effect from 1st July 2019. Essentially this means that all employers will be required to report tax and superannuation details to the ATO from their payroll software *at the time of paying employees*. For further information please contact us or refer to the ATO website About Single Touch Payroll.

ATO contact regarding business cars and Fringe Benefits Tax ('FBT')

The ATO has recently advised that it will be contacting taxpayers (and tax agents on behalf of their clients) that have been identified as having cars registered in their business name who have **not** lodged an FBT return.

The ATO has reminded businesses that:

- a car fringe benefit will occur when a business owns or leases a car and makes it available for an employee's private travel or use (including garaging the car at or near an employee's home and making it available for private use); and that
- business directors are also 'employees' for FBT purposes.

External collection agencies to enforce ATO lodgement obligations

The ATO has finalised a trial relating to sending overdue taxpayer lodgement obligations to external collection agencies.

As a result, it may now refer taxpayers to an external collection agency to secure tax return lodgement.

The ATO has stated that it will only refer a taxpayer to an external collection agency where the taxpayer takes no action in response to its initial correspondence letters.

ATO data matching and share transactions

The ATO has extended its data matching program, this time focusing on share data.

The ATO will continue to receive share data from ASIC, including details of the price, quantity and time of individual trades dating back to 2014, with more than 500 million records obtained.

The ATO will use the information to identify taxpayers who have not properly reported the sale or transfer of shares as income or capital gains in their income tax returns.

It seems share transactions are high on the ATO's priority list, given more than 5 million Australian adults (almost one-third) now own shares.

Improvements to employee share schemes announced

The Government has announced it intends to introduce legislation to improve the ability of small businesses to offer employee share schemes by simplifying the current regulatory framework, and reducing the time and cost burden for businesses by (amongst other things):

- increasing the value limit of eligible financial products that can be offered in a 12-month period from $5,000 per employee to $10,000 per employee;
- creating an exemption for disclosure, licensing, advertising and on-sale obligations in the Corporations Act; and
- allowing small businesses to offer (in most instances) employee share schemes without publicly disclosing commercially sensitive financial information.

New Staff

We would like to extend a warm welcome to Monica Bauman and Michelle Scuderi who have recently joined the ML Partners team in Ayr.

Monica has re-joined the ML Team after a 3 year absence and brings with her a wealth of experience in both public practice and the banking industry. Monica worked as a trainee accountant on the Gold Coast and Mackay before moving to the Burdekin in 2011 where she worked as a junior accountant in the ML Home Hill Office. Monica has spent the last 3 years as a business banker at Suncorp. Monica is currently completing her Economics degree and hopes to complete the honours program before completing her CPA program. Welcome back Monica!

Michelle is a Burdekin local who brings a wealth of knowledge to her position of Accounting Support. Michelle previously worked in the

accounting industry for over 10 years and runs a successful business with her husband. Welcome Michelle!

ATO guidance regarding 'downsizer contributions'

The ability to make 'downsizer contributions' effectively commenced on 1 July 2018, prompting the ATO to release further guidance with respect to this new superannuation contribution classification.

This new measure will be of most assistance for individuals approaching retirement, where they dispose of their family home in an effort to 'downsize' and they want to contribute part or all of the proceeds to superannuation.

Basically, these measures allow older Australians to make a downsizer contribution where:

- ❑ they are aged at least 65;
- ❑ there was consideration received for the disposal of an eligible Australian dwelling;
- ❑ the contract of sale for the property was entered into on or after 1 July 2018;
- ❑ a superannuation contribution is generally made within 90 days of settlement;
- ❑ the contribution does not exceed the lesser of $300,000 and the proceeds received from the sale of the dwelling;
- ❑ an ownership interest in the dwelling had been held for at least 10 years (usually by the individual making the contribution or their spouse);
- ❑ either a full or partial CGT main residence exemption applies to the disposal of the dwelling;
- ❑ a choice to treat the contribution as a downsizer contribution is made in the approved form; and
- ❑ broadly speaking, it is the first downsizer contribution the taxpayer has made.

No tax deductions if you don't meet your tax obligations

New laws passed by parliament last month directly target the behaviour of taxpayers that don't meet their obligations.

Tax deductions denied

If taxpayers do not meet their PAYG withholding tax obligations, from 1 July 2019 they will not be able to claim a tax deduction for payments:

- of salary, wages, commissions, bonuses or allowances to an employee;
- of directors' fees;
- to a religious practitioner;
- under a labour hire arrangement; or
- made for services where the supplier does not provide their ABN.

The main exception is where you realised there is a mistake and voluntarily corrected it. For example, if you made payments to a contractor but then later realised that they should have been paid as an employee and no PAYG was withheld. In these circumstances, a deduction may still be available if you voluntarily correct the problem but penalties may still apply for the failure to withhold the correct amount of tax.

Are you in the road freight, IT or security, investigation or surveillance business?

The Taxable Payments Reporting system was introduced to stem the flow of cash payments to contractors and rampant under reporting of income. Since the building and construction industry was first targeted in 2012, the reporting system has expanded to include cleaning and courier services. Now, a broader set of industries have been targeted.

If you have an ABN, and are in road freight, IT or security, investigation or surveillance, then any payments you make to contractors will need to be reported to the Australian Tax Office (ATO).

Be careful here as the definition of these industries is very broad. For example, 'investigation or surveillance' includes locksmiths. The definition covers services that provide "protection from, or measures taken against, injury, damage, espionage, theft, infiltration, sabotage or the like."

IT services are the provision of "expertise in relation to computer hardware or software to meet the needs of a client." This includes software installation, web design, computer facilities management, software simulation and testing. It does not include the sale of software or lease of hardware.

Road freight is typically goods transported in bulk using large vehicles. This includes services such as log haulage, road freight forwarding, taxi

trucks, furniture removal, and road vehicle towing. The addition of road freight to the taxable payments reporting system completes the coverage of delivery and logistics services as businesses in courier services are already obliged to report payments to contractors to the ATO.

If your business is impacted by these changes, you need to document the ABN, name and address, and gross amount paid to contractors from 1 July 2019. Your first report to the ATO, the Taxable Payments Annual Report (TPAR), is due by 28 August 2020. This might seem like a long way away but it will come around quickly and you need to ensure that your systems are in place to manage the reporting required easily and accurately.

Who needs to report?

The obligation to report contractor payments to the ATO is already quite broad. The addition of road freight, IT or security, or investigation or surveillance services, adds another layer.

Service	Reporting of contractor payments
Building and construction services	From 1 July 2012
Cleaning services	From 1 July 2018
Courier services	From 1 July 2018
Road freight, IT or security, or investigation or surveillance services	From 1 July 2019

For businesses providing mixed services, if 10% or more of your GST turnover is made up of affected services, then you will need to report the contractor payments to the ATO.

Contractor or employee? Defining workers in the gig economy

A former Foodora Australia delivery rider, Joshua Klooger, recently won an unfair dismissal claim despite a service agreement that classified him as an independent contractor.

When determining whether a worker is a contractor or an employee, the courts say "… the distinction between an employee and an independent contractor is rooted fundamentally in the difference between a person who serves his employer in his, the employer's business, and a person who carries on a trade or business of his own."

The factors identified by the commission in this case are helpful indicators:

- How work is fulfilled. The commission determined that while the riders had the choice to accept the shifts, the shift start and finish times and geographical locations were fixed by Foodora. Despite the ability to self-select shifts, the commission saw that the "process for engagement is similar to a variety of electronic and web-based systems that are frequently used to advise, in particular, casual employees of available shifts that are offered." While the system is not as prescriptive as naming particular employees, the commission saw the results as essentially similar.
- What the contract said. While the Foodora service agreement attempts to establish a relationship of principal and contractor, the commission found that, "The service contract contains many provisions which are similar in form and substance to those that would ordinarily be found in an employment contract document." These included clauses dealing with rostering and acceptance of jobs, the attire to be worn when on shift, the specific nature of the engagements to be undertaken including requirements that the contractor is to comply with all policies and practices of the principal.
- Who had control? Foodora had "… considerable capacity to control the manner in which the applicant performed work." The commission also noted that the batching system meant that to maintain a high ranking, riders had to perform a certain number of deliveries during a shift, work a minimum number of shifts in a week and work a number of Friday, Saturday and Sunday shifts.
- Generating business. In Foodora's favour was the fact that it did not prevent its riders from working for other companies or delivery platforms. However, in this case the commission compared this ability to casual restaurant staff working for more than one restaurant.
- Is the contractor operating separate to the principal? One of the aspects of many contractor versus employee cases is whether the individual holds themselves out to the public as a separate business in their own right – do they have their own place of business. In this case, Mr Klooger worked exclusively for Foodora.
- Supply of tools of trade. Mr Klooger's only investment as a contractor was his bicycle which he also used privately. An asset which the commission points out

does not require a high degree of skill or training.

- Delegation of work. One of the factors that determines whether someone is a contractor or employee is their capacity to delegate work to others. The substitution scheme operated by Mr Klooger was a significant factor in this case as he was delegating work. However, in this instance, the commission saw that the substitution scheme was a breach of Foodora's own service agreement not evidence of delegation despite their eventual acceptance of the scheme by Foodora.
- Identifying as Foodora. Riders had to identify as being from Foodora. Clause 4 of the service contract established an expectation riders dress in Foodora branded attire, and utilise equipment displaying the livery of the Foodora brand.
- Tax, leave, and remuneration. As Foodora classified the riders as independent contractors no tax was deducted from payments made. Riders were not entitled to holiday or sick leave. When Foodora paid Mr Klooger, they would generate a recipient created invoice. Once Mr Klooger had reviewed the invoice and made any corrections, the invoice would be paid.
- Reputational damage. If the riders did not perform to the standard expected by customers, it was Foodora that faced reputational damage not the riders.

While Mr Klooger won his case and was awarded $15,559, Foodora appointed voluntary administrators on 17 August 2018, well before this case came before the commission. The commission pursued the case on public importance grounds.

What to do if you engage contractors

If you engage contractors, it is essential to get the facts of the relationship right. Business owners need to take a proactive approach to reviewing arrangements to ensure that the business is not exposed to material liabilities. Key factors include:

- Whether the work involves a particular profession or skill set.
- The level of control the contractor has over how the contract is executed.
- The ability of the contractor to delegate work to another person.
- Whether the contractor supplies his own tools or equipment.
- Whether the contractor has his own place of business.
- The contractor's ability to generate goodwill or saleable assets during the course of the contract.
- How the contractor is paid (for hours worked or a result).
- The level of risk the contractor bears.
- Whether the contractor is independent or in reality, simply 'part and parcel' of the organisation they contract to.

No single factor is determinative; it is the weight of evidence, on balance, across all of the factors.

The implications of misclassifying a worker

The implications of misclassifying a worker go well beyond industrial relations. If a business misclassifies an employee, it impacts on superannuation guarantee (SG), PAYG withholding, workers compensation, and payroll tax. These entitlements will often need to be met even if the misclassification was a genuine mistake.

For SG obligations, there is no real time limit on the recovery of outstanding obligations. However, the ATO will generally only go back 5 years unless the individual employee can prove an entitlement beyond this point. Remember that employers that fail to make their superannuation guarantee payments on time don't just pay the outstanding superannuation but are subject to the SG charge (SGC) and lodge a Superannuation Guarantee Statement. SGC is made up of:

- The employee's superannuation guarantee shortfall amount;
- Interest of 10% per annum; and
- An administration fee of $20 for each employee with a shortfall per quarter.

Unlike normal superannuation guarantee contributions, SGC amounts are not deductible to the employer, even when the liability has been satisfied.

Getting it wrong can be a very costly exercise particularly if the error is evident over a number of years.

Penalty rates – General Retail Industry Award 2010

The Retail Award changes apply from the first pay period starting on or after 1 November 2018.

They affect:

- the Saturday rate for casuals
- the weekday evening penalty rate for casuals
- the Sunday shiftwork rate for all employees.

These changes are being phased in over the next 2 to 3 years. For further information go to the Fair Work website: Penalty rates changes

Fast-tracking tax cuts for small and medium businesses

The Government has fast-tracked the already legislated tax cuts to small and medium businesses by bringing them forward **five years**.

Companies with an aggregated turnover of less than $50 million will have a tax rate of **25%** in the **2022 income year** (instead of the 2027 income year based on the previously legislated timeline).

Similarly, the increase in the tax discount to **16%** for unincorporated entities will apply from the **2022 income year**, rather than the 2027 income year.

Small and medium businesses will appreciate the earlier access to the already legislated tax cuts.

More help for drought-affected farmers

As part of the next phase of its **drought assistance policy** (which includes various other measures), the Government announced that farmers will be able to **immediately deduct** the cost of **fodder storage assets**.

Previously, these types of assets (such as silos and hay sheds used to store grain and other animal feed storage) were required to be depreciated over three years.

This measure is designed to make it easier for farmers to invest in more infrastructure to stockpile fodder during the drought.

This measure is available for fodder storage assets first used, or installed ready for use, **from 19 August 2018** (being the date of the announcement), and complements the $20,000 instant write-off already available to small business entities.

The relevant legislation giving effect to this announcement was fast-tracked through Parliament to provide certainty for these drought-stricken farmers, passing both Houses on 20 September 2018.

Change of banking details – ML Partners Invoices

We will be notifying clients shortly of a change to our banking details for payment of our invoices. Please keep an eye out for this advice in the next few weeks and months so that your payment is made to the correct account.

Christmas

After a hectic year where time seems to tick by faster with each passing minute, Christmas is a reason to stop and be present. It is a time dedicated to revelling in the warmth and company of family and friends.

Peter, John & staff would like to wish you and your family the warmest of Christmas wishes.

We look forward to working with you again in the New Year.

Please note that both offices will be closed from 1pm Friday 21st December 2018 and will re-open on Monday 7th January 2019.

Quote of the Month:

"Cheers to a new year and another chance for us to get it right." – Oprah Winfrey