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Practice Update

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

November - December 2014

5 steps to a tax free Christmas

OK, we know tax is not the most exciting thing to think about in the lead up to Christmas. But these are the questions we get asked all the time, and if you are familiar with all the tricks and traps, you can save yourself and your business hundreds if not thousands of dollars.

1. Spontaneous, well thought through team gifts

The key to Christmas presents for your team is to keep the gift spontaneous, ad hoc, and from a tax perspective, below \$300 per person. \$300 is the minor benefit threshold for Fringe Benefits Tax (FBT) so anything at or above this level will mean that your Christmas generosity will result in a gift to the Tax Office as well at a rate of 47%. To qualify as a minor benefit, the gifts also have to be ad hoc - no once a month gym membership payments or giving the one person multiple gift vouchers amounting to \$300 or more.

2. The work Christmas party options

If you really want to avoid tax on your work Christmas party then host it in the office on a work day. This way, FBT is unlikely to apply regardless of how much you spend per person. Also, taxi travel that starts or finishes at an employee's place of work is also exempt from FBT. So, if you have a few team members that need to be loaded into a taxi after over indulging in Christmas cheer, the ride home is exempt from FBT.

If your work Christmas party is out of the office, keep the cost of your celebrations below \$300 per person.

This way, you won't pay FBT because anything below \$300 per person is a minor benefit and exempt. Be careful though as the \$300 includes all the costs of the event so meals, drinks, entertainment, etc.

If the party is not held on your business premises then the taxi travel is taken to be a separate benefit from the party itself and any Christmas gifts you have provided. In theory, this means that if the cost of each item per person is below \$300 then the gift, party and taxi travel can all be FBT free. However, the total cost of all benefits provided to the employees needs to be taken into account in determining whether the benefits are minor.

If your business hosts slightly more extravagant parties and goes above the \$300 per person minor benefit limit, you will pay FBT but you can also claim a tax deduction for the cost of the event.

3. Give a gift rather than doing lunch

Few of us have that much time in the diary for lots of Christmas lunches so why not give a gift instead? In addition to a few extra hours saved and a lot less calories to work off, there is also a tax benefit. As long as the gift you give to the client is given for relationship building with the expectation that the client will bestow your business with more work (that is, there is a link between the gift and revenue generation), then the gift is tax deductible. Entertaining your clients at Christmas is not tax deductible. So, if you take them out to a nice restaurant, to a show, or any other form of entertainment, then you can't claim it as a deductible business expense and you can't claim the GST credits either. It's goodwill to all men but not much more.

4. Give a charity a cash donation

Charities love cash. They don't have to spend any of their precious resources to receive it – unlike a lot of charity dinners, auctions, and promotional campaigns. And, from a tax perspective, it's the safest way to ensure that you or your business can claim a deduction for the full amount of the donation.

There are a few rules to giving to charities that make the difference between whether you will or won't receive a tax deduction.

- The charity must be a deductible gift recipient (DGR). You can find the list of DGRs on the [Australian Business Register](#).
- If you buy any form of merchandise for the 'donation' – biscuits, teddies, balls or you buy something at an auction – then it's generally not deductible. Your donation needs to be a gift, not an exchange for something material. Buying a goat or funding a child's education in the third world is generally ok because you are generally donating an amount equivalent to the cause rather than directly funding that thing.
- The tax deduction for charitable giving over \$2 goes to the person or entity whose name is on the receipt.

5. Christmas bonuses

If you are planning to provide your team with a cash bonus rather than a gift voucher or other item of property then remember that this will be taxed in much the same way as salary and wages. A PAYG withholding obligation will be triggered and the ATO's view is that the bonus will also be treated as ordinary time earnings which means that it will be subject to the superannuation guarantee

Aged Care Planning

If you wish to gain an understanding of what you need to consider now so you or your aging parents are not caught out with little or no options in the future, we have attached a link to a video, that is both informative and provides practical insights into this complex issue. You'll find out what the key issues are that can influence Aged Care fees and the next steps to optimise cash flow, reduce tax and preserve the wealth of loved ones.

<https://www.youtube.com/watch?v=sDQ3Zi1mPeA&feature=youtu.be>

Director liable for company's PAYG withholding

A recent case before the Administrative Appeals Tribunal (AAT) involved a company that had withheld nearly \$850,000 in pay as you go (PAYG) withholding that it had deducted from its employees' salaries and wages.

It was obviously in some financial trouble, and failed to remit any of the monies to the ATO before being wound up.

Company directors have a legal responsibility to ensure that their company meets its PAYG withholding and superannuation guarantee charge (SGC) obligations.

This doesn't only apply to companies that are wound up, as a director of any company that fails to meet a PAYG withholding or SGC liability by the due date can become personally liable for a penalty equal to the unpaid amount.

The ATO issued director penalty notices (DPNs) to the director (the DPN is the first step in the process for the ATO to start legal proceedings to recover the unpaid PAYG).

The director tried to fight the case, but the DPNs were valid in the opinion of the AAT.

Can you access your super fund for medical procedures?

The following relates to a newspaper article that appeared recently in a national newspaper and was then subsequently picked up by national TV and radio.

As it concerns a taxpayer withdrawing all of her \$30,000 balance from her superannuation fund for weight loss, a tummy tuck and breast implants, clients who heard about it or saw it on TV may be incorrectly contemplating accessing their super.

Compassionate grounds to withdraw superannuation

The taxpayer involved suffered from obesity. On this basis, she obtained a written statement from her medical practitioner in which it was argued that without this stomach reduction procedure, it was likely that she would experience severe ill health that could possibly be a life threatening condition.

However, applications for early release of superannuation on medical grounds:

1. Must be approved by the Department of Human Services (DHS); and
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2. Applicants need to supply letters from their GP and a specialist certifying that their condition is **life threatening**, and provide proof that expenses cannot be met by other means, including savings.

The taxpayer said that given her family history of diabetes, cancer and hypertension, her case met the criteria.

Breast implants and tummy tuck?

However, the taxpayer apparently made a second withdrawal (of approximately \$20,000) from her superannuation fund to pay for breast implants and a tummy tuck.

Clients need to understand that there are only very limited circumstances under which superannuation monies can be withdrawn to pay for a medical procedure, under the umbrella of 'compassionate grounds'.

When can super monies be released on 'compassionate grounds'

Where an SMSF member is suffering a severe medical condition and **cannot** afford to pay for such medical expenses, they can apply to the DHS (not the ATO) to have some of their super funds released on 'compassionate grounds'.

Basically, a member will be entitled to claim 'compassionate grounds' where:

- The medical treatment (which is not readily accessible through the public health system) is necessary to treat a life threatening condition, to alleviate acute or chronic pain, or to alleviate an acute or chronic mental disturbance/illness; and
- Two registered medical practitioners (one of whom is a specialist) have certified that the above requirements have been satisfied.

There are many other issues involved, including significant penalties where funds are withdrawn incorrectly, so clients should contact our office before trying to withdraw any funds from their superannuation fund.

How to protect your identity – ATO's (anti) fraud video

The ATO continues to warn taxpayers about the dangers of not protecting important details such as their tax file number, date of birth, current address and driver's licence number.

So it has put out a video called *"Don't let yourself disappear"*, which shows what can happen when personal information gets in the wrong hands.

In it, while discussing identity fraud, one of the characters says, *"Yeah, I saw an ad for a cleaning job."*

"Great pay, low hours. I thought awesome, extra cash. So I gave them all my details, and then I never heard back about the job."

"Then at tax time my refund was taking forever, so I called the Tax Office and they told me that it's already been issued."

"So the scammer stole my identity and my refund."

"The Tax Office is helping me sort it out, but I should have thought twice about giving out my details."

Quote of the Month:

"The joy of brightening other lives, bearing each others' burdens, easing other's loads and supplanting empty hearts and lives with generous gifts becomes for us the magic of Christmas."

~ W. C. Jones



Peter, John and Staff would like to wish you and your family a Merry Christmas and a Happy New Year.

Please note, our offices will be closed from 3pm Tuesday 23rd December, 2014 and will re-open for business Monday 5th January, 2015.

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.
