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5 tips for a tax-free Christmas work party

Christmas will be here before we know it, and it is likely that better organised employers will already be thinking about their yuletide preparations.

While you should feel free to pop a champagne cork or three for your employees, make sure that you don't get the tax hangover; particularly with fringe benefit tax and associated income tax and GST pitfalls.

Here are five tips for you to think about to try to keep your Christmas tax-free.

1. Give until it doesn't hurt

There are two words and one dollar value that businesses need to keep in mind with regard to tax and Christmas parties and gifts — the two words are "minor benefits", and the dollar value "$300".

Contact Us

Welcome to Collison Accounting's client information newsletter, your monthly tax and super update keeping you on top of the issues, news and changes you need to know. Should you require further information on any of the topics covered, please contact us.

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There is a fringe benefits tax (FBT) exemption for providing minor benefits valued at less than $300 that satisfy certain criteria — that they are provided to staff or their associates, for example a spouse, on an "infrequent" or "irregular" basis, and the benefit is not considered a reward for services.

Another thing to note however is that the $300 threshold applies to each benefit provided, not to a total value of "associated benefits". So if, as a generous employer, you host a party and also give a gift to everyone, the party and the gift are considered separately for FBT. If each is less than $300, they are both generally FBT-free.

The minor benefit exemption is dependent on the facts. Check with this office for assistance.

2. The party location is important

The most certain way to ensure festivities are kept tax-free is to host the party at your workplace during the working week, and to limit attendees to staff only. However if "associates" of employees attend, it is important to stay below the $300 threshold and satisfy the minor benefit conditions.

If the Christmas party is away from the workplace, it is important to keep the cost per person (staff and their family) below this $300 threshold, among other conditions, to retain minor benefit status — but remember this is a total of meals, drinks, entertainment and associated benefits.

3. Deduction and GST credits for employee gifts? It's a fine balance

While in the giving spirit, the important thing to remember is that if a Christmas gift or benefit to an employee is exempt from FBT, such as a minor benefit, you typically won't be able claim it as an income tax deduction, nor can you claim any GST credits from the purchase.

Whether a gift is deductible and GST credits can be claimed depends on whether the gift provided is "non-entertainment" or "entertainment". The former includes such gifts as flowers, wine, "beauty" products, gift vouchers and hampers for example, while the latter includes items of "recreation" such as tickets to a musical, theatre, movie, or sporting event.

The tax treatment where a gift is provided to an employee is summarised below.

4. Where do taxis stand?

For an employer thinking of paying for a taxi to get their staff from point A to point B, the important consideration in regards to this will be where exactly those points A and B are.

If the taxi travel is from work to a venue where the party's being held (and vice versa), the Tax Office says this is all part of the fun and the fare can be exempt from FBT under special rules. However if some staff members perhaps overload on the Christmas cheer and consequently are themselves loaded into a taxi to be taken home (not back to the workplace), this cost may attract FBT.

5. Are Santa's pockets filled with cash?

If instead of giving gifts or covering the bar tab you'd rather hand out cash bonuses to thank your employees for their hard work during the year, this payment is treated in the same way as salary and wages. PAYG withholding, super guarantee and payroll tax obligations will be triggered. The Tax Office will treat this bonus as ordinary time earnings. ■

> The most certain way to ensure festivities are kept tax-free is to host the party at your workplace during the working week.

Gift to employee or associate	FBT liability?	Income tax deduction?	GST credit available?
If gift constitutes "entertainment"			
Property	Yes	Yes	Yes
Minor benefit (< $300)	No	No	No
If gift constitutes "non-entertainment"			
Property	Yes	Yes	Yes
Minor benefit (< $300)	No	Yes	Yes



Property transactions: Got an appropriate valuation?

Be aware of how the use of valuations can affect your annual tax bill.

Estimates are most commonly used in apportioning expenses between private and business use. More important however is the use of valuations to work out the cost of transactions that are not at arm's-length or when no actual cash changes hands. A common example is in respect of property transactions.

Why are valuations in property transactions important for tax?

There are times when a valuation is necessary for tax purposes. For example, let's say that Humbert transfers his rental property to his daughter Dolores for no consideration. The CGT rules require that the transfer be made at "market value".

If Humbert has held the property for a lengthy period of time and the property has increased significantly in value at the time of transfer, then he will be up for quite a hefty tax bill. This is so even though he has not received a single cent by gifting his property. In order to work out the extent of any capital gain, Humbert will need to obtain an appropriate market valuation of the property that appropriately reflects an arm's length value.

The Tax Office has recently issued guidance about penalties that could arise when valuations are not done correctly. A general understanding of how the Tax Office expects valuations to be done is necessary so there are no nasty surprises when the assessment arrives. The best way to demonstrate how valuation rules apply is to look at how this guidance applies to property.

While the Tax Office admits that the process of valuing an asset can range from being simple to complex, the principles remain constant. The valuation deals with a concept of market value based on the highest and best use of the asset in question.

It is recognised by valuation professionals, and tested in the courts, that particular valuation methods are more appropriate for some valuations than others based on the information available. The market value should use the most appropriate valuation method.

For commodity products, the comparable arm's length sales data is considered the most appropriate method, or for a mature company, discounted cash flow or a multiple of Earnings Before Income Tax (EBIT). Many valuations also use one or more secondary methods to cross check the value determined from the primary method.

Where a market exists for an asset, that market is widely considered to be the best evidence of market value of the asset (because naturally the "market value" is the value that the market is willing to pay).

Valuing real property

The most appropriate method for the valuation of real property is "highest and best use". The concept of highest and best use of the property in the market takes into account any potential for a use that is higher than the current use of the property, for example development potential based on council approvals. Factors to consider would be current market transactions, current

Where an element of informed judgement is called for, taxpayers may be well advised to seek out, and document, the wisdom of a tax professional. Contact this office for more.

market trends and condition of the property. A valuation should be undertaken by a suitably qualified and experienced person in relation to real property valuation, and be fully documented to explain how the value was determined.

As with many tax issues, substantiation is extremely important and the Tax Office may not accept the market value determination if the document is not "fit for purpose".

It is also possible to apply for a market value private ruling from the Tax Office. Ask us for more information on this option.

Safety grey zone

The Tax Office makes it clear however that there is some fallback for people whose intentions are on the right side of the rules.

"The majority of taxpayers who use a qualified valuer or equivalent professional for taxation purposes will generally not be liable for a penalty if they have provided the valuer with accurate information where the valuation ultimately proves to be deficient," the Tax Office says.

It uses the example of a real property valuation prepared by a qualified valuer, or an estimate of historical building cost made by a quantity surveyor. "Relying in good faith on advice of this nature is consistent with the taking of reasonable care," the Tax Office says, "even though the advice later proves to be deficient."

Even fallbacks have limits

But even when using the services of a qualified professional, the Tax Office says there may still be potential penalties for making a false or misleading statement, or for treating the tax law "in a manner that is not reasonably arguable".

The Tax Office says this could be the case if:

- the taxpayer has not given correct information to the valuer to allow them to correctly assess the value of the item for the period required
- the taxpayer or their agent should reasonably have known that the information provided by the value was incorrect
- the methodology or valuation hypothesis used by a qualified valuer may be based on an unsettled interpretation of a tax law provision or unclear facts.

Speak to this office if you require further information. ■



Tax-free life policy bonuses

When a life insurance policy has been held by the taxpayer for 10 years or longer, reversionary bonuses received on that policy are tax-free. A reversionary bonus is the profit earned annually on traditional life contracts on top of the sum-insured.

For policies held less than 10 years, stipulated amounts are included in the taxpayer's assessable income and a tax offset is available.

A bonus is not assessable income if it is received:

- at least 10 years after the policy was first acquired
- under a life assurance policy that was part of a superannuation fund or scheme when the person on whose life the policy was effected dies, has an accident, illness or other disability, or
- as a result of serious financial difficulties, provided the policy was not taken out with a plan to mature or be terminated within 10 years. ■

Information provided is of a general nature only, is not personal financial or investment advice, and we accept no responsibility for persons acting on information contained herein. Clients should not act solely on the basis of material contained in this document. We recommend that our formal advice be obtained before acting on the basis of the topics presented here.

Are you a company director? Better brush up on your responsibilities.



As though business owners don't already have enough on their minds, the words "slowing economy" are being heard around the barbecue again.

Company directors especially need to keep in mind that the *Corporations Act* holds directors personally liable for many of the legal and financial obligations expected from a company.

Commercial decisions must be made by company directors, and many times these decisions involve some degree of risk. While the distinction between entrepreneurial freedom and delinquent corporate behaviour will be clear cut for most company directors, there are nevertheless circumstances where these lines can blur, resulting in sometimes substantial, and sometimes unexpected, personal exposure.

RISKS AND LIABILITIES

The corporate regulator, the Australian Securities and Investments Commission (ASIC), says failing to perform your duties as a director can, in the more extreme cases, lead to being found guilty of a criminal offence with a penalty of up to a maximum of $200,000, or imprisonment for up to five years, or both.

ASIC gives an example of how a company director may be asked by a bank to give a mortgage over their house to secure the company's repayment of a loan. If the company does not repay the loan as agreed with the bank, the director will be held liable (and risks losing their house).

Another liability, for example, is that one's obligations as a director continue even after a company has ceased trading. Under certain circumstances, a director can still be held personally liable for ongoing debts and other losses even after the business has stopped operating.

Further, there are the tax obligations for PAYG withholding and superannuation guarantee charge payments, which are outlined under the Tax Office's "director penalty regime".

The Tax Office recommends that directors get up to speed on what is expected of them. It says one good source is ASIC's *Guide for Small Business Directors*. Contact this office for more information.

MISCONCEPTIONS

ASIC has found small business company directors continually need to be reminded that a company is its own entity, and has a distinct legal existence that is separate from that of its owner, manager, operator, employees and agents.

A company has its own property, and its own rights and obligations. A company's money and assets belong only to that company and must be used for the company's purposes. But it also has the powers of an individual, including the power to:

- own and dispose of property and other assets
- enter into contracts, and
- sue and be sued.

Company directors, according to ASIC, have seven key responsibilities. These include:

- **disclosing personal details of directors** – a company must inform ASIC of the name, date of birth and current residential address of directors
- **having a current registered office** – a company must have a current registered office in Australia and must inform ASIC of its location
- **having a principal place of business** – a company that operates a business from a location different from the registered office must inform ASIC
- **checking annual statements** – a company's details on the ASIC register must be accurate and must be kept up-to-date.
- **keeping financial records** – a company must keep up-to-date financial records that correctly record and explain transactions and financial position (larger companies have additional obligations to lodge financial reports with ASIC)
- **notifying ASIC of key changes** – whenever there are certain key changes to the company's details (for example registered office, principal place of business, a change of directors or details of same), ASIC must be notified
- **paying relevant fees to ASIC** – for example, the annual review fee.

If you require assistance with meeting any of these various company director responsibilities, please contact this office. ■

Deductibility of training course fees provided to employees

Running a successful small business sometimes requires an upskilled team. If you need your employees to grow their expertise in a particular area, spotting them for short-courses can be a worthwhile endeavour. When providing staff these courses, we have observed the following questions for employers to consider from a tax viewpoint.

Can I claim a deduction for course or education fees provided?

Yes. As general rule, a deduction is available for the full costs incurred in providing education to employees (such as course fees, travel costs and so on). What businesses tend to forget however is to consider possible FBT implications (see below).

Is the provision of education also subject to FBT?

Yes. Paying for your employee's work-related course fees would generally constitute a fringe benefit and be subject to FBT. However the rules within the FBT legislation allows for a full or partial reduction of FBT payable on the benefit provided that the "otherwise deductible" rule is met.

Simply put, the otherwise deductible rule assumes that if the employee had hypothetically incurred the expense, they would have been able to claim a deduction for the expense themselves. It follows that if the otherwise deductible rule could apply, the employer can reduce their FBT liability to the extent that the hypothetical deduction would have been allowed to the employee.

Certain membership fees and subscriptions paid by an employer are specifically exempt from FBT (such as a subscription to a trade or professional journal). Any FBT expense, however, can be deductible to the business.

When is an education expense considered to be hypothetically deductible to the employee?

This will depend on the type of course or education undertaken by the employee. The Tax Office has provided guidance in working out whether course or education fees incurred is deductible to an employee (ask this office).

Generally, the course must have a sufficient connection to an employee's current employment and:

- maintain or improve the specific skills or knowledge the employee requires in current employment, or
- result in, or possibly result in an increase in, income in current employment.

Employees generally cannot claim a deduction for an education expense if it doesn't have a sufficient connection to their employment, even if:

- it might be generally related to it, or
- it enables the employee to get new employment.

In most cases, employers will provide for education costs that are beneficial to their business, and so the otherwise deductible rule should apply such that no FBT is payable.

See this office if you require assistance either in your capacity as a business owner or an employee. ■



Winding up your SMSF? A list of do's and don'ts

When the time comes for you to wind up your fund, there are things to do, and things to avoid.

The reasons for winding up your SMSF could include that there are no assets left as members have been paid all their benefits, or members move overseas (and the fund cannot satisfy the definition of an "Australian superannuation fund"), or that members just don't want the responsibility of being a trustee any longer. Once the decision has been made it is always a good idea to sit down and read your trust deed, as it may contain vital information about winding up your fund. And remember, once a fund is wound up, it cannot be reactivated.

THE DO'S

Do: Notify the Tax Office within 28 days. You need to let the Tax Office know within 28 days of the fund being wound up. You can ask this office to help you do it in writing, but you must ensure to include the name of your SMSF, its ABN, your name and contact details, and the date you wound up your SMSF.

Do: Deal with member benefits. You need to make sure that:

- you deal with members' benefits according to the superannuation law and the trust deed
- you obtain market value balances of all related accounts
- you ensure all SMSF assets have been sold and member contributions dealt with in accordance with the trust deed and superannuation laws
- you ensure all proper steps are taken to transfer ownership and title of any assets
- you decide whether any corporate trustees in your fund wish to deregister with ASIC, and
- your self-managed super fund has no assets left once it has been wound up.

But remember, if you have wound up your fund but you, as a member, have not met a condition of release – retirement, transition to retirement, or reaching an eligible age – you cannot access your superannuation. Your super needs to be rolled over into another regulated fund. Remember, there are serious legal penalties for accessing your superannuation benefits before you are legally allowed.

Seek advice from this office on the potential capital gains tax (CGT) implications for your SMSF on the disposal of assets to enable the payment of benefits or the rollover of benefits to another fund.

Do: Arrange a final audit of your fund. When winding up your fund, you will need to have an audit completed by an approved SMSF auditor before you can lodge your final SMSF annual return.

Do: Complete reporting responsibilities. When preparing and lodging your annual return, you need to complete all labels in relation to "Was the fund wound up during the income year?"(item 9). You must also pay any outstanding tax liabilities at this time and lodge any outstanding returns from previous years. This office can assist you in these matters.

It is important to wind up your fund correctly. If you fail to carry out these reporting responsibilities, you may be the focus of compliance activities and you may be subject to penalties. After meeting all of your tax responsibilities, the Tax Office will send you a confirmation letter stating that it has cancelled your SMSF's ABN and closed your SMSF's record on its systems.

THE DON'TS

Don't: Cancel the fund's ABN. The Tax Office will do this once it has been notified of the intention to wind-up the SMSF. It will then send the trustee written confirmation that the ABN has been cancelled.

Don't: Walk away completely. The fact that you have lodged a final SMSF annual return and reported wind up information may not be the last contact you will have with the Tax Office. You need to finalise all lodgement and payment obligations before you can wind up.

Don't: Dispose of any paperwork. A lot of your records will need to be kept for several years, and some even up to 10 years.

Don't: Close the bank account. Keep the SMSF's bank account open until all expected final liabilities have been settled and requested refunds are received. Tax liabilities (including the final SMSF levy) can be prepaid or paid with lodgement of the SMSF annual return. Also, once a bank account for an SMSF has been closed, a new bank account cannot be opened without first producing a new trust deed. ■

Tips to beat bracket creep



While it's not a bad thing to get a raise or have salary adjusted for inflation, unwittingly jumping into a higher tax bracket can erode any gains. But there are steps you can take.

The government has said it is looking for ways to combat bracket creep – like making smaller brackets or adjusting them for inflation – but in the meantime, here's how it affects the average working taxpayer.

Jackie earned $179,000 a year (excluding super) during 2014-15. She sat in the $80,001 to $180,000 tax bracket, so her income in that bracket was taxed at 37%*. Her employer offered her a raise of $11,000 a year. Jackie was thrilled to earn $190,000, but she unknowingly crept into the next tax bracket.

The tax rate for her new bracket (more than $180,000) is 47%*. As she enters the higher bracket, her additional tax payable, because of the $11,000 pay rise, is $5,070 a year. Were Jackie left within her previous bracket, her pay rise would have attracted $4,070 in extra tax — in other words, she is now liable to an additional $1,000 in tax. But there are options for her to lessen this burden.

Option 1. Salary sacrifice the additional income

Instead of accepting the higher salary as purely taxable income, Jackie decides to sacrifice an extra $10,000 into her super. That way, her taxable income is reduced to keep her in the lower tax bracket, and that $10,000 yearly super injection ends up being taxed at only 15% (although she will need to consider contribution caps).

Super isn't the only avenue. Consider speaking to your employer about a novated leasing arrangement. Salary packaging a car is a good way to potentially reduce your taxable income if you need a nice new set of wheels.

Option 2. Negatively gear properties and/or shares

Many shrewd taxpayers out there are quick to tout the benefits of negative gearing. While you shouldn't misconstrue the day-to-day arrangements as anything but an economic loss, offsetting that loss against your taxable income is a good way to reduce your taxable income and stay in a lower tax bracket.

Option 3. Push back your deductions

If you're on the verge of creeping into the next tax bracket and you think it'll happen in the next financial year, consider paying any deductible expenses after June 30. That means membership fees, course fees, technical resource expenses and so forth may prove more advantageous if deducted later rather than sooner. ■

**Excluding the Medicare levy but including Temporary Budget Repair Levy (if applicable).*