Christmas Newsletter 2010

Welcome to our final newsletter for 2010. Another huge year is behind us and 2011 is shaping up to be bigger than ever.

As those of you that have been into the office over the last few months will know, we are renovating upstairs to make more office space for our staff. While the building work has been noisy and dusty at times, we are incredibly excited as the project nears completion. We anticipate completion by April 2011.

Thank you for your patience during this busy six months. Our turn around times have been slower than usual as we deal with training new staff and a new work paper system that we introduced in July. We are confident that the new system will bring time efficiencies to our practice, but has had a seemingly long lead time.

We wish you and your families a very Happy and Holy Christmas, and sincerely hope that 2011 brings good health and much happiness to your family and every success for your business.

Peter, Pauline and Staff

Merry Christmas

Christmas is a time when we can give a collective sigh of relief and, for a short time at least, put away the hard work that consumes us and focus on what's really important. Be generous to others, be generous to yourself and relax. 2011 will be here soon enough and we'll be here to help you meet the challenges and capitalise on the opportunities that the New Year will inevitably bring.

So, to help you move from the fast and furious pace of business to the festive season we've compiled our top 5:

Christmas cracker jokes:

Why was Santa's little helper feeling depressed? *He had low elf-esteem.*
What did the grape say when the elephant stepped on it? *Nothing. It just let out a little wine.*
What do you give a man who has everything? *Antibiotics.*
What do you call Santa's Helpers? *Subordinate Clauses.*
What is so good about getting a neurotic doll for Christmas? *It's already wound up.*

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Ho ho ho humbug: Avoid the Christmas tax scrooge

If you're planning your Christmas budget for your team and your clients there are a couple of things you need to know to keep the Christmas tax scrooge from ruining your Christmas celebrations. We take a look at what you can and can't deduct and what is and isn't likely to incur Fringe Benefits Tax (FBT).

Your team

The big issue with Christmas celebrations for your team is FBT. FBT applies to non-cash benefits provided by employers to their employees. This generally includes expenses for entertainment that you provide to your team (and their family). If you provide the Christmas celebrations at your work on a working day, then they are likely to be exempt from FBT. If however family members of your team attend, then FBT may apply if the cost of the celebration is over $300 per person. If the cost of the celebration is less than this amount then no FBT applies as it is considered to be a minor benefit and minor benefits are exempt from FBT. Christmas presents to staff members also need to be kept to less than $300 per person and need to be one-off gifts. They are not included in the calculation of the total cost of the Christmas party but are assessed separately (even if they are given out at the event). The cost of your Christmas celebrations for team members is not deductible for income tax purposes if FBT does not apply. If FBT applies, then you can claim a tax deduction.

Entertaining clients at Christmas

Entertaining your clients at Christmas is not tax deductible. So, if you take them out to dinner, to the theatre, or any other form of entertainment, then it's not deductible. However, if your business gives a gift then it is deductible as long as the gift is given in the expectation that the business will benefit. To be deductible the gift needs to be an expense of the business incurred in the course of generating revenue. You need to be able to prove the link between the two.

Donations to charity

It's important to recognise that you can only claim a deduction for donations made to deductible gift recipients (DGRs). If you receive any form of merchandise - biscuits, teddies, balls or you buy something at an auction - then it's not deductible. This is simply because you purchased something rather than giving a gift. The same goes for charity balls and dinners. You cannot claim the cost of the dinner unless the organisers have arranged for part of the cost to be deductible and are able to provide you with a confirmation receipt.
The most (tax) effective way to give is to make a direct donation to a DGR. This way, you get a tax deduction for the donation and the charity does not have to spend time, money, and resources creating and supporting events.

Declaring or paying dividends?

New rules apply to how your company declares or pays a dividend.
Paying dividends is a normal part of company life; generate the profits, pay the tax, and then look at what dividends are available for the shareholders. Changes in the Corporations Act earlier this year mean that directors need to consider a new set of rules before they declare or pay a dividend. Section 254T of the Corporations Act provides the rules governing dividends. In the past, directors needed to ensure that dividends were paid out of profits. This has now changed.

With effect from 28 June 2010, section 254T has been amended and replaces the profit test with three new tests. These new tests are:

1. The company's assets exceed it liabilities immediately before the dividend is declared and the excess is sufficient for payment of the dividend; and
2. The payment of the dividend is fair and reasonable to the company's shareholders as a whole; and
3. The payment of the dividend does not materially prejudice the company's ability to pay its creditors.

As a director you need to consider and satisfy these issues at the time when a dividend is declared and also when the dividend is paid.

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Why every person with a SMSF needs a will

Approximately 60% of Australian's die without a will in place. The average age of people with a will is 82 and the average age of people who die without a will is 62. Apparently, the majority of us believe that we are all going to die of extreme old age.

Dying intestate can be complex enough but if you have a Self Managed Superannuation Fund the situation can become even more complex. Dying without a will in place is likely to mean that there will be a significant period of time before your beneficiaries can access your superannuation - even if you have binding death benefit nominations in place. The reason is that once the trustee dies, there may not be anyone with the legal authority to approve the payment of your superannuation to your nominated beneficiaries. If you are a Director of a trustee company with multiple directors, it will depend on whether the trust deed and the company constitution allow the other directors to act without you.

With many of us building a significant amount of wealth within SMSFs, it's important that these funds are not unnecessarily tied up when our families most need them.

Pregnant pause

Understanding the new paid parental leave scheme

The Federal Government's paid parental leave scheme is open for business. Available to eligible parents whose babies are born or adopte[illegible] January 2011, the scheme opened for registrations on 1 October.

Expectant parents can apply to access the scheme through the Family Assistance Office (FAO) up to 3 months prior to the birth of their child. During the six month phase-in period of the scheme, employers can opt into the scheme. If they don't, the FAO will administer the parental leave payments for them. From 1 July 2011 however, responsibility for administering the scheme will predominantly fall to employers.

Who can access paid parental leave?

The parental leave payment is made to the primary carer of a baby born or adopted from 1 January 2011 (this is likely to be the birth mother or the initial primary carer of an adopted child unless there are exceptional circumstances).

To access the scheme, parents need to:

- Register for the scheme through the Family Assistance Office;
- Be Australian residents;
- Earn $150,000 or less (based on your adjustable taxable income in the previous financial year);
- Be the primary carer of the child; and
- Pass the work test.

To pass the work test, you need to have worked at least 10 months of the 13 months prior to the birth or adoption of the child and completed at least 330 hours of work within that 10 months. As long as you pass the work test, it does not matter if you are a part-time worker, casual, full time employee, contractor or self-employed.

There are also special provisions that allow parents to 'stay in touch' with work where you can have up to 10 days of contact time with work within the 18 weeks of paid parental leave without being considered to have returned to work. The self-employed are also able to oversee business operations. If you intend to utilise these provisions you will need to be very clear about what you can and can't do and for how long, or risk losing your entitlements.

What does the scheme provide?

The Paid Parental Leave Scheme provides 18 weeks of paid parental leave at the minimum weekly wage (currently $570 per week). Tax is paid on this amount.

Anyone receiving the payments under the paid parental leave scheme will not be eligible for the $5,000 baby bonus. Eligible parents can elect to take the baby bonus instead of participating in the parental leave scheme.

So, what do employers need to do?

Parental leave is paid by the employer in line with the employee's normal pay cycle. The Government's parental leave payments are treated in much the same way that salary and wages are paid to the employee. That is:

- Any tax owing will need to be withheld and remitted to the Tax Office.
- Any amounts paid are included on the employee's PAYG summary.
- Payslips should be provided as per usual.

Unlike normal employment conditions:

- Superannuation guarantee does not apply to paid parental leave payments.
- Leave does not accrue during the period of the paid parental leave.
- If your business is enrolled or liable for Payroll Tax, parental leave payments are not included. You will need to make sure you can distinguish between the different payments.
- Parental leave payments are not included in worker's compensation calculations.

The scheme triggers when an employee registered under the scheme advises the FAO about the birth or adoption of a child (parents have 12 months to make the notification and can take the parental leave at any time within this period as long as they do not work during that period). From that point, the FAO will pay the employer and the employer will then pay the employee as part of the normal pay cycle. The employer will be paid in advance of the employee's payment cycle to ensure they are not out of pocket.

Employers are not obliged to pay the employee until they have been paid by the FAO. The first payment is likely to be in arrears as the details of the claim are processed by the FAO which might create some angst if employees are not aware of this.

There are also a series of administrative functions that employers will need to perform outside of the payments to administer the scheme.

Employers are only responsible for paying the parental leave payments to eligible employees who have been with them for 12 months or more and intend to take 8 weeks or more of parental leave. Anyone who is eligible to access paid parental leave but does not meet these criteria will be paid directly by the FAO.

Quote of the month

"A 'No' uttered from the deepest conviction is better than a 'Yes' merely uttered to please, or worse, to avoid trouble." *Mohandas Gandhi*