CHRISTMAS NEWSLETTER

DECEMBER 2014

Hello and welcome to our final newsletter for 2014. As Christmas looms, our newsletter has details of employee gifts and how to avoid fringe benefits tax, along with an update on the budget measures, rental property deductions and superannuation issues. As always, contact us if you have any queries.

All staff have been working hard and we will have caught up on our scheduled work before Christmas. This means that we will be ready and able to start work on your 2014 returns in January, so bring in your paperwork if you have not already done so.

We would like to take this opportunity to thank you for your continued patronage. Your continued support means the world to us and we look forward to working with you in the New Year.

May you and your family enjoy a safe and peaceful Christmas and a healthy and prosperous New Year.

Peter, Pauline and the team.

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We will be closing our office from 3pm Friday 19th December 2014

And re-open Monday 5th January 2015

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 provisions.

2014 CHAMPIONSHIP RODEO DISPLAY IN GLOBE FOYER

Rental property expenses – what you can and can’t claim

It’s not uncommon for landlords to be confused about what they can and can’t claim for their rental properties. What often seems to make perfect sense in the real world does not always make sense for the Australian Tax Office (ATO).

In general, deductions can only be claimed if they were incurred in the period that you rented the property or during the period the property was available for rent. This means a tenant needs to be in property or you are actively looking for a tenant. If, for example, you don’t put a tenant into the property so that you can renovate it, then you might not be able to claim the expenses during the renovation period if it was not rented or available for rent during this time (there are some exceptions to this general rule). There needs to be a relationship between the money you make and the deductions you claim. Here are a few common problem areas:

Travelling to inspect your property

You can claim the cost of travelling to inspect your rental property. For example, if you fly interstate to inspect your property, stay overnight then fly home, you can claim the full cost of the trip. If however, the purpose of the travel is a holiday and the inspection is incidental to it, the trip is non-deductible except direct expenses and a reasonable portion of your accommodation.

Interest on bank loans

Only the interest on investment property loans, and bank charges, are deductible - not the actual loan repayment.

Repairs & maintenance

Expenses you incur for repairs and maintenance are deductible if the expenses relate to wear, tear, damage through rental activities.

If the repair improves function or if it replaces an entire structure (e.g. a whole fence as opposed to repairing damaged palings), it’s unlikely to be deductible but will be capital and depreciated over time.

Rental income from overseas

If you are an Australian resident, the ATO looks at your worldwide income. This means that if you own rental property overseas, you have to declare any income earned in your tax return - even if you have lodged a tax return and paid tax on the rental income in the country where the property is located.

Got international connections? How to avoid problems

Whether you're in business or an individual taxpayer, if you have funds flowing between countries, the tax office is going to be interested in you. For individuals, Project Do It provides an opportunity to voluntarily disclose unreported foreign income and assets before the tax office discovers them.

The cut off date to declare offshore income and assets without penalty is 19th December 2014. Contact us today if this affects you.

What happened to all of those Budget cutbacks?

If you're confused about what happened to all of those announced Budget cutbacks then you're not alone. Many of the Government's initiatives are stalled in the Senate awaiting final negotiation. Here's a quick summary of where everything is up to:

What's changed?

- 2% debt tax on high income earners from 1 July 2014 (and FBT rate increase from 1 April 2015)
- Superannuation guarantee rephased - now SG will remain at 9.5% until 1 July 2021
- Mining tax repealed
- The company loss carry back rules abolished
- The instant asset write off threshold of $6,500 for small business entities under the simplified depreciation rules has reduced back to $1,000 from 1 January 2014
- The accelerated deduction of $5,000 for motor vehicles has been removed from 1 January 2014
- Schoolkids bonus repeal - moved to 31 December 2016 and a means test applied until the repeal date
- Low income superannuation contribution repeal delayed until the 2017/2018 financial year onwards
- Income support bonus repeal delayed until 31 December 2016

What's still up for debate?

- Co-payments for visiting a doctor
- Fuel excise increase
- Retirement age increase to 70
- Changes to pension indexation
- Tightening of access to family tax benefits
- Removal of add-on family tax benefit for additional children
- Cuts to R&D incentive
- 6 month wait for employment benefits
- Deregulation of University fees

The Treasurer has flagged that he will seek savings elsewhere – so watch this space.

The risky business of dying

Why the death of your business partners can have dire consequences

Imagine this scenario…. Michael, James, and Nadine are shareholders in a successful business, MJN Solutions. The shares in the company are fairly evenly split reflecting the contribution that each has made to the business, with Michael and James each holding 35% and Nadine holding 30%. They have been working together for years to build the business to its current level. The business is now worth around $4 million and is still on a growth path. While no one is related to each other, everyone is close. They have had their disagreements but they trust each other and respect each other's ability. It's a fairly common scenario.

But one morning Michael and Nadine are shocked by a call from James' wife Monica, telling them that James has died in a car accident.

If you are in business with shareholders, your business faces a major potential threat and its shareholders unexpected personal costs, if one of your fellow shareholders dies or becomes permanently disabled. And, the situation can be exacerbated where the shareholders are not related.

Good planning through buy/sell agreements and appropriate insurance can make all the difference.

For many businesses, if no pre-existing arrangements are in place, the death of a shareholder can mean having an unknown person (the beneficiary of the shares) actively involved in the business or an unwilling shareholder. The alternative is for the original shareholders to find the cash, then and there, to buy back the shares. Think about the value of your company…do you have enough cash to quickly fund the buy back for another shareholder?

What does a buy/sell agreement do?

Many companies do not have a plan in place that contemplates the untimely death of its shareholders or a break-up of the shareholders, and as a result, do not have buy/sell agreements in place.

Buy/sell agreements are legal documents that define what happens in an event that may trigger the disposal of a shareholder's interest in a company. Amongst other things, the agreement determines how the company will be valued, and how shares can be disposed of in a series of scenarios including death.

Outcome 1 – Nothing planned

Michael and Nadine have a problem beyond dealing with the demise of a close friend and trusted professional in the business. While everyone knows that the unexpected can happen, nothing was planned or put in place to manage a worst case scenario.

James' shareholding and the rights that come with it, transfer through his estate to his wife Monica. Monica however wants nothing to do with the business that consumed so much of her husband's time. She just wants to cash out the shares and get on with her life.

MJN Solutions is still on a growth path and does not have the cash available to buy back James' shares. This means that Michael and Nadine now need to personally fund the purchase of Monica's shares (assuming they can come to an agreement about what the company is really worth). If they are unable to come up with the money, then Monica will become an unwilling shareholder.

Outcome 2 – Pre planning

Michael, James and Nadine worked with their accountants to put a buy/sell agreement in place to manage succession and unplanned events, such as the death of one of the shareholders. The buy/sell agreement defines how MJN Solutions will be valued and how the equity will be managed. In this scenario, the buy/sell agreement states that James' shareholding will be purchased by Nadine and Michael if James dies or becomes permanently disabled.

During the planning process, the funding arrangements necessary were put in place should the buy/sell agreement be triggered. In this scenario, Michael, James and Nadine opt to manage the funding through an insurance policy taken out in their own names (another way would be to fund the policy through a self managed superannuation fund - although there may be changes in this area with the ATO flagging that they will soon release their position on insurance held through superannuation for buy/sell agreements. Whichever way you go, it will be important to get current, structured advice in this area).

When James dies, the insurance proceeds are used to purchase James' shareholding. As a result, neither Michael nor Nadine are out of pocket or take on debt, they own an increased share of the business, they avoid having an unplanned shareholder running the company, and they can get on with business.

Contact us today if you want to discuss any issues raised in here.

Superannuation - What Happens To It When You Die? –

The general rule is that superannuation is not part of your estate unless you expressly make it part of your will, right? Well, maybe not. A recent case before the courts serves as a warning to make sure that you take care of the details.

Generally, superannuation is passed directly to your nominated beneficiaries and not to your estate. However, a recent case before the Supreme Court, however, may change current belief and convention on what happens to your superannuation when you die.

In this case, an unmarried son, James, tragically dies at the age of 40. His mother and father had an acrimonious relationship since separating when James was 5 (divorcing just under 2 years later).

At the time of his death, James did not have a valid will in place (intestate). Generally, when a child dies intestate, the estate is divided equally between the parents. James' estate was worth about $80,000 and his superannuation over $450,000.

James lived with his mother at the time of his death. She applied for Letters of Administration and Probate to manage his estate as there was no will. As administrator of his estate, her obligation was to "use her best endeavours to maximise the size of the estate."

The mother received advice from her lawyers that superannuation does not form part of the estate. As such, she sought to have James' superannuation distributed to her in her personal capacity (and not to the estate). While James' mother was not a nominated beneficiary for James superannuation, she was a non-binding beneficiary because of their interdependent relationship.

The superannuation benefits were eventually paid to the mother by three different funds because she had a relationship of financial and emotional dependency with James (James was bipolar and had lived with her 30 of his 40 years and they shared the household expenses).

During this time, the father's lawyers queried the mother's intentions for the superannuation benefits stating that to have the superannuation transferred to her in person was a breach of her fiduciary duties as administrator of the estate. The response they received was that superannuation is not an asset of the estate. And so it went to court.

The court agreed with the father's lawyers, ordering that the superannuation benefits form part of the estate, that the mother (having been granted Letters of Administration to deal with the estate) had a duty to maximise the value of the estate, and that her self interest in the superannuation benefits should not have come before her responsibilities as administrator.

By becoming an asset of the estate, the superannuation benefits were to be split between the mother and father.

The outcome of this case would have been different had James had a binding death benefit nomination in place for his superannuation in favour of his mother, and made a will naming his mother as executor. While these factors do not guarantee that the payment of superannuation benefits will not be contested (and there are a number of SMSF related cases that do), the measures will go a long way.

The top three things you must do:

1. Check your superannuation death benefit nominations - who is nominated and do you want them to receive your superannuation benefits if you die?
2. Review your will to make sure it is up to date for your current circumstances.
3. Check nominations for the legal representative of your estate and whether this nomination is current and appropriate.
   If you need help structuring your assets and managing your superannuation, please call us today. Don't leave these important issues for another day.

Tax Treatment of Virtual Currencies

If you have a digital coin, is it real? And if it's real do you have to pay tax on it? According to the Australian Taxation Office (ATO), the answer depends on how you are using it and why.

The ATO recently released its position on the tax treatment of the virtual coin bitcoin and other virtual currencies - much to the chagrin of proponents. The ATO's view is that bitcoin is not money or a foreign currency, and the supply of bitcoin is not a financial supply for GST purposes. However, bitcoin is a CGT asset.

The ATO have changed their procedure for applying for tax file numbers. You can now lodge an application form on line and then visit an Australian Post Office outlet to supply proof of I.D. visit ato.gov.au for details and search for "Applying for a TFN"