



CHRISTMAS PARTIES

FBT considerations and tax deductibility of expenses relating to the holding of Christmas parties either at work premises or held elsewhere are outlined in a Fact Sheet issued by the Tax Office in 2004.

EXEMPT BENEFITS – PROPERTY

The cost of food and drink associated with Christmas parties provided on business premises during a working day to employees is exempt. There is a taxable fringe benefit in respect of wives and partners of employees who attend unless the minor benefits exemption applies.

EXEMPT BENEFITS—MINOR BENEFITS

Cost of a Christmas party may be exempt if it is less than \$100 per employee. The cost per employee includes the costs of their associates attending. Cost of any gifts such as bottles of wine or hampers given at the function must be included in the total cost of the party.

TAX DEDUCTIBILITY

The cost of providing a Christmas party is tax deductible only to the extent that it is subject to FBT. If exempt from FBT you cannot claim an income tax deduction. Costs for entertaining clients at a Christmas party are not subject to FBT but are not income tax deductible. The fact sheet provides the following examples:

Christmas Party held on Business Premises

A company decides to have a party on its business premises on a working day before Christmas. The company provides food, beer and wine.

The tax implications for the employer will be as follows:-

IF...	THEN...
<i>Current employees only attend.</i>	<i>No FBT implications as it is an exempt property benefit.</i>
<i>Current employees and their associates attend at a cost of \$45 per head.</i>	<i>For employees – no FBT implications as it is an exempt property benefit. (The minor benefit exemption could also apply). - For associates – no FBT implications as the minor benefits exemption applies.</i>
<i>Current employees, their associates and some clients attend at a cost of \$165 per head</i>	<i>For employees – no FBT implications as it is an exempt property benefit. For associates – a taxable fringe benefit will arise as the value is equal to or more than \$100. For clients – no FBT payable and no income tax payable.</i>

Christmas Party held off Business Premises

Another company decides to hold its Christmas function at a restaurant on a working day before Christmas and provides meals, drinks and entertainment.

IF...	THEN...
<i>Current employees only attend at a cost of \$95 per head.</i>	<i>No FBT implications as the minor benefits exemption applies.</i>
<i>Current employees and their associates attend at a cost of \$45 per head.</i>	<i>No FBT implications as the minor benefits exemption applies. The per head cost for an employee includes the cost of any of their associates attending the function. If the combined cost is \$100 or more it will not be an exempt minor benefit.</i>
<i>Current employees, their associates and clients attend at a cost of \$165 per head</i>	<i>For employees – a taxable fringe benefit will arise. For associates – a taxable fringe benefit will arise. For clients – no FBT payable and the cost of providing the entertainment is not income tax deductible.</i>

OUR VIEW

Have you read about the furore currently conducted in the newspapers and television concerning the appointment of a South Australian businessman to the Reserve Bank Board?

This man's company set up a captive insurance company and made contributions to it over many years. Such an arrangement is commonplace among major companies and in fact, one major tobacco company fought the Tax Office on this issue and won! (WD & HO Wills v. FCT 96ACT4223)

Yet the Tax Office went after this man with ferocious intent. Issued assessments totalling \$150 million and sued for the money in three separate Courts. Eventually they wore him down and there was an agreed settlement for half the amount.

One would ask a question. If the Tax Office agreed to accept 50% of the money it was chasing, what does this say about the strength of its case?

There was no prosecution, no case decided against him in the Courts. Yet this man is pilloried in the media as a tax evader!

Yet another example, we think, of the Australian trait – he who dares to put his head above the rest is liable to get it chopped off! (metaphorically speaking of course).

And while this is going on, the Tax Office has accepted \$21million to track down the owners of lost Super accounts totalling \$8.2 billion. But those owners won't benefit because the Tax Office is not going to get around to doing anything for at least three years!

Having a Christmas party this year? We have an article about the complex FBT and Tax Rules you need to consider.

Some good things are happening in the Superannuation field. Check out our articles on Super Benefits. With the abolition of Super Surcharge, superannuation should take priority in our wealth and retirement planning.

Have a wonderful Christmas break. We meet again in early in February with a combined January/February issue.

Tony Lovett

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SUPER BENEFITS FOR OVER 55S

Until recently you were not permitted to draw down on your superannuation until you were fully retired. In order to encourage people to continue working past retirement age, even if only in a part time capacity, the Government relaxed this rule.

Anyone aged over 55 can draw a transition to retirement pension while still in the workforce. This is intended to supplement work income and, whilst aimed to assist those moving to part time work, is equally applicable to those continuing to work full time.

The pension must be in the form of a complying pension or a term allocated pension payable from income derived from investments in bonds, shares or property.

A strategy which utilises the transition to retirement pension can save you heaps of tax and help you build your superannuation nest egg.

If over 55, you can elect to draw a pension from your superannuation fund and arrange a salary sacrificed superannuation contribution of the same amount as the after tax income received from your new pension. If you do this your take home pay will be reduced but this will be offset by your pension. PAYG tax on your salary will be substantially reduced whilst your superannuation pension will enjoy a tax rebate of 15%.

The superannuation contribution will be taxed at 15% but income earned by the super fund from its investments will be tax exempt.

There are big savings to be made if you have a substantial income.

Taxation Commissioner, Michael Carmody, announced through a Media Release that Part IVA would not apply to these arrangements if they were "entered into in a straightforward way and are consistent with the operation of the law."

SUPER BENEFITS FOR ALL

Writing in the *Australian Financial Review*, Peter Haggstrom, former special tax adviser to the Commonwealth Ombudsman, blames Paul Keating for the fact that our superannuation system is preposterously complicated – all allegedly in the interests of fairness!

However, in recent times there have been a number of improvements which makes it a very attractive proposition for all.

Recent changes benefiting members of superannuation funds include:

- Abolition of the hated superannuation surcharge as from 1 July 2005.
- The work test for those under 65 has been removed. This means that investors and others who are not employed or carrying out physical work can contribute to superannuation.
- Valuation factors for allocated pensions have been changed and there is flexibility in determining terms for pensions.
- Superannuation splitting with your spouse will be permitted as from 1 January 2006. If you are getting closer to your Reasonable Benefit Limit (RBL) you can direct your superannuation trustee to allocate all or part of your contributions to your spouse.

These changes make superannuation a far better proposition for both low and high income earners and enable you to provide for your retirement in a tax advantaged way.

TAX OFFICE CRITICISED

Of course if you do have superannuation, make sure you are in control. Don't lose your paperwork and leave it to the Tax Office to look after your money. The Tax Office has come under severe criticism from the Australian National Audit Office in connection with \$8.2 billion worth of super which is unclaimed.

The Tax Office is charged with the task of administering lost super accounts and has been paid some \$21 million for doing this. However, it has not succeeded in identifying lost members.

The Audit Office has recommended that it do so and whilst agreeing with this recommendation the Tax Office says that its "resources were fully committed" on other projects for the next three years and this task will just have to wait.

DATA MATCHING PROJECTS

LowDoc Loans

The Tax Office has announced that it will collect names and addresses of those who have taken out insurance on *LowDoc Loans* from the following mortgage insurance providers:

- PMI Mortgage Insurance Limited;
- St George Bank Limited;
- GE Mortgage Insurance Company Pty Ltd;
- ANZ Banking Group Limited;
- Westpac Banking Corporation; and
- Suncorp-Metway Limited

These will be electronically matched with Tax Office data to identify non-compliance with lodgement and payment obligations.

The Tax Office expects this project will enable it to identify those who are not lodging tax returns or not paying taxes.

NSW WorkCover

The Tax Office will collect business names and addresses from WorkCover NSW. These will be electronically matched with Tax Office data to identify non-compliance with registration, lodgement and payment obligations.

Records of approximately 300,000 entities registered with WorkCover NSW will be matched.

Horse Racing Industry

Between November 2005 and March 2006 the Tax Office will write to 3,000 horse owners seeking co-operation in completing a questionnaire relating to their horse racing activities.

This questionnaire is intended to determine whether the owner was justified in quoting his ABN to the Registrar of race horses and the principal racing authorities. In the horse racing industry an ABN may only be quoted to these racing bodies if the ABN is for an enterprise that races animals as part of the enterprise. This is the case even if the racing animal is owned by individuals who are associated with the enterprise.

LAWYERS TARGETED

In its 2004/05 annual report the Tax Office says that it has obtained convictions against 20 barristers and 63 solicitors. Tax debt from barristers increased from \$8 million to \$73 million. Tax debt by solicitors increased from \$45 million to \$225 million.

The Tax Office bankrupted 16 barristers and 25 solicitors.

DISTRIBUTIONS FROM UNIT TRUSTS

It is necessary for trustees of discretionary trusts to decide each year which beneficiaries will share in the income of the trust and in what proportions.

Beneficiaries of unit trusts hold units which give them fixed entitlements to trust income. Accordingly, it is normally assumed that there is no need for trustees of unit trusts to resolve to distribute income among the beneficiaries. This assumption is made because the beneficiaries hold fixed entitlements.

This follows a decision by the Full High Court in 1954 (*Charles v. FCT*) which held that a unit in a unit trust confers on the unit holder a proprietary interest in all the property "which for the time being is subject to the trust".

This has been thrown into some doubt in a recent decision by the High Court in *CPT Custodian Pty Ltd v. Comr of State Revenue* which held that the unit holders in a unit trust that own land were not the owners of the land for the purpose of liability to Victorian land tax.

Writing in *Weekly Tax Bulletin*, Robert Richards considers the possibility that this may mean that unit holders are not automatically presently entitled to a proportionate share of the income of the unit trust. If correct, trustees of unit trusts should, before year end, either make distributions of income to unit holders or else resolve that unit holders are entitled to their proportionate shares of income of the trust. Robert Richards suggests that this would be a prudent precaution to be taken until the implications of the recent case are clear.

INSPECTOR GENERAL OF TAXATION

The Inspector General of Taxation has announced that he intends to review the Tax Office's ability to identify and deal with major, complex issues within a reasonable timeframe.

The review will examine the Tax Office's handling of the following major complex issues:

- Research and development syndication arrangements;
- Living-Away-From-Home allowances; and
- Service entity arrangements.

The Inspector General will address, on behalf of the private sector, concerns that periods of uncertainty arising from the Tax Office's handling of these issues have been unnecessarily prolonged by the Tax Office.

BOARD OF TAXATION

The Board of Taxation has announced that it will undertake a scoping study of tax compliance costs facing the small business sector. It intends to work closely with small business to identify and analyse main costs they face in complying with taxes administered by the Tax Office.

The Board has completed its review of small business CGT concessions. Its report has been provided to the Treasurer early October. The report is expected to be made available when the Treasurer publishes his response to the report.

DEPRECIATION – EFFECTIVE LIVES

The depreciation rate you apply to a particular item of plant or equipment depends on the effective working life of that item. The effective life determinations by the Tax Office are published in our sister publication *Tax Returns Special*. These are reviewed frequently by the Tax Office and are subject to change.

Businesses also have the right to self assess the effective life of assets used in the business if they consider the effective life differs from that determined by the Tax Office. If self assessing you must show adequate evidence and provide appropriate explanations. If you choose an effective life for a particular item substantially less than the Tax Office determination, it would be advisable to have independent evidence.

In a recent review of the transport industry, the Tax Office found that many had chosen to self assess effective life of trailers – unacceptable explanations included:

- Effective life determined to be the same as the term of the hire purchase agreement;
- Effective life determined to be the same as the term of the leased period;
- Effective life determined to be the same as the term of a service contract with a customer (e.g. 5 years);
- Effective life determined to co-incide with a time when substantial repairs and maintenance would be incurred;
- Truck and trailer treated as one unit of property – the Tax Office considers they should be treated as two separate units.

MOTOR VEHICLE INDUSTRY

The Tax Office intends to increase its focus on both licensed motor traders and backyard motor traders.

It has identified some common practices which lead to incorrect accounting for tax. These include:

- Vehicle sales made off the books and not included as taxable supplies in BAS;
- GST credits claimed prior to receipt of a valid tax invoice;
- Luxury vehicles purchased as trading stock to avoid luxury car tax but used by employees and principles for private purposes;
- Recipient created tax invoices completed without the required agreement;
- Failure to withhold tax from payments to staff and contractors where no ABN provided; and
- BAS and tax returns not being lodged on time.

SERVICE TRUSTS

Tax IQ Monthly October 2005 issue reported the issue of a draft Tax Ruling and the Tax Office's investigations into the practice of professional firms setting up service trusts. These trusts were then able to distribute profits to members of the families of the partners of the professional firms.

The Tax Office is looking closely at cases where service fees paid are over \$1 million and represent over 50% of gross fees earned by the professional firms.

The Assistant Treasurer has announced that the criteria for these investigations has been expanded. The Tax Office is now able to identify cases where the net profit in the service entity represents more than 50% of the total profit of the firm. The Tax Office will be looking closely at these cases as well.

Audit activity will also take place where the Tax Office considers that the services for which charges have been made have not actually been provided.

VICTIM BITES BACK

The Tax Office issued a garnishee notice and collected \$586 owing by a taxpayer under a default assessment. The trouble was that the Tax Office issued the garnishee notice against the taxpayer before it issued the assessment!

The taxpayer then sued the Commissioner for "misfeasance in public office" and claimed damages.

Not liking this, the Commissioner claimed that the action should be dismissed on the grounds that it disclosed no reasonable cause of action or was frivolous or vexatious. The Commissioner conceded that the garnishee notice was invalid and refunded the \$586.

The Court dismissed the Commissioner's application and allowed the taxpayer to amend his claim. The Court noted the difficulties the taxpayer faced in conducting the proceedings from prison where he was on remand and the fact that he was unrepresented.

(*Henson v. DCT*)

THE GOLD STAR!

In an address to the Leadership Matters Forum in Perth, Taxation Commissioner, Michael Carmody, said that 11,000 taxpayers with a good compliance record will receive a letter from the Tax Office thanking them for doing the right thing.

They will also receive confirmation that their tax affairs for this year are all but closed from the Tax Office perspective.

TAX OFFICE IMPROVEMENTS

In a speech to the annual conference of Taxpayers Australia the Commissioner designate, Michael D'Ascenzo, outlined major changes planned to provide taxpayers "with a more personalised, faster and more comprehensive service."

A Client Relationship Management (CRM) system involves:

- Tax Office contact staff at call centres having a single consolidated view of a taxpayer's information and history (including phone calls and letters);
- Later in 2006, when taxpayers need to be transferred to another tax officer, the details of their enquiry will be automatically transferred with the call;
- Users of tax portals will have a secure messaging function to send enquiries and requests for tax technical assistance and advice and get a response;
- Sometime after 2006 inbound correspondence to the Tax Office will be imaged, tracked and made available electronically to all front line Tax Office staff;
- Still later (some time after 2006/07) there will be real time processing of forms. Income tax and FBT returns can be lodged and assessed electronically with refunds being instantaneously deposited directly to bank accounts.
- On line forms will be tailored to meet taxpayers' individual circumstances; and
- Taxpayers will be able to register, view and update their details on line including elections such as variations to instalment rates.

BANKRUPT LOSES OUT

If you have a tax dispute with the Tax Office be sure to argue this through the Courts or the Administrative Appeals Tribunal.

Do not let the Tax Office enter judgement against you and then bankrupt you. In a recent case a bankrupt taxpayer lost his appeal to the Full Federal Court.

The story goes back to 1998 when the Tax Office issued default assessments. The taxpayer, Mr Spirakos objected but the objections were disallowed. The Tax Office then obtained judgement for the default assessments plus interest and costs. This was not paid and Mr Spirakos was made bankrupt by the Tax Office.

Later, Mr Spirakos appealed the objection decision but this was denied because, as a bankrupt, he did not have any standing to bring the application. Mr Spirakos then brought the matter to the Federal Court and subsequently to the Full Federal Court but his appeals were dismissed on the same grounds.

(*Spirakos v. DCT*)

In another case the taxpayer was unsuccessful in securing an adjournment of a hearing of a creditor's petition in bankruptcy brought by the Tax Office concerning a tax debt of over \$1.1 million.

MORE TAX OFFICE TARGETS

The *Australian Financial Review* reports that the Tax Office is trawling the web sites of sports clubs and major public companies to catch high profile professional sportspeople, business figures and entertainers who haven't lodged tax returns.

Players' lists on clubs and sports associations web sites are being matched with Tax Office data to review tax affairs of 2,807 professional and semi-professional sportspeople who are expected to have high incomes.

The Tax Office has used websites of major public companies to identify Board members and chief executives and has found that some 10% of these are behind with their lodgements.

REDUCING COMPLEXITY

Reported briefly in the November issue of *Tax IQ Monthly* was a proposal to reduce the size of the Tax Act by getting rid of some 2,000 pages of redundant tax law. This follows an 10 month investigation by the Taxation Board of Review and by five tax professionals from the University of NSW Australian Taxation Studies Programme (ATAX). Gary Banks, the head of the Government's new regulation task force said a couple of years ago that, "To take a fanciful term, were this current rate of growth to continue unabated, I am informed that by the end of this century the paper version of the Tax Act would amount to 830 billion pages. It would take over 3 million years of continuous reading to assimilate and weigh the equivalent of around 20 aircraft carriers."

The combined Income Tax Assessment Acts for 1936 and 1997 total 6,450 pages and with ancillary legislation, the total blows out to 8,800 pages. It consists of four volumes and no other country in the world except for the USA has a Tax Act which is even half as big.

Shadow Treasurer, Wayne Swan, said that in 1996 the Tax Act was 3,500 pages. This blow out in complexity and length took place during the reign of current Taxation Commissioner, Michael Carmody. We can but hope that with the change of Commissioners, we might see a return to common sense and an understanding that people are not able to obey laws which are far too complex to understand.

TAXPAYER ALERTS

Taxpayer Alerts have no legal standing nor do they even represent a final Tax Office view. They are issued as a warning from the Tax Office that it has concerns about a particular scheme or transaction.

If you enter into any arrangement declared as unacceptable in a Taxpayer Alert you are likely to have an argument on your hands, so make sure you obtain expert advice before proceeding. Some recently issued Taxpayer Alerts are explained below.

Profit Washing Scheme Using a Trust and Loss Entity (TA 2005/1)

This arrangement involves the restructuring of a business into a hybrid trust which derives income. This trust has a number of classes of units which have different rights attached. Class A units held by the taxpayer or associates have income, capital and voting rights whilst Class B units held by the promoter trust holds units with income rights only.

The units in the promoter trust are held by a company with carry forward losses.

The hybrid trust distributes most of its income to the Class B unit holders and a small proportion (about 10%) of the distribution is paid in cash to the promoter trust. The balance is never paid and by agreement (usually verbal) between the parties is never intended to be paid.

The promoter trust then distributes all of the income to the loss company and offsets this against carry forward losses.

Under an alternative arrangement, the distribution to the promoter trust is actually paid but remains under the effective control of the taxpayer or associates through the use of a joint venture.

The Tax Office believes that Section 100A of the Tax Act applies because there is a reimbursement agreement.

It also considers that the carry forward losses in the company may not be deductible. Further, the general anti-avoidance provisions of Part IVA have application. It considers also that the arrangement or crucial parts of it are a sham and that a CGT event or other tax consequence may occur as a result of the restructure of the trading entity.

Prepaid Services Warrant Arrangement

This Alert relates to arrangements in which:

- The taxpayer enters into a business agent dealership and claims to be in the business of acquiring and disposing of pre-paid service warrants;
- The taxpayer then buys a series of warrants redeemable for professional services;
- To purchase the warrants the taxpayer makes a part payment with the balance due when the warrants are redeemed, for example a warrant with a stated value of legal services of \$50,000 may be acquired by paying \$7,500 (15% of the face value) with the balance owing to the service provider;
- The claimed objective is to endorse the warrants to a client for a fee so the client can redeem the warrant for legal or other professional services. Alternatively, the warrants may be exchanged for a percentage of any proceeds recovered from litigation;
- The taxpayer may appoint an administrator to conduct the dealership including acquiring and disposing of the warrants;
- Any warrants not endorsed to clients at the end of the 13 month period are cancelled and refunded at a discount. Generally, the discount is equal to the part payment initially made. The refund is credited against the balance outstanding leaving no amount outstanding by the taxpayer;
- A deduction is claimed for the purchase price of the warrants in the year acquired;
- It is claimed that assessable income is earned on endorsing or cancelling the warrants and that this income would be derived in the following financial year;
- It is also claimed that the arrangements are supported by the decision in *Lamont v. Commissioner of Taxation*;
- The warrants are marketed on the basis that a continuing deferral of income may be achieved by entering into purchases of warrants in subsequent years.

The Tax Office considers that the arrangement is artificial and there are questions about whether a business is actually being carried on, whether the costs of the warrants is actually deductible, whether anti-avoidance provisions in Section 82KZME and 82KZMF are applicable, whether the non-commercial loss provisions under Division 35 of the Tax Act are applicable, whether the general anti-avoidance provisions of Part IVA are applicable and whether the sale of the warrants may result in a liability to GST.

The Tax Office is of the view that the tax consequences of these arrangements are not determined by the *Lamont* decision. This decision came down against the Tax Office and was the result of a long, drawn out process to get the Tax Office to issue a private ruling. Eventually, the Tax Office was forced to issue a ruling which denied tax deductibility. The Court held that the ruling was wrong at law and that the purchase price of the warrants was deductible.

LAND TAX - QLD

Onerous provisions of the Queensland Land Tax Act relating to principal place of residence exemption for land tax purposes have been relaxed. Previously, if a principal place of residence was used for any other purpose, the Land Tax exemption was foregone entirely. With the change, the exemption is now available if an alternate use is not substantial. This means that working from home or taking in boarders will not destroy the land tax exemption.

WINE EQUALISATION TAX

Wine Equalisation Tax (WET) is a tax which wine wholesalers charge and is calculated as 29% of the wholesale value of the wine. If you buy wine from either a wholesaler or a retailer you will be charged WET in addition to the normal GST. If you are GST registered make sure tax invoices for the purchase of wine show the WET and GST separately. An invoice showing those two amounts combined is not a valid tax invoice and will not enable you to claim the GST as an input tax credit.

WET is a value based tax applied to wine consumed in Australia. The rate is 29% of the wholesale sale value and applies to the last wholesale sale (before GST is added). WET is charged on the following alcoholic beverages:

- Grape wine, including sparkling wine and fortified wine;
- Grape wine products such as marsala, vermouth, wine cocktails and creams;
- Other fruit wines and vegetable wines including fortified fruit wines and vegetable wines;
- Cider and perry; and
- Mead and sake, including fortified mead.

You are required to collect and remit WET to either the Tax Office or the Customs Service if you are a:

- Wine manufacturer;
- Wine wholesaler; or
- Wine importer.

Generally, WET is included in the price for which retailers (including bottle shops, hotels, restaurants and cafés) purchase the wine. The retailer can obtain an input tax credit for GST but not for WET. WET forms part of the retailer's cost base and is passed on in the retail price of the wine to the end consumer.

Exports of wine are not subject to WET. If you fall into one of the above categories you must report WET amounts, either payable or in credit, on your BAS.

Rebates

Commencing from 1 October 2004, wine producers became entitled to a rebate of 29% of the wholesale value of domestic wine sales including retail sales, wholesale sales and sales under quote. This rebate can be claimed through the BAS.

The rebate is only available to wine producers who either manufacture the wine, or supply another entity with the grapes, other fruit, vegetables or honey from which the wine is manufactured. All products subject to the WET are eligible for the rebate, including cider, perry and sake.

The maximum rebate for a full year is \$290,000.

Wine Producers

There are two methods to calculate WET and GST when wine producers sell wine by retail (to the end consumer). For grape wine you can use either of the two methods but for grape wine products (eg vermouth and marsala), fruit wine, vegetable wine, perry, mead and sake you must use method 1.

Method 1: The Half Retail Price Method

WET is calculated at the rate of 29% of 50% of the retail selling price (which includes WET and GST).

Method 2: The Average Wholesale Price Method

WET is calculated at 29% of the average wholesale price of wine. This method can only be used if wholesale sales of the particular grape wine are at least 10% of your total sales of that wine.

All products subject to the WET are eligible for the new wine producer rebate. Sales for which you do not have a liability to pay WET because the purchaser quoted, also qualify for the rebate if:

- You would have had to pay WET if the purchaser did not quote; and
- The purchaser has not notified you that they intend to make a GST free supply of that wine.

The following table illustrates the calculation of the producer rebate for a wine producer. In this case the producer uses the half retail price method to calculate the notional wholesale selling price of the wine.

Nature of Customer	Type of Dealing	Selling Price	Purchaser Quoted	Purchaser's Intention	WET Payable	Producer Rebate Claimable
End Consumer	Retail	\$20,000 (incl WET and GST)	N/A	N/A	\$2,900 (29% of \$10,000)	\$2,900
Restaurant	Wholesale	\$30,000 (excl WET and GST)	N/A	N/A	\$8,700	\$8,700
Distributor	Wholesale	\$25,000 (excl WET and GST)	Yes	Will make a GST free supply	Nil	Nil
Distributor	Wholesale	\$15,000 (excl WET and GST)	Yes	Will not make a GST free supply	Nil	\$4,350
Wine Used for Tastings	Applied to own use	Retail Value \$2,000 (incl WET and GST)	N/A	N/A	\$290 (29% of \$1,000)	\$290

Excise

Wine Equalisation Tax is levied on wine and wine products, other alcoholic products are subject to excise duty. Excise duty applies to: Beer; Spirits such as Brandy, Whiskey and Rum; Liqueurs; and Other alcoholic beverages not subject to Wine Equalisation Tax.

Customs duty applies to imported alcoholic beverages.

READER QUESTIONS:

LAND TAX - VIC

Question:

If a primary production trust owns land, is it now subject to land tax under the new land tax reforms?

Answer:

Land used for primary production is exempt from land tax. As the land is exempt it is not caught under the new taxation arrangements for trusts which were reported in *Tax IQ Monthly* November issue.

You can obtain more information about this by obtaining the primary production exemption publication from the Victorian State Revenue Office.

SUPERANNUATION SURCHARGE

Question:

My understanding of the change to legislation is that superannuation surcharge for 2005/06 is only applicable if you exceed contributions for your age limit (\$100,587 for over 50) despite what salary you receive in addition.

Look forward to your response. Your Manual is vital to our business planning. We thank you for the amount of invaluable information you provide.

Answer:

Superannuation surcharge was based on the actual contribution made plus your taxable income and reportable fringe benefits. If these figures together reached the threshold figure, superannuation surcharge would be payable.

However, superannuation surcharge is abolished as from 1 July 2005 so you don't have to worry about it any further.

CGT – SPLIT OR CHANGED ASSETS

Question:

Several years ago we purchased a house and several acres of land adjoining land our own property. We then moved the boundary of our original property to incorporate most of the land purchased, leaving the house with just 2.5 acres on the second section. We have rented the house since purchase.

We now intend to sell the house and 2.5 acres of land. How do we calculate CGT considering the majority of the land originally purchased will be retained?

Answer:

This is covered under Section 112-25 of the Tax Act which relates to split, changed or merged assets.

Where this occurs you are required to work out the cost base of the original asset and then apportion each element of the cost base in a reasonable way.

Here are some hypothetical figures. Let's say:

Original cost of house and land	\$170,000
Stamp duty and legals	<u>\$10,000</u>
Total Cost:	<u>\$180,000</u>

You get a valuer to apportion this cost between the house and land and he advises:

Value of vacant land	\$100,000
Value of house	<u>\$80,000</u>
Total:	<u>\$180,000</u>

- You spend \$10,000 in consulting and council fees to move the boundary of the land;
- The total land purchase (which we assume to be 10 acres) now has a cost base of \$110,000;
- This equals \$11,000 per acre;
- The cost base of your original land is increased by \$82,500 (7.5 acres at \$11,000 per acre);
- The cost base of the house and land you intend to sell is:

House	\$80,000
2.5 acres at \$11,000 per acre	<u>\$27,500</u>
Total Cost Base:	<u>\$107,500</u>

FBT - ENTERTAINMENT

Question:

Do tickets to a ball constitute meal entertainment or recreational entertainment for FBT purposes? The ball would provide dinner, music and dancing.

Answer:

This would be an expense payment fringe benefit for entertainment. It does not come under the meal entertainment definition and the cost of the ticket would be a taxable fringe benefit unless it comes under the minor exempt benefit of less than \$100.

STS - DEPRECIATION

Question:

In *Tax IQ Monthly* November issue the question was raised whether or not the low value pool applied only to STS taxpayers to which the answer was "yes". I think the answer could be "no".

The low value pool could be used by a non-STS taxpayer for assets costing less than \$1,000. They would be added to the pool and depreciated at 18.75% in the first year and 37.5% in subsequent years. Assets costing more than \$1,000 would be depreciated in the old manner.

Answer:

Agreed. Thank you for clarifying this. STS taxpayers can obtain a 100% deduction for assets costing less than \$1,000 whilst non-STS taxpayers must allocate those items to a low value pool and claim depreciation at the rates you have stated.

GST – INSURANCE

Question:

Is GST payable on all types of insurance – workers' compensation, public liability, etc?

Answer:

GST on insurance is covered under Division 78 of the GST Act. Generally, GST is payable on insurance premiums charged by Australian insurance companies but not on stamp duty.

Generally, the insurance company is making a taxable supply and the insured will be entitled to an input tax credit if it is GST registered and operating an enterprise.

GST does not apply to life insurance which is input taxed or to health insurance which is GST free. It also does not apply if you arrange insurance through a foreign company.

GST – SALARY SACRIFICE

Question:

In *Tax IQ Monthly* November issue there is a question about salary sacrificing for a laptop computer. To claim the input tax credit, the tax invoice would have to be in the name of the employer. The employee who is salary sacrificing will want ownership of the laptop which they have paid for through the salary sacrifice. The warranty would be in the employer's name. Would the salary sacrifice paperwork be sufficient to show that the employee then owns the laptop?

Answer:

This would depend on the manufacturer's requirements. There are two possible ways to overcome this problem. One way is to have the invoice made out in the name of the employer but noted that the laptop is to be delivered to the employee (name inserted). Alternatively, have the invoice made out in the name of the employee. The invoice should then be delivered to the employer (with the employee retaining a copy) to enable the employer to claim an input tax credit.

The provisions of the GST Act enable an employer to claim an input tax credit in respect of an acquisition by another person who is acting as agent for the employer. Hence the tax invoice made out to the employee should be sufficient to enable the employer to claim the input tax credit.

SALARY SACRIFICE

Question:

I have been receiving *Tax IQ Monthly* for the past six months – excellent effort! Do you have any past comprehensive articles on salary sacrificing? My son has landed a job at the mines and, as a single guy with virtually no deductions (you know the rest!!).

Answer:

There was an in depth article on salary packaging in *Tax IQ Monthly* March 2005 issue. Also have a read of the chapters in the *Australian Taxation Manual* on Personal Tax Planning and Superannuation.

FBT – NOVATED LEASES

Question:

Novated leasing of motor vehicles utilised in connection with employee salary sacrifice has become a very popular method of purchasing a new vehicle.

Normally, any vehicle with a load carrying capacity in excess of 1 tonne is an exempt vehicle and therefore not encompassed under the FBT car benefits but treated as a residual benefit. Leasing companies, when organising novated leases on such vehicles, obtain a letter from the delivering dealer to the effect that, "Due to the fitment of accessories this vehicle payload is reduced and no longer has a payload in excess of 1,000 kg". This is said to make the vehicle a car for the purpose of calculating car fringe benefits.

Is this situation approved by the Tax Office via a special tax Determination or Ruling?

Answer:

Not to our knowledge. Section 136 of the FBT Act defines a car as:

- A motor car, station wagon, panel van, utility truck or similar vehicle, designed to carry a load of less than 1 tonne, or
- Any other road vehicle designed to carry a load of less than 1 tonne or fewer than 9 passengers,
- but does not include a motor cycle or similar vehicle.

The operative word is *designed*. In Tax Ruling MT 2033 the Tax Office discusses modifications of cars to fit the exemption in Section 8(2) where a non-passenger vehicle is used only for work related travel including travel between home and work. Clause 7 of this Ruling provides, ".... A vehicle's design is generally established at the time of manufacture. In order to change that design it would be necessary that the modifications effect a permanent alteration to the vehicle."

In Clause 9 it states, "Whether or not modifications to a car satisfy the test detailed in paragraph 7 needs to be determined by the facts of the particular case. However, as a general rule, the requirements that modifications effect a permanent change to the car would be satisfied where they are not capable of being readily reversed such that the car could, if required, be used alternatively as a passenger or non-passenger car on a regular basis."

In our view, a generalised statement as suggested may not be sufficient. The letter should provide details of the accessories which have been fitted, the reasons why such accessories reduce the payload and evidence that the fitment is of a permanent nature.

CGT – MAIN RESIDENCE EXEMPTION

Question:

Our client works at a mine site in the Kimberleys on a two week on, two week off basis and occasionally lives in his private residence while in Perth. Over the last three years he has rented out his private residence, even though he does come back and live in it. Can he claim exemption under Section 118-140?

Answer:

Section 118-140 relates to a taxpayer keeping his existing home when purchasing another. He can have main residence exemption on both homes for a limited period of six months. We think Section 118-145 may be applicable in your client's case if he does not have a second main residence.

Under Section 118-145 he can choose to continue to treat his Perth home as his main residence for up to six years even though he is renting it out. This six year period is extended for a further six years if he goes back to the home and lives in it for a time.

INCOME OR CAPITAL?

Question:

Our client gave up his job and moved to Tasmania to care for his dying partner, Julie, and her daughter. Before she died, Julie made a wish list indicating that her partner, Max, was to receive \$100,000 but she did not put it in her will. Can you advise on the provisions of the attached draft deed as to whether the payment will be tax free in the hands of Max?

Answer:

The question of whether a lump sum receipt is of an income or capital nature is somewhat complicated. There have been a number of cases where lump sum receipts have been determined to be income where they related to the giving up of rights to income.

The draft deed you have forwarded includes a lengthy explanation of the services which Max has provided for Julie and her daughter prior to Julie's death. We think there is a danger that these recitals will overshadow the fact that this is a capital sum payable in accordance with the wishes of the deceased and in relinquishment of any claim which Max may have against Julie's estate as her partner.

We recommend deleting the recitals contained in the draft deed together with the comments in Clause 2 about accounting and financial advice having been provided and having the deed simply record the matters agreed to (as expressed in Clauses 1-4).

FINANCE LEASES

Question:

I enjoy your articles. The Australian ant and grasshopper version is so very true. I have two questions:

1. Why do medical financial institutions always present you with interest only commercial loans with balloon payments at the end and rollover from term to term? Are there any real financial and tax benefits from this structure compared to longer term commercial principal and interest loans?
2. Why do medical financial institutions recommend you have the fitout part of a medical facility financed by lease? Does this make more financial sense compared with a loan principal and interest and accompanying depreciation approach? Is the residual value at the end of the lease term tax deductible? Is the decline in value to arrive at the residual value different from conventional depreciation?

Answer:

1. Interest only loans with balloon payments and subsequent rollovers enable you to borrow more and perhaps pay up front interest to get better tax deductions earlier.
2. If you purchase a fitout using a conventional principal and interest loan you would claim depreciation on the cost of the fitout. The depreciation rates must be fixed in accordance with the Tax Office guidelines and these are very low for fitouts.

If instead of purchasing the fitout, you lease the fitout from the financial institution you can claim a full tax deduction for your lease payments. This gives you a much better tax result.

Because the fitout has a very low resale value at the end of the lease term you can adopt a very low residual value thereby having higher lease rentals which are fully tax deductible. At the end of the lease term you can purchase the fitout from the financial institution for the residual value and claim depreciation on that.

AGENCY ARRANGEMENTS

Question:

Would you please comment on the Tax Office's position on paying company expenses through an employee's personal credit card with the company then re-imbursing the employee.

Answer:

This would be in order so long as the employee provides the company with adequate documentation to support the expenses. The employee is acting as the company's agent in paying the expenses through his personal credit card and is being reimbursed on provision of the appropriate documentation. The GST Act actually covers such agency arrangements and expressly provides that the principal (the employer) is entitled to the input tax credits even though the tax invoices are made out in the name of the agent (the employee).

SUPERANNUATION DEDUCTIONS

Question:

We were required to pay \$10,000 superannuation contribution for the 2004/05 year but did not pay this amount til July. Can we claim a deduction for this amount in 2004/05?

Answer:

No. You can only claim a deduction for superannuation contributions when you actually pay them. The \$10,000 payment will be deductible in the 2005/06 financial year. Keep in mind that superannuation guarantee payments must now be made quarterly.

LUXURY CARS

Question:

We purchased a motor car for \$69,285 (including GST). The input tax credit is \$5,946. The full purchase price was financed by a bank loan secured by a Bill of Sale. Does the luxury car limit of \$57,009 need to be reduced because of the input tax credit? Would the finance charges be claimable, if so, how much?

Answer:

Whilst the GST on the car was \$5,946, the input tax credit cannot exceed 1/11th of \$57,009.

Under Section 27-80 the cost price of a depreciable asset is reduced by the input tax credit. Hence for depreciation purposes the motor car cost is:

Actual Cost	\$69,285
Less Input tax credit	<u>\$5,182</u>
Depreciable Value	<u>\$64,103</u>

As this exceeds the luxury car limit of \$57,009 your depreciation is calculated on \$57,009. Show both the depreciable value (\$57,009) and non depreciable value (\$7,094) on your Depreciation Schedule.

If the vehicle is wholly used for business purposes you can claim 100% of the finance charges (the interest included in the loan repayments). You should apportion the finance charges over the term of the loan.



Seasons Greetings



On behalf of the Board of Directors and all the team at Media IQ, we would like to wish all our valued clients, suppliers and friends a very Merry Christmas and a prosperous and Happy New Year.

This year has been exciting for many of us: new projects; new goals; greater ideals. But perhaps one of the greatest understandings gained this year is the value of time. In a world where the greatest certainty is uncertainty itself Christmas is the time of the year when we take a step back; assess many of our actions and goals, and spend valuable time with loved ones. As business owners and professionals we often lose track of the value of our own time, and more importantly "their time" - our family, our friends, our colleagues.

When you kick off the New Year, embrace the motivation and intent that accompanies it. Set goals and build strategies to meet them. And most importantly set a price on your time and how you use it.

Tax IQ is about you, your business and time. Our aim is to give you more of your time to work on your business rather than deep within it—hopefully from up above, the view will be a whole lot clearer. Get Smarter: Get Tax IQ!

Merry Christmas,

Dwade Sheehan MBA (Laws)
Executive Director