BRIEFINGS

WATERHOUSE
CHARTERED ACCOUNTANTS

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Thank You

From all of us at Waterhouse Chartered Accountants we would like to thank you for your ongoing support and custom. We especially appreciate your patience and flexibility over the last year of further disruptions and lockdowns.

Our Mona Vale office will be closed from 11.30 am on Thursday, 23 December 2021 and will re-open at 8.45 am on Tuesday, 4 January 2022.

Our Sydney office will be closed from 12 noon on Wednesday, 22 December 2021 and will re-open at 9 am on Wednesday, 12 January 2022.

We wish you and your family a safe and happy holiday season.

The Top Christmas Tax Questions

Below we look at the tax impact of various Christmas or holiday related gestures.

Staff 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 ATO as well. To qualify as a minor benefit, the gifts also have to be ad hoc (no ongoing gym membership payments or giving the same person regular gift vouchers amounting to $300 or more).

A question we are often asked is what is the tax impact if you give your team, say, a hamper and a gift card? The good news is that the tax rules treat each item (the hamper and the gift card) separately. FBT will not necessarily apply as long as the value of each item is less than $300. However, the minor benefits exemption is a bit more complex than this. For example, you need to look at the total value of similar benefits provided to the employee across the FBT year, etc.

If you are planning to provide your team with a cash bonus rather than a gift voucher or other item of property, then this will be taxed in much the same way as salary and wages. A cash bonus at Christmas is not a gift; it is still income for the employee regardless of the intent. 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 unless it relates solely to overtime that was worked by the employee.

The Staff Christmas Party

If you really want to avoid tax on your work Christmas party then host it in your office on a work day (Covid rules allowing!). 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 will not generally pay FBT because anything below $300 per person is a minor benefit and exempt.

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 considered in determining whether the benefits are minor.

The trade-off to this is that if the costs associated with hosting the party are not subject to FBT then it would be difficult to claim a tax deduction or GST credits for the expenses.

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

Client Gifts

Few of us have that much time in the diary for pre-Christmas entertainment 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 keep giving you work (that is, there is a link between the gift and revenue generation), then the gift is generally tax deductible as long as it does not involve entertainment.

Entertaining your clients at Christmas is not tax deductible. If you take them out to a nice restaurant, to a show or any other form of entertainment, then you cannot claim it as a deductible business expense and you cannot claim the GST credits either. It is goodwill to all men, but not much more.

Charitable Gift Giving

The safest way to ensure that you or your business can claim a deduction for the full amount of the donation is to give cash to an organisation that is classified as a deductible gift recipient (DGR). And the charities love it as they do not have to spend any of their precious resources to receive it.

There are a few rules that make the difference between whether you will or will not receive a tax deduction.

- The charity must be a 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 is generally not deductible (the rules become more complex in this area). 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.

If your business is making a donation on behalf of someone else, such as a client or that friend "who has everything" it will depend on how the donation is structured. The tax rules generally ensure that the deduction is available to the individual or entity who actually makes the gift or contribution. Having receipts issued in someone else's name can make this more complex.

The "Backpacker Tax" and the High Court

The High Court has ruled that the "backpacker tax" is discriminatory. We look at the impact of that decision.

Since 2017 the "backpacker tax" has taxed the first dollar of income a backpacker earns in Australia - regardless of their residency status - at the working holiday maker tax rate of 15% up to:

- $37,000 in an income year for 2019/20 and earlier income years.
- $45,000 for 2020/21 and later income years.

When the tax was introduced in 2017, a backpacker would pay a maximum of $5,500 in tax on the first $37,000 of income. However, an Australian national performing the same work would have a maximum tax liability of $3,572.

In this case Catherine Addy, a UK national working in Australia since 2015, contested her 2017 amended

income tax assessment which imposed the backpacker tax on the grounds that it contravened the Double Tax Agreement (DTA) with the United Kingdom. Article 25(1) of the DTA seeks to ensure that nationals of the UK are not subject to "other or more burdensome" taxation than is imposed on Australian nationals "in the same circumstances, in particular with respect to residence". Ms Addy was a tax resident of Australia.

The ATO did not accept Ms Addy's argument, and she launched action in the Federal Court. The Federal Court initially upheld the Tax Commissioner's position. However, Ms Addy appealed the decision and the High Court overturned the Federal Court's decision. The question for the court was whether a more burdensome tax was imposed on Ms Addy owing to her nationality. The short answer was "yes".

The High Court decision found that the backpacker tax is inconsistent with the non-discrimination clause in the UK DTA. That is, the flat working holiday maker tax rate is not valid in some situations. Non-discrimination clauses that are similar to the one in the UK DTA can also be found in the DTAs with Chile, Finland, Japan, Norway, Turkey, Germany and Israel.

So What Does this Mean?

Some individuals who have been taxed under the backpacker tax rules may be able to obtain a tax refund from the ATO. However, there are a couple of key points to bear in mind:

- The decision only impacts those classified as an Australian tax resident. Many individuals who are living or working in Australia on a working holiday visa will be classified as non-residents, in which case this decision will be less relevant.
- The decision is only likely to be relevant to individuals who are a citizen/national of a country that has a DTA with Australia containing a non-discrimination clause similar to the clause found in the UK DTA.

The Year Ahead: 2022

2021 was to be the year we returned to a post-Covid world. However, the pandemic has now fundamentally changed the way many of us operate in our personal and work lives. Below is some of what we can expect in 2022.

Federal Election

The Federal election will be held sometime between March and May 2022. Text messages, robo messages and advertising are on their way!

Federal Budget in March

The timing of the election will bring the Federal Budget forward to March 2022. As it is an election year; expect many of the productivity based tax concessions to be extended.

Lock-in Digital Gains

McKinsey & Company reports that consumer digital adoption rates accelerated dramatically during the pandemic.

- Many sectors will lock in the digital gains they made. Some, however, will see a decline in digital sales as consumers are no longer forced to shop online – groceries, for example.
- To lock in the gains of digitalisation, consumers expect trust, end-to-end digital service (from start to after sales service) and an improved online experience.
- Forced online adoption has changed the consumption habits of an older and wealthier portion of the market. The average age of online users in the McKinsey Global Sentiment Survey increased by around three years and spent around 4% more.
- Coming off a lower base, developing nations have experienced much higher growth in digital adoption than developed nations, evening out global access.