

SAYWELLS

Chartered Accountant – Registered Tax Agent - Business Advisor

December 2010

Saywells Chartered Accountant, 12 Vincent Street / PO Box 263, Cessnock, NSW 2325
Website: www.saywells.com.au Email: office@saywells.com.au Phone: 02 4990 9766

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.*

INSIDE THIS ISSUE

- 1** Ho ho ho humbug: Avoid the Christmas tax scrooge
- 2** Declaring or paying dividends?



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.

Continued on page 2

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 its 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. *Continued on page 3*

Ho ho ho humbug: Avoid the Christmas tax scrooge

Continued from page 1

If you hold your celebrations at an external venue, then you need to ensure that the cost of the celebrations is less than \$300 per person. So, if you invited 40 team members and 20 of their spouses to a Christmas lunch, your expenses might look like this:

Item	Cost per person	Total
Meal	\$60	\$3,600
Beverages	\$40	\$2,400
Entertainment	\$33	\$2,000
Total	\$133	\$8,000

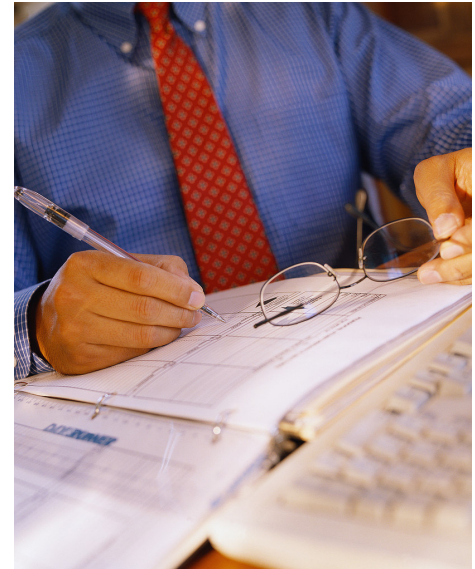
For FBT purposes, the cost per employee is \$133 so no FBT applies. If however the cost of the meal was \$180 per person, the beverage package \$90 per person and the entertainment \$3,800 then the cost per employee would be \$333 and the Christmas party celebrations would be subject to FBT for both the employee and the spouse.

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.



"The cost of your Christmas celebrations for team members is not deductible for income tax purposes if FBT does not apply."

Declaring or paying dividends?

Continued from page 2

At this stage you might be thinking does this really have any practical effect on us? And, in many cases the answer might be no. Certainly as a director, when your company declares or pays a dividend, you are subject to the requirements of the Corporations Act. Get it wrong and you may be explaining your actions to ASIC. But think about what might happen if your company ever got into financial problems and a liquidator was appointed. Then, the liquidator might be interested in identifying any circumstances where the directors had breached their responsibilities. If this occurred you could expose yourself to personal liability. Where tested, the onus would be on the directors to prove that they had met the tests imposed.

Dividends are a normal part of company life. They may be a part of the way you return value to yourself from your company. They may also be used to manage fringe benefits provided by the company, shareholder loan accounts or as an alternative to more traditional forms of remuneration. This will continue. You simply need to be sure at the time when dividends are declared and paid that you satisfy the new tests imposed by the Corporations Act. You also need to be mindful of what your company constitution provides. It may have additional requirements. Where this is the case you will also need to meet these.

Ho ho ho humbug: Avoid the Christmas tax scrooge

Continued from page 2

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.

"...be sure at the time when dividends are declared and paid that you satisfy the new tests imposed by the Corporations Act."



Our office will be closed from 12pm Thursday 23 December and will re-open Monday 10 January 2011.

Merry Christmas and Happy New Year from Craig and the team at Saywells.

Want to know more? Talk to us if you are concerned or want to know more about any of the areas covered.

Quote of the month

"The one thing women don't want to find in their stockings on Christmas morning is their husband."

Joan Rivers

Saywell Services Pty Ltd ABN: 33 083 874 631

Liability limited under a scheme approved under Professional Standards Legislation.

The material and contents provided in this publication are informative in nature only. It is not intended to be advice and you should not act specifically on the basis of this information alone. If expert assistance is required, professional advice should be obtained.