Tax Talk | November 2018

Beware of the grinch that steals Christmas – hangover inducing tax traps

With the festive season fast approaching, minds turn to Christmas traditions – the annual Christmas party and the giving of gifts to customers, suppliers and employees. As with many things throughout the year, the festive season is fraught with tax risk for the unwary and may result in an unhappy new year if you are not careful.

Entertainment – Parties

By now, it is well established that expenditure on food and drink provided off business premises is generally subject to the 50% entertainment deduction limitation – and this includes the annual Christmas party. Further, expenditure on food and drink provided on business premises can also be subject to the 50% entertainment deduction limitation, especially in the context of a party. So, while the Christmas party is a great way of boosting staff morale, just remember that half the expenditure is likely to be non-deductible. A GST adjustment will also be necessary.

Entertainment – Gifts

Perhaps your business likes to give a bottle of wine or a box of chocolates to customers and suppliers as a token of appreciation for their business during the year. Unfortunately, even this humble act of appreciation comes with tax risk.

The entertainment limitation rule applies to "deductions for expenditure on food and drink that a person provides off their business premises". Inland Revenue guidance considers that a gift of food or drink is included within these parameters with the result that only half of the cost of these gifts can be claimed as a deduction.

Gifts which are not of food and drink (for example books and promotional gadgets) are fully deductible.

FBT

Perhaps your business gives a gift to its employees as a thank you for their hard work and contribution during the year.

You should be aware that almost anything that isn't cash given by an employer to an employee in the context of an employment relationship can be subject to fringe benefit tax (FBT). For a business that typically does not provide fringe benefits, the compliance costs of those gift hampers can have year long consequences.

The good news is that government has provided a small fringe benefit tax concession in relation to unclassified benefits. Typical Christmas gifts (for example, gift hampers or gift vouchers) fall in the category of unclassified benefits. Where the value of all unclassified benefits provided to each employee in the quarter is less than $300 and the total value of unclassified benefits provided by the employer to all employees for the current quarter and previous three quarters is less than $22,500, then no FBT is payable.

Importing Presents

In recent years, the purchasing of items from overseas has become more commonplace. The bargain purchased from Amazon may come with hidden costs if you are not careful.

Historically, the government has provided a concession to taxpayers. This concession allowed goods to be imported without GST, duties and an administration charge being charged by New Zealand Customs. This concession has arisen where the total of duties and GST is less than $60.

Unfortunately, a common misconception is that goods costing less than $400 are not subject to GST and duties. While this is true in many cases, there are still many items in New Zealand subject to tariffs. The result is some items costing less than $400 may still be subject to GST and duties (especially clothing and footwear), because the tariff plus GST total more than $60 with an administration charge thrown on top. New Zealand Customs have provided the "What's My Duty estimator" (here) which enables you to get a rough idea of how much that imported item might cost you at the border.

The government is currently in the process of updating the GST legislation to remove this concession. Refer to our later article on this matter.

Conclusion

Christmas time is a time for festivity, joy and happiness. By ensuring you know the potential tax impact, you should have happy returns.

As with everything, these areas are fact specific and the above comments are not a substitute for good advice. If you have any questions about entertainment, FBT or GST on imports, contact your Baker Tilly Staples Rodway advisor.

GST on low value imports update

In the May edition of Tax Talk (refer here), we discussed the government's plans to collect GST on low value imports. The government has recently provided more detail around its proposals; some changes have been made as a result of consultation.

What has changed

- Tariffs and border cost recovery charges will only apply for imported consignments valued above NZ$1,000
- The purchaser will be responsible for GST in relation to imported consignments valued above NZ$1,000; imported consignments valued at less than NZ$1,000 will be subject to the new rules

What is unchanged

- The overseas supplier will be required to register, collect, and return New Zealand GST on goods valued at or below NZ$1,000 supplied to consumers in New Zealand
- The new rules will only apply to sales made to New Zealand consumers; sales made to New Zealand business will remain exempt
- Non-resident suppliers of imported goods are required to register for GST if they supply goods to consumers worth more than NZ$60,000 per annum

The government is still aiming to have these rules in place from 1 October 2019. Given the length of time it took some businesses to upgrade their systems for the GST remote services changes, any overseas suppliers must get ready to charge New Zealand GST on supplies made to New Zealand consumers.

R&D Tax Credit update

In the May edition of Tax Talk (refer here), we discussed the government's plans to reinstate the research and development (R&D) tax credit which applied to the 2008/09 income year. The government has recently introduced legislation to Parliament to legislate for these credits; some changes have been made as a result of consultation.

What has changed

- The credit is 15% of eligible expenditure instead of 12.5%
- Tax credits of up to $255,000 per annum will be refundable. This requires R&D expenditure of $1.7 million

- The minimum expenditure threshold will be $50,000 instead of $100,000
- The results of the R&D activities must be owned by either the person or a member of the person's corporate group instead of by the person alone

What is unchanged

- The cap on claimable expenditure will be $120 million, with the ability to apply for an extension above this figure
- A maximum of 10% of an annual claim can be on overseas research and development
- Recipients of Callaghan Innovation Growth Grants will not be eligible for the R&D tax credit for the year of receipt
- Amounts not refunded will be able to be carried forward based on the same shareholder continuity percentage as normal losses (49%)

What is new/been clarified

- From the 2021 income year onward, businesses with less than $2 million in annual R&D expenditure will be required to receive approval of their R&D activity from Inland Revenue. Once granted, approval will be binding on Inland Revenue. Businesses with more than $2 million in annual R&D expenditure may be subject to a different approval regime
- Activities which are ineligible for the R&D tax credit regime will be listed, as well as a schedule of categories of eligible and ineligible expenditure
- R&D supplementary returns will be due within 30 days of the usual deadline for income tax returns and a person cannot apply for research and development tax credits where their income tax return is more than one year late

Given the 2020 income year is starting in the coming months for businesses (and has already started for a small number of businesses), now is the time to ensure your processes are in place to take advantage of the credit. Contact your Baker Tilly Staples Rodway advisor if you wish to discuss the R&D tax credit.

Tax residence of companies with Australian decision makers

Does your company have Australian resident directors or Australian resident strategic decision makers? If so, the company could be considered to be Australian tax resident under a new ruling issued by the Australian Tax Office. For more information on this ruling, please click here for a link to an article written by our Australian affiliate, Pitcher Partners.

This ruling means that some New Zealand companies will be considered to be dual resident (tax resident in both Australia and New Zealand) which could give rise to significant ramifications in New Zealand. In particular, a dual resident company may be prevented from:

- maintaining a New Zealand imputation credit account
- being part of a consolidated group with other New Zealand companies
- sharing losses with other New Zealand companies

If your company has Australian resident directors or Australian resident strategic decision makers, we recommend that you contact your usual Baker Tilly Staples Rodway advisor to discuss further.

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