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Thomas Noble & Russell
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IS THE TAXMAN HIDING UNDER YOUR OFFICE CHRISTMAS TREE?

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While Santa Claus is making his rounds during this festive season, don't forget that so too is the taxman.

Hosting an office or client Christmas party requires significant planning and it is important to understand the fringe benefits tax (FBT) implications. Appropriate planning may eliminate the FBT burden entirely, with the following scenarios worth considering.

FBT EXEMPTION

Under FBT legislation, a minor benefit exemption is available if the benefit provided is less than $300 per employee and is provided on an irregular basis. The hosting of a Christmas party is considered as an irregular event and, as long as the cost per employee is below $300, the minor benefit exemption can be used to eliminate any FBT implications.

BUSINESS PREMISES

If Christmas parties are held on the business premises on a normal workday, expenses such as food and drinks are exempt from FBT. In addition, there is no income tax deduction available for such expenses, nor are GST input credits allowable.

If family members of employees attend and the total cost (per head) is under $300, again, FBT will not apply and no tax deduction and GST input tax credits will be allowable.

However, if the total cost per head is above $300, FBT will apply, however an income tax deduction and GST input tax credits will be allowable.

While there is no dollar limit on the food and drinks consumed by employees at a Christmas party held on business premises, if there is a band and other forms of entertainment at the party and the total cost of each benefit is greater than $300 per employee, then FBT

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HELPING ADULT CHILDREN WITH THEIR FINANCIAL FUTURE

When making the decision to start a family there are plenty of obvious direct costs such as clothing, schooling and feeding. Most people are also aware of the indirect costs such as time off work and unexpected items.

As our children grow up, we also start to realise that the buck doesn't stop at 18 years old. Children are now staying at home longer with their careers starting later. So, how should we best prepare our adult children for their own financial future?

SETTING A GOOD EXAMPLE EARLY

Children learn from their parents. The example you set in your own relationship with money will impact your children's attitude. Openly discussing topics such as the meaning of money, the concept of savings and opportunity cost, will open your children's mind to what money is and what it means to them.

THE IMPORTANCE OF HAVING A BACKUP PLAN

Discuss with your children the importance of saving for a rainy day or, we like to call it, an emergency fund. Also consider personal insurances to protect themselves in the event of injury or illness. In most cases, when establishing wealth, you are heavily dependent on your ability to earn an income and maybe haven't yet accumulated the resources to self-insure as yet.

SPEAK WITH SOMEONE OUTSIDE THE FAMILY

As children become more independent in their attitude, this naturally becomes their reaction with money, too. Sometimes both parents and children find it difficult to talk about things like money. We often see parents who will cover the cost for their child to meet with an independent financial adviser. It provides parents the peace of mind that the matter is being addressed and the child an opportunity to be responsible for their own money with the support of a professional.

SUPPORT BUT NOT ASSIST

It's in a parent's nature to want to assist their children when in financial trouble. This can sometimes be a band-aid fix rather than a long-term solution. Sometimes providing your children with the skills and tools to make sound financial decisions will actually end up costing less than covering the incident. Instead of thinking of an exit strategy on behalf of your children, you could be providing them with the tools to develop their own.

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will apply. If the total cost of each benefit is less than $300 per employee, then there is no FBT.

OFF BUSINESS PREMISES

If the Christmas party is held at an external venue such as a hotel or restaurant, the party will again be exempt from FBT as long as the total cost per employee (and their families if attending) is less than $300. There will also be no income tax deduction or GST input tax credits allowable. If the cost of hosting a Christmas party is greater than $300 per employee, FBT will apply and income tax deduction and GST input tax credits will be allowable to claim.

CLIENTS

There are no FBT implications on the portion of expenses that relate to clients, regardless of the location of the Christmas party. As such, no income tax deduction and no GST input tax credits can be claimed for the client's portion of the Christmas party expenses.

CHRISTMAS GIFTS

Many employers like to give gifts to their employees during the festive season, but these may attract FBT depending on whether they qualify as entertainment or non-entertainment gifts.

Entertainment gifts include items such as tickets to live concerts, movies, holiday tickets and the like. Non-entertainment gifts include gift hampers, gift vouchers, flowers and bottles of wine.

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ATO UPS APPLICATION OF JUSTIFIED TRUST REVIEWS

The recent increase in flow of available information to the Australian Taxation Office (ATO) can make even the owner of the local corner store nervous.

With the introduction of Single Touch Payroll, banking exchange of information such as Common Reporting Standard and Foreign Account Tax Compliance Act (FATCA), cross border initiatives such as country-by-country reporting, the Automatic Exchange of Information (AEOI) portal and governing bodies such as AUSTRAC, it's never been more important to accurately document tax positions and procedures.

Rather than focusing on gathering data, the ATO's focus on reviews and audits of taxpayers has transitioned to a theme of 'justified trust'. Justified trust is the ATO wanting to establish confidence that taxpayers are paying their fair share of tax but also that the taxpayer can demonstrate they have the ability and procedures in place to identify potential problems.

In order for the ATO to obtain the justified trust of a taxpayer, it reviews the following four key areas:

- Understanding a taxpayer's tax governance framework
- Identifying tax risks flagged to the market
- Understanding significant and new transactions
- Understanding why the accounting and tax results vary.

While most assume the ATO only target the big end of town, it's important for all types and sizes of taxpayers to prepare for a review, especially where any of the following circumstances apply:

- Significant sale or purchase of assets/business
- A recently published ATO guideline or ruling applies to your circumstances
- Change or restructure in your funding or group
- Continued tax losses or GST credits reported
- Outstanding tax debts or lodgments
- Where you are a Top 1000 public group or Top 320 privately held group (group turnover in excess of $100 million and $250 million net assets or market leaders)
- Where your private accumulated wealth is more than $5 million
- You are requesting amendments to prior year returns or activity statements
- Where there is an unusually higher number of entities connected or controlled by you or your group
- Unreported foreign income found as a result of exchange of information
- Large sums of money in excess of $10,000 transacted domestically but also overseas; and
- Your or your connected entities have been reviewed or audited before.

Taxpayers who fall into any of the above criteria should consult their professional advisers who will work on developing a tax governance framework. This includes documenting in-house procedures to meet tax obligations and identifying existing tax risks, but also documenting internal controls to ensure potential problems are identified. These could include the required qualifications of a finance/tax function, the use of advisers, and identifying a minimum value where a transaction's tax implications must be considered.

Investing in an effective tax governance structure that supports appropriate tax outcomes can influence a tax profile with the ATO and could ultimately save time and money. This is not withstanding the importance of attaining the ATO's trust with the looming potential of the director penalties regime being extended so that directors will be personally liable for GST, PAYG withholding and superannuation.

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> "Investing in an effective tax governance structure that supports appropriate tax outcomes can influence a tax profile with the ATO and could ultimately save time and money."

2020 IS THE YEAR TO DIGITISE YOUR BUSINESS

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In 1982, music legend Prince released his fifth studio album which contained the hit 1999, a song that continues to be played at New Year's Eve parties year after year.

In the mid to late 90s, Y2K fever took hold and we learnt that planes would fall out of the sky if airlines didn't address the Y2K programming issues. This was followed by the release of smartphones and the proliferation of all things social media. We were bombarded with buzz phrases including digitisation, big data, artificial intelligence (AI), data analytics, and robotics.

Drawing on inspiration from Prince, 2020 is the year to make use of the proliferation of technology, AI and big data to drive incremental continuous improvement in your business.

While these phrases come across confronting, in the same way that Prince made 1999 sound like a blast, here are some practical examples of these tech applications in everyday business:

- **Digitisation of training content** – film/record all of your training sessions, where possible. For those where the content has a lifespan of greater than two years, you will increase your return on investment even after allowing for the associated costs of recording.
- **Use of AI** – there are a number of AI products which are geared towards driving efficiency for doing repetitive tasks, while improving the quality of the outcome. More importantly, they also improve the morale of those doing these tasks. In our audit business, we acquired one such tool recently and the feedback has been positive. We are in the midst of finalising our evaluation of a contract reading tool, to assist us to streamline the process of contract review. Again, this is aimed at driving a better and more streamlined outcome for our clients and staff.
- **Use of data analytics** – increasingly, the concept of sampling is becoming redundant where one can extract and review the entire dataset. This could include performing a check of the suppliers' master file and doing a check for valid ABN, BSB, account number.

You either make the digitisation investment needed to remain relevant or risk becoming irrelevant in this day and age of all things digital. Or put another way, do you want to continue to party?

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THE NUANCES OF SELLING SHARES IN A SMALL BUSINESS

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Small business capital gains tax (CGT) concessions offer valuable tax savings when selling a business, but there have been major changes to the rules when selling shares in a company, adding extra tests that will often be extremely difficult to navigate.

Under the old rules, a shareholder – or unitholder - could own between 20 per cent and 40 per cent of one or more large business entities and apply the CGT concessions to a sale of their shares.

As a hypothetical, Pat, Josh, Mitch and Nathan each owned 25 per cent of Last Blast World Pty Limited, which carried on a sporting merchandise business. They sold their shares in LBW to IPL Holdings for $20 million in total, but as none of them controlled LBW they have to count only the value of their 25 per cent stake ($5 million) in the $6 million net asset value (NAV) test. An individual could start up or buy a small business to satisfy the $2m 'small business entity' turnover test, where they would fail the $6m NAV test.

A further example applies to buying a small business when selling out of a larger business. Freddie owned 100 per cent of Blue Origin Pty Limited which carried on a business of corporate wellness coaching and sold all his shares to Todd for $10 million. In the year of the sale, Freddie acquired a worm farm that supplied local anglers with bait with annual turnover of $400,000. This makes Freddie a "small business entity", and he could claim the CGT concessions for the Blue Origin share sale.

However, under the new rules, there are three additional conditions to be met for a share sale, including:

1. Modified active asset test - this applies only to multi-layer business structures and changes the way the active asset test applies to selling shares at the "top" of the structure.

   The active asset test requires the market value of active assets held by companies in which shares are sold to be at least equal to 80 per cent of the total market value of assets.

   The modified test looks through interposed companies to their proportionate interests in the market values of assets held by the underlying operating companies. The operating companies must meet either the $2 million turnover test or the $6 million NAV test using a modified control test where 20 per cent or more is enough to establish control.

   The taxpayer must also be a "CGT concession stakeholder" in the operating company, i.e. they or their spouse hold an interest of at least 20 per cent.

2. Carrying on a business prior to the CGT event - this represents a very prescriptive approach to applying the $2 million turnover test when shares are sold, and becomes relevant if the $6 million NAV test cannot be satisfied.

   There are two parts that, when combined, make it more difficult to use the $2 million turnover test, including:

   - The taxpayer must have carried on a business just prior to the CGT event, so they cannot buy or start a small business after selling the shares in the existing business
   - The company must itself have satisfied the $2 million turnover test for the year.

3. Company must satisfy $2 million turnover test or $6 million net asset value test - the company must satisfy either the $2 million turnover test or the $6 million NAV test, in each case if there is a multi-layer structure applying the modified control percentage of 20 per cent. This is all aimed at preventing taxpayers from using the concessions when selling shares in a large business.

The changes to the small business CGT concessions are therefore significant for share sales and are intended to close off perceived loopholes. This will need more planning to maximise access to the CGT concessions, or if they cannot be used then to review other approaches that will provide the most tax-effective outcomes for the business owners.

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"The changes to the small business CGT concessions are therefore significant for share sales and are intended to close off perceived loopholes."

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LOW RATES SHOULD GIVE RISE TO MORTGAGE REVIEW

Australia's sluggish economy and weaker housing market has placed a lot of pressure on the Reserve Bank of Australia and the monetary policy levers being used.

The business cycle is about peaks and troughs, and with the present trough unlikely to be a permanent fixture, the economy will pick up at some point, and so too will interest rates.

But for now, the cash rate is at an unprecedented level and, with rates so low, it feels as though we can borrow free money if we choose the right lender and are constantly reviewing our debt.

Not all lenders are passing on the full rate cut to borrowers, and a lot of variance in pricing remains across lending institutions. Borrowers need to be doing their research to ensure they are benefiting from the current low interest rate environment, and should bear in mind the following:

- If you've been with your bank for more than two years, then you are probably paying too much. Banks love loyal long-term customers, because they can charge loyal customers a higher interest rate. The longer you set and forget your home loan or any other loan, the higher the rate you're likely being charged.
- Refinancing debt - provided it's not a fixed rate - is not necessarily costly. In most instances, when you consider the discharge fees of approximately $700, outweighs the benefit of the competitive rate you are getting with the incoming lender.
- Taking out debt is a large impost on family expenses and, as mortgagees, we live with this expense for 30 years or more, so you want to make sure you have shopped around and are receiving the best possible rate.
- If you don't fit one lender's policy, you might fit another's. Policy variance is also common among lenders. For example, if you have just started work and are still on probation, you do not need to wait for your probation period to end - there are lenders that offer super competitive rates to consumers that are still on probation.
- The wisest borrower is always keeping their lender on their toes. Annual rate checks are a must and ringing your bank and renegotiating your rate is also important (excluding those on fixed rates).
- Failing to renegotiate an expiring fixed rate loan or interest only loan can also potentially cost you. A fixed rate home loan or interest only loan will automatically be rolled into a variable rate loan with no discount with most lenders if you don't ask the question.
- The low interest rate environment has become the new normal, so much so that a lot of the lenders are offering a super competitive fixed rate, lower than any variable rate on the market. Fixed rate loans can bear large break costs if broken early, so understanding the fixed rate contract you are entering with your lender is important.

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"Borrowers need to be doing their research to ensure they are benefiting from the current low interest rate environment."

UNDECLARED FOREIGN INCOME OF RETURNING EXPATS AN ATO FOCUS

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The ATO has put taxpayers on notice that it will be increasing its attention towards any undeclared foreign income, and has indicated it will contact those taxpayers where they have information from a foreign revenue authority or other third parties that they may have received income from another country.

Taxpayers who are residents of Australia are required to include income from all sources in their annual income tax returns. For Australians working in other countries, the recent decision in Harding v Commissioner of Taxation [2019] FCAFC 29 concerned the definition of "resident" and "resident of Australia" in our income tax law and its application to individuals.

In this decision, a person is not only a resident if they reside in Australia but includes a person whose domicile is in Australia and who does not have a "permanent place of abode" outside Australia.

The Court held that when assessing the tax residency of an individual, the phrase "permanent place of abode" should be interpreted more widely than by reference to the individual's house or dwelling and consideration be given to whether the individual is living permanently in a particular country or state. In this case, the Court found that Mr Harding had ceased his residence in Australia and was permanently based in Bahrain.

The decision provides a definitive test for Australians working in other countries as to whether they have established a home in that country and have ceased their ties with Australia.

COMMON REPORTING STANDARD (CRS)

Many people will have had to comply with the CRS when they opened new bank accounts and report their tax residency status to their bank or financial institution. The CRS is the single global standard for the collection reporting and exchange of financial account information. Since September 2018, the ATO receives and exchanges financial account information with participating foreign tax authorities to ensure Australian resident taxpayers are complying with their tax obligations.

ATO DATA MATCHING

The ATO follows strict data matching protocols to match external data with that held by the ATO (such as interest, dividends and other sources of income), and has announced that it will be focusing on capital gains made on shares, property and cryptocurrency. This includes capital gains on assets held overseas.

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HLB Mann Judd firms are part of HLB International, the global advisory and accounting network.

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FINANCIAL REVIEW
CLIENT CHOICE AWARDS 2018 WINNER
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2019 DIRECTOR APPOINTMENTS

HLB Mann Judd in Sydney has recently appointed four directors and the Australasian Association has appointed one director. The Sydney firm welcomes Vanessa Abboud, James Friend, Matthew Hocking and Amanda Sweeting to its leadership team, while Holly Dixon has been promoted to director of marketing and brand for the Australasian Association.

Vanessa Abboud
Audit & Advisory Director

Vanessa joined the Sydney firm as a graduate in 2008 and has spent the past 11 years providing audit and financial reporting services to a broad range of organisations. In recognition of her expertise and leadership, Vanessa was nominated as a finalist for the Young Leader of the Year award category at the 2018 Women in Finance Awards. She is a member of the Chartered Accountants Australia & New Zealand and holds a Bachelor of Commerce from Macquarie University.

James Friend
Audit & Advisory Director

James joined the Sydney firm as a graduate in 2009 and has a portfolio of audit and assurance clients including medium to large private businesses, companies listed on the ASX, managed investment schemes and not-for-profit organisations. James is also highly experienced in valuation and due diligence assurance services. He is a member of the Chartered Accountants Australia & New Zealand and holds a Bachelor of Commerce from Macquarie University.

Matthew Hocking
Restructuring & Risk Advisory Director

Matthew has been appointed director in the Sydney firm's restructuring and risk advisory division. He joined the firm in 2005 and, following a year working in business services/taxation, he began specialising in the newly established business recovery and insolvency division. He is a member of the Australian Restructuring, Insolvency and Turnaround Association and Chartered Accountants Australia & New Zealand. Matthew holds a Bachelor of Commerce from the University of Adelaide.

Amanda Sweeting
Audit & Advisory Director

Amanda joined the firm as a graduate in 2008 and has spent the past 11 years working with the Sydney firm's audit and assurance clients. She has specific industry knowledge of funds management, AFS licences, charities, not-for-profit entities and private-public partnership transactions. Amanda is a member of the Chartered Accountants Australia & New Zealand and holds a Bachelor of Business from Australian Catholic University.

Holly Dixon
Australasian Marketing & Brand Director

Holly has previously held marketing roles in accounting firms in Australia and the USA. Since joining HLB Mann Judd in 2017, she has successfully overseen a number of large projects for the Association including a rebrand and new website launch. Earlier this year, Holly was named a finalist for the Marketer of the Year award at the Women in Finance Awards. She holds a Bachelor of Communications from Newcastle University.