MEDICAL AND DENTAL
ACCOUNTING

THE HEALTH WEALTH SPECIALISTS

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INTRODUCTION

Welcome to the Spring edition of MADA News for 2007. We hope that this selection of articles comprises something for everyone.

Topics covered

1. Travel Expenses – What you can claim?
2. Minor Fringe Benefits – ATO Draft Ruling TR 2007/D6
3. Restructuring CGT Assets – Concept of "Tenants In Common"
4. CGT Main Residence Exemption – How Far the ATO Will Go In Checking the Facts!
5. What Happens To My Super If I Get Divorced?

1.Travel expenses – What can you claim?

Although most of our clients are familiar with the rules in relation to claiming travel expenses (whether car deductions or expenses incurred whilst traveling domestically or internationally), we thought it worthwhile restating the various rules as a refresher for you all.

Travel expenses directly connected with your work can be claimed as a deduction. If travel was partly private and partly for work, only that part that related to work can be claimed.

Travel expenses that can be claimed include meals, accommodation and incidental expenses incurred while away overnight for work. Other expenses are

- Air, bus, train, tram and taxi fares

- Bridge and road tolls
- Parking, or
- Car hire fees.

Travel between home and work

You cannot claim a deduction for the cost of normal trips between your home and your place of work. This is even if:

- you did minor tasks such as picking up the mail on the way to work or home;
- you had to travel between home and work more than once a day;
- there was no public transport near home;
- you were on call ;
- you worked outside normal business hours – eg shift work;
- your home is a place of business and you traveled directly to a place of employment.

There are certain situations involving home and work travel where a deduction is allowed.

- *Transporting bulky tools or equipment*

The cost of using your car to transport bulky tools or equipment that you used for work and couldn't leave at your workplace can be claimed. For instance a doctor carrying emergency equipment e.g. a defibrillator, doctor's bag, Xrays, laptop and patient records would be allowed a deduction for transporting bulky l equipment. There has also been a case where an employed dentist was allowed a deduction for transporting sensitive, valuable and potentially embarrassing ems between one surgery and another. A physiotherapist transporting fitballs would also be allowed a deduction under the bulky equipment rule.

- *Home as a base of employment*

This is where work is started at home and you travel to a workplace to continue work.

- *Shifting places of work/Itinerant worker*

A deduction for the cost of travel is allowed where you regularly worked at more than one site each day before returning home. For example an "itinerant" teacher engaged in a special scheme which involved teaching at five schools each day and using her home as a base for preparing lessons and keeping materials was allowed a deduction for her car traveling expenses between schools and between home and school. Similarly a radiologist who travels between various hospitals/clinics throughout the week would also qualify here.

Travel between two places of work

The cost of traveling directly between two separate places of employment can be claimed. This would apply where you have a second job.

- ***Example****:*

  Peter is a doctor who works at the Royal Melbourne Hospital and also has a private practice at St Vincents Hospital. The cost of travel between these two places of work is deductible.

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Also claimable is the cost of traveling:

- from the normal workplace to a patient's residence and back to the normal workplace or home; and

- from home to a patient's residence and then on to the normal workplace or directly home.

Example

Jane is Practice Manager of a medical practice in the city. She is required to attend meetings at her employer's other practice in the suburbs. She can claim the cost of each journey.

Business Trips

Convention/seminar expenses

Travel expenses incurred in attending a convention or seminar relating to business or employment are deductible. The fact that vacation or leave time is utilized while attending these events will not necessarily prevent a deduction. If the trip was only partly to attend the convention or seminar then the expenses may be apportioned.

Inspection of investment properties

The cost of trips to inspect investment properties will be deductible. Where the trip is partly for pleasure it will be necessary to apportion the costs and only the costs attributable to inspection of the investment properties will be deductible. It may be necessary to make an apportionment based either on time or overall purpose of the trip.

Documentation of Business Travel

Special substantiation rules apply to expenses in relation to overseas and domestic travel. The effect of the substantiation rules is that domestic and overseas travel expenses are not deductible unless the following two conditions are satisfied.

1. Written evidence must be obtained in respect of the business expenses, regardless of the length of absence from home. Note that for a business travel expense (i.e. not an expense incurred by an employee earning salary and wages) written evidence need only be kept if the travel involved at least one night away from home; and

2. A travel diary (or similar document) must be kept where the traveler is away from home for six or more consecutive nights. The records must contain particulars of each business activity undertaken. Entries must be made before the activity ends or as soon as possible afterwards and must set out: (a) the nature of the activity; (b) the day and approximate time when it began; (c) how long it lasted; and (d) where the activity took place.

It is important that these documentation requirements are met, otherwise the expenditure will be non-deductible and may also be subject to FBT.

2. Minor Fringe Benefits – ATO Draft Ruling TR 2007/D6

What is a minor fringe benefit?

Generally speaking benefits with a value of less than $300 (from 1 April 2007) are considered "minor benefits" and exempt from FBT as long as they are considered infrequent and irregular in nature and it would be unreasonable to treat them as fringe benefits. TR 2007/D6 was issued in June 2007 and clarifies that a minor benefit provided to an employee by an employer is not necessarily exempt from FBT just because it is less than $300. For the exemption to apply there are five tests that must all be satisfied. These are:

- the frequency and irregularity with which associated benefits are provided;

- the value of the sum of the minor benefit and any associated benefits, that are identical or similar to the minor benefit;

- the sum of the values of any other associated benefits;

- the practical difficulty for the employer in determining the values of the minor benefit; and

- whether the benefit was provided as a result of an unexpected event and whether or not it was in the nature of a reward for services.

Examples

The ruling provides a number of examples of benefits that would be considered exempt and non-exempt minor benefits. A few examples are:

- *Gift provided at Christmas*

An employer provides modest gifts to employees at Christmas time of a bottle of whiskey, perfume or a store voucher. The value of each gift is less than $300.

The gifts are provided infrequently but on a regular basis (being every Christmas). However the sum value of all gifts is not considered to be substantial and there are no associated benefits provided in connection with the gift.

The gift would be an exempt benefit.

- *Christmas Party*

An employer provides a Christmas party for employees at a local restaurant. Employees' partners and children are invited to attend. The cost per person attending the party is less than $300.

The Christmas party is provided infrequently but on a regular basis (being every Christmas). However the sum of the values of the benefit being the consumption of food and drink at the Christmas is not considered to be substantial.

The cost of the Christmas party would be an exempt benefit.

- *Christmas Party and Gift*

An employer provides each of its employees with a Christmas gift of less than $300. The gifts are distributed at the annual staff Christmas party which also has a value of less than $300 per employee. Gifts are only provided at Christmas time.

The value of the gift is below $300. Again the provision of the gift is infrequent but regular. However the sum value of all gifts is not considered to be substantial.

The cost of the Christmas party and gift would be an exempt benefit.

- *Gifts*

An employer has a policy of providing flowers to its employees on special occasions such as the birth of a child, or as a get well gift. The flowers are always valued at less than $300.

The flowers would be considered to be provided on an irregular and infrequent basis. There are no associated benefits and it is rare for employees to receive flowers on more than a couple of occasions per year.

The flowers would be an exempt benefit.

- *Staff Incentive*

An dental practice provides bonuses to staff by way of gift vouchers. The store vouchers have a face value of less than $300.

A particular employee receives a number of bonuses on a number of occasions and received other store vouchers during the previous years as well.

The value of the store voucher is less than $300. However the vouchers are considered to be provided to this employee on a frequent and regular basis. Even though the value of each individual benefit is less than $300 the sum of the associated benefits is considered to be substantial.

The voucher provided to this employee would not be an exempt benefit. (Note: look at each employee individually)

3. Restructuring CGT assets – Concept of "Tenants In Common"

Circumstances often arise where it is necessary or advantageous to restructure the joint ownership of capital assets. Before doing so it is prudent to consider whether or not the restructuring of the ownership of the assets constitutes a "CGT event" potentially giving rise to a capital gain (or loss).

"Johnson's case"

A recent Administrative Appeals Tribunal ("AAT") decision highlights some of the issues. In Johnson's case, Paul Johnson and his brother received a gift of 4,000 shares in CSR Ltd from their mother and grandfather, which were registered in the brothers' joint names. In 2003 CSR Ltd demerged and as a result the brothers received a further 4000 shares in another company which were also registered in their joint names.

In 2006 the brothers decided to go their separate ways and each take half their shares. They executed transfers, without any money changing hands and each brother subsequently owned 2000 shares in both companies.

The AAT decided that the restructuring of the shares gave rise to a CGT liability. It was considered that the brothers were "tenants in common" in respect of the shares. Each brother owned a separate CGT asset comprising an equal interest in the asset. In this case each share was comprised of two CGT assets, one held by each brother. The whole original parcel of 8,000 shares was therefore ultimately comprised of 16,000 CGT assets, with each brother holding 8,000 CGT assets, being a 50% share in each asset.

When the transfer took place they both disposed of 4,000 CGT assets to each other. This rearrangement and reallocation of the ownership of CGT assets constituted a disposal of CGT assets and potentially gave rise to a taxable capital gain.

In some cases where the ownership of assets is transferred, rollover relief is available and there is a deferral of any capital gain or loss (eg between spouse on marriage breakdown). However, in this case there was no rollover relief available.

4. CGT Main Residence Exemption – How Far the ATO Will Go In Checking the Facts!

A recent case decision *(Erdelyi v FC of T [2007] AATA 1388)*, involving a husband and wife who tried to claim the CGT main residence exemption after supposedly living in a house for three months, demonstrates just how far the Tax Office will go in looking into the facts.

The Facts

In July 2002, the husband and wife (the taxpayers), together with their daughter, purchased a block of land. The intention was to build a house for the three of them to live in. At this time all three were living in the daughter's house nearby. She intended to sell this property to help finance her share of the new property.

Construction of the new house started in December 2003 and reached lock-up stage in March 2004. At this time the husband and wife claimed that they had moved into the house. However their daughter was having trouble selling her house, so, in May 2004, the newly constructed house was put on the market. The house was sold and settlement occurred on 30 June 2004.

The husband and wife claimed the main residence exemption on the basis that they had been living in the house for three months before selling it and that they intended to live there permanently. The ATO disagreed and issued default assessments to the taxpayers for the 2004 tax year plus penalties. The taxpayers appealed to the AAT. The AAT looked into the facts and found the following:

- most of the furniture had not been moved to the new house but had remained at the daughter's house to improve the prospects of selling that house;
- the only items that had been moved to the new house were the main bedroom furniture, a tv, some casual chairs and a table, some bar stools, a small amount of crockery and utensils, and some clothing and personal items;
- the telephone had not been installed;

- there were no clothes washing facilities;
- the electricity bill was very low for the period;

the husband did not amend his driver's licence, his vehicle registration details or his addresses with Centrelink, insurance companies or his banks. addresses with Centrelink, insurance companies or his banks.

Therefore the AAT concluded that the husband and wife taxpayers were not entitled to the main residence exemption.

5. What happens To My Super If I Get Divorced?

Superannuation is now treated like any other property in the event of a marriage breakdown. Superannuation assets can be valued and the couple (or the court) can decide how they want to deal with them.

A person has the right to request information from a fund about their spouse's entitlement. A special declaration must be made to the relevant fund stating that you require the information to help you in seeking a court order, or in property negotiating an agreement, about superannuation. To protect both parties, the trustee of the fund is not permitted to tell the member that their spouse has applied for this information, or to give the member's address to the spouse.

Splitting Superannuation – how does it work?

In most cases, splitting superannuation is based on a court order to the fund, that the non-member spouse must receive a certain amount of the member's benefit at a given date, or a share of their future pension. This can be either a consent order, registered with the Family Court with the consent of the couple, or, if the couple cannot agree, the order may be made by the Court.

The couple can decide whether to split the superannuation entitlements and if so, what amount or proportion goes to each spouse. For example, in some cases the couple – or the Family Court – could decide to give one party the house and let the other keep the superannuation. Alternatively the couple could decide to split either or part of the superannuation.

Generally it will be possible to start a new account for the non-member spouse to hold their split of the superannuation savings. This account could be in the fund where the original amount was, or, in another fund, depending on what the fund allows and the non-member spouse wants.

Where the member's benefit is paid from the fund, the agreed amount plus interest is subtracted from it and is put into an account for the non-member spouse or paid out if the non-member spouse leaves the fund. The agreed amount or proportion stays in the fund until that time. A set rate of interest is paid while it remains.

Separated but not divorced?

If you are separated but not divorced and want to split your superannuation benefits, you will need provide a separation declaration in the same way that you are required to do so for all other property settlements.