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## Client Newsletter

December & January 2011/12

### FBT and Entertainment

Christmas is just around the corner and many employers will be incurring staff expenses in the form of bonuses, presents, entertainment, etc. It is important to distinguish between entertainment (which has its own rules) and non-entertainment expenditure. Although fully deductible, non-entertainment expenditure is often caught by FBT. If cash bonuses and gifts are given to staff as Christmas presents, they are considered benefits and FBT will apply. However, there is a new maximum exemption from FBT for employers from 1 April 2009.

Employers may be exempt from paying FBT if the unclassified benefits (such as flowers, wine, dinner vouchers, fuel vouchers, etc) provided to all employees are no more than \$22,500 per annum and that each employee benefit does not exceed the \$300 exemption per quarter.

Christmas functions held for staff, whether on company premises or elsewhere, are not fully deductible entertainment expenses – instead, they are only 50% deductible. So are the costs of any accommodation provided by the employer in a time-share apartment/holiday home, or costs of tickets to a show.

Entertainment that is 100% deductible is normally restricted to food and beverages provided at a promotional function that is ‘open to the public’, where no particular group of people, such as staff or business clients, have a greater chance of enjoying the entertainment than the general public. It is not possible to cover all types of entertainment here so contact us if you have any doubts about the treatment of any entertainment.

### From the IRD corner...

#### Time Bar Waiver

The Inland Revenue Department (IRD) appears to have firmed up on its audit activities in recent months. Although we had mentioned this in one of our earlier newsletters, it is timely to re-iterate the taxpayer’s stance on IRD time bar waivers.

There is a time bar of four years for an income tax audit by the IRD. The four years run from the income year in which the tax return is lodged with the IRD – for example if a 2010 tax return (with a standard balance date) was filed before 31 March 2011 then the IRD has until 31 March 2015 to audit or investigate the 2010 income tax.

The IRD can re-assess the 2010 year after 31 March 2015 if the taxpayer waives the time bar before 31 March 2015.

There have been instances in the past where the IRD investigators have sent letters directly to taxpayers close to the 31 March date along with a Time Bar Waiver form IR775 requesting the taxpayer to sign and fax it to them before 31 March without explaining what the consequences of signing or not signing the

form will be. Even the IR775 form does not state anywhere that the taxpayer does not have to sign.

This effectively leaves the IRD to dispute a tax return which is no longer time barred.

In actual fact, the taxpayer is not obliged to sign the Time Bar Waiver form and there is no prejudice to them in not signing. However, once it is signed, the taxpayer may not be able to escape out of it because legally they were not forced to sign.

It is always prudent to seek professional advice before signing any IRD forms received directly from the IRD.

#### Using the correct code for tax payments

If you make payments to IRD electronically, it is important to code these payments correctly. The GAP code should only be used when paying GST and provisional tax together. If you are paying them separately, use the GST and INC codes respectively. Choosing the correct code means the payment will be credited to the right place and there are no delays in processing them quickly and correctly.

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## Holidays and other Entitlements

Many employers shut their doors over the Christmas period enabling employees to take their annual leave. The responsibility for ensuring the employees' entitlement for leave under the Holidays Act 2003 falls on the employers. The following briefly lists the holidays and other leave entitlements.

### Public Holidays

- Employees are entitled to a paid day off on a public holiday if it would otherwise be a working day for them.
- If an employee works on a public holiday and it is their normal working day, they are entitled to another paid day off in lieu as well as whatever pay has been agreed to in their contract for working on a public holiday. The minimum requirement is payment of time and a half for the time actually worked on that day.
- An employee who does not normally work on the day the public holiday falls, and does not work on that day, is not entitled to a payment for that day e.g. a part-time employee is not entitled to a payment for Good Friday if they do not work on Fridays.

### Annual Holidays

- All employees are entitled to a minimum of four weeks' paid annual leave per year after the first year of employment.
- Employees must be allowed to take two weeks continuous leave if the employee so requests.
- The employee and employer can agree in writing to pay out a portion (for maximum of one week) of the employee's entitlement to annual holidays.
- Annual leave must be calculated at the greater of the ordinary weekly pay or the employee's average weekly earnings over a 12-month period before the annual holiday is taken.

### Sick Leave

- Both full-time and part-time employees are entitled to a minimum of five days' paid sick leave after the first six months of continuous employment. Unused sick leave is retained and can be accumulated up to 20 days.
- If the sickness lasts for a period of three calendar days, the employer has the right to request proof of the employee's illness or injury.

### Bereavement Leave

- Employees are entitled to two forms of bereavement leave after six months of employment.
  - up to three days' paid leave on the death of an immediate family member; and
  - up to one day's paid leave on the death of a person outside the immediate family that causes the employee to suffer a bereavement.
- Both types of bereavement leave can be taken at any time i.e. not necessarily immediately after death or on consecutive days.
- 'Immediate family members' are defined as an employee's spouse, parent, child, sibling, grandparent, grandchild or the spouse's parent. If there has been a multiple fatality, the employee is entitled to three days' bereavement leave for each death.

There is a positive requirement on employers to inform employees about their entitlement under the new Act and to advise them that they can access further information from the Department of Labour, viz, Employment Relations Service on 0800 800 863 or its website [www.ers.dol.govt.nz](http://www.ers.dol.govt.nz).

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## Proposed Change to Producing Financial Reports

The Minister of Commerce in conjunction with the External Reporting Board recently announced some important changes to the New Zealand financial reporting. One of the changes include that SMEs (small and medium sized companies) that are not 'issuers' as defined will no longer have a statutory obligation to prepare general purpose financial reports. This is a welcome change by those SMEs that are obliged to prepare financial reports under the current reporting framework when they require special-purpose (tax) reports. The change is likely to be effective from mid-2013.

Important: This is not advice. Clients should not act solely on the basis of the material contained in the Client Newsletter. Items herein are general comments only and do not constitute or convey advice per se. Changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas. The Client Newsletter is issued as a helpful guide to clients and for their private information. Therefore it should be regarded as confidential and should not be made available to any person without our prior approval. 188/2011.