

client newsletter

Summer 2016



Sinko & Associates

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Seismic signals

Meanwhile our thoughts are with those faced with putting home and business life back together. If your business has been affected by these recent extreme events, please talk to us about tax relief that may be available from Inland Revenue.

It's highly relevant at this time that Inland Revenue is re-consulting on whether obtaining a detailed seismic assessment (DSA) on a building is a deductible cost for a business. Where a building is identified as quake-prone the owner must assess its vulnerabilities and how to overcome them. This starts with the DSA. Inland Revenue recognises that taxpayers need to know how their buildings are likely to cope in an earthquake.

The Inland Revenue draft looks at situations in which a DSA can be obtained. Current indications are that in most situations DSA costs will be deductible. However where DSA costs are incurred as part of a capital project to seismically strengthen, develop or improve a building, they will be capital and non-deductible. The current round of consultation on this closes on 2 December. We'll let you know the outcome.

Risk and Reward

Buying off the plan? The bright-line test and you

We've talked before about how changes to tax law around buying and selling property might affect you. Now that the changes are in operation and the bright line test is being applied to determine tax liability, an issue highlighted only recently might leave you exposed.

As we've discussed before, people who buy or sell a property within two years of acquiring it must pay tax on the gain. The main home is exempt and there are some other exceptions such as inheritance and relationship break-ups.

However, what happens when you have bought a house and land package off the plan but titles haven't been issued yet and settlement is still 12 months off or more? Do you intend to move the asset into your family trust on settlement? If you have signed the purchase agreement in your own name but want to have the family trust settle the deal, it looks like you may be caught under the bright line test. Inland Revenue may deem your interest to have been disposed of within two years, in which case if there is a gain it will be taxable.

A spokesperson for Inland Revenue has commented that 'in the case of a purchase off the plans, the house has never been used as the main home and therefore cannot qualify for the main home exemption.' Inland Revenue have no plans at this time to review their position on this. If you think this might affect you, please contact us to discuss your tax position.

Be canny with cashflow

In the race to have everything done before the Christmas closedown, make sure you take some time to look at your cashflow and plan for the new year. January is a month with some key tax dates, with a lot of things falling due on 16 January in particular (see Timely Reminders, page 4). As well as the usual PAYE return dates, GST returns for both November and December are due in January. And for many, January and February can be big months for provisional tax. Plan ahead to make sure you're covered. Contact us if you think cashflow will be tight and you'd like to talk through options for how to manage it best.



Filling employment gaps over summer

With the holidays coming up, you may have started to think about whether to employ some extra people over the holidays. If you do, think carefully about the kind of help you need and broadly what kind of employment contract is best suited to the situation. It's important to make sure you comply with current employment law and have it right from the start.

Casuals

Casual employees might be right for your business, for instance if you are covering unexpected absences. But remember that, no matter what you *call* the employment, if you treat casual staff as if they are permanent — for instance, give them regular hours or work over a sustained period — their employment may be regarded as permanent, with all that that entails.

Points to note:

- Casual work is intermittent or irregular, and casual employees don't have to accept every offer of work you make so it may not fit the situation you have in mind
- Just like other employees, people who work casually for you need an employment agreement
- You can offer casual employees annual holiday pay on a 'paid as you earn' basis. You need to discuss this with the people you propose to employ as casuals. If they agree, this must be stated in their employment agreements, and payment must be recorded separately in wage records at a rate of at least 8%.



Fixed-term employees

It might suit your needs better to employ someone on a fixed-term agreement, particularly if working hours are going to be regular and predictable. But the law is very strict about the form of such agreements, and if that is not complied with, you may find yourself with a permanent employee, i.e. someone whose agreement is of indefinite duration.

Because a fixed-term agreement is intended to be for a limited time, the agreement must state the means of ending the employment relationship. For instance, this might be a specific date or event (like the last day of the Boxing Day Sales or the final performance of the Christmas pantomime). Or it might be when a specific project is completed, for instance roofing the new hay barn or installing a new cooling system.

As an employer you must have genuine reasons for the employment period to be fixed-term and you must advise your prospective employee of when and how the employment term will end and the reasons for it ending in that way. Make sure the employment agreement backs this up clearly.

Be aware of the rules around entitlement to holiday pay. Like casual employees, employees on a fixed-term agreement of less than one year can agree that they will receive 8% added to their gross weekly earnings (paid-as-you-earn) instead of taking annual holidays or getting paid out all of the 8% at the end of their term. Again, you must state this clearly in the employment agreement, it can't be less than 8% of the hourly rate, and it must be shown as a separate item in the employee's pay slip and in wage and time records.

If you would like more information about how to cover these situations in your employment agreements or your wage and time records, please let us know.

Seasonal workers

Many businesses are looking for seasonal workers. The hospitality industry want people for their high season. The summerfruit and wine sectors are moving into high gear.

If you are keen to employ seasonal workers over the summer and can't find New Zealand citizens or residents to do the job, it could be an option to employ overseas workers. If you are considering this, make sure you take these simple steps:

- When advertising, state that applicants must be entitled to work here
- When applicants contact you, ask for evidence they are entitled to work here
- Keep this evidence on file
- Check their visa and passport details on Immigration NZ's online tool VisaView

And remember – like other workers, seasonal workers have rights as employees and are able to seek protection from workplace bullying or exploitation. Make sure you observe their entitlements to holiday pay and breaks, that you pay them at least minimum wage and have written employment agreements with them.



RSE scheme

If you are an employer in the horticulture or viticulture industry, and your need for seasonal workers comes up annually, you might consider becoming a Recognised Seasonal Employer (RSE).

This scheme can help you recruit overseas workers when there aren't enough New Zealanders to plant, maintain, harvest and pack your crops. You need to apply for RSE status and it needs to be renewed regularly. Talk to us if you would like to pursue this.

Ho Ho Ho! Knowing what's deductible

Do your plans for the festive season include functions to celebrate with clients and the team? What about gifts? If they do, here are some tips on the tax implications.

Entertainment

When you're entertaining clients or colleagues, some entertainment expenses are tax deductible while others aren't. It can be tricky working out what's deductible as a business expense and what isn't.

The basic idea is that an expense is business-related if you spend the money to help your business earn income. Most business-related expenses are fully deductible. If the expense doesn't help your business earn gross income, it's private and you can't claim it as a tax deduction.

It becomes a little trickier when there's an element of private enjoyment. You might think that the firm's Christmas party for clients is a business related expense and should be fully deductible because it's promoting your business, products or services. However:

- if your clients or employees have a greater opportunity to enjoy the entertainment than the general public, you can only deduct 50% of the costs
- if anyone associated with the business has a greater opportunity to enjoy the entertainment than the general public, you can only deduct 50% of the costs

Generally speaking, if there's an element of private enjoyment, the expenses (in addition to the food and drink) associated with events where you entertain clients and/or staff will only be 50% deductible. For instance, this would include the hire of crockery, glasses, waiting staff and music.

There are exceptions. Entertainment supplied for charity is 100% deductible. For instance if you throw a Christmas party for the children's ward at the local hospital, this is fully deductible. Entertainment enjoyed outside New Zealand is 100% deductible. If you take the team to the Gold Coast for Christmas (lucky them) it will be fully deductible. However, if they contribute towards the cost of their airfares (or anything else), you will need to reduce your expense claim by the amount of the contribution.

Gifts

The rule of thumb with gifts is that if they consist of food or drink, you can only claim 50% of the expense as a tax deduction. If you are giving out gift baskets or hampers and some of the contents are food or drink, but not all, the food or drink items are 50% deductible but the other gift items are 100% deductible. When you come to claim the tax deduction, you will need to apportion the expense between the 100% deductible items and the 50% deductible items.

Functions and events

Some entertainment expenses are fully deductible but some are not. Use these examples as a guide.

50% deductible

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| Christmas drinks for team members or clients in the office |
| Christmas drinks for team members or clients in the pub |
| Hire of a launch to entertain clients |
| Restaurants providing food and drinks to team members at a social function in their restaurant |
| Staff Christmas party on or off the business premises |
| Function hosted in a marquee at the races (or in a corporate box at the rugby). Includes the cost of tickets and any food and drink provided |
| A weekend away for the team at holiday accommodation in New Zealand. Includes any food and drink provided |

100% deductible

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| Donating food to a Christmas party in a children's hospital |
| Providing morning and afternoon tea for your team |
| Providing entertainment, including food and drink at your promotional stand for the Cracker Christmas Festival |
| Holding the Christmas party in Fiji (woo-hoo!) |

0% deductible

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| Taking your family (who don't work with you in your business) out for dinner to thank them for being patient while you worked long hours and paying for this using the business credit card |
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GST

If that's not enough to think about, you will need to make a GST adjustment for entertainment expenses which are 50% deductible. This adjustment will be required to be made at the time your income tax return is filed. Of course, we can help and advise you on this.

Gifts to clients

If your Christmas giving includes gifts to clients, remember that some gifts will be fully deductible while others will be only 50% deductible. Use these examples as a guide.

50% deductible

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|------------------------------------|
| Bottle of wine or six pack of beer |
| Meal voucher |
| Basket of gourmet food |
| Box of chocolates/biscuits |
| Christmas ham |

100% deductible

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| Calendar |
| Book or gift voucher |
| Tickets to a rugby game (but not corporate box entertaining) |
| Movie tickets |
| Presents (not food or drink) |



FBT on gifts and entertainment

If you are giving gifts to your team you may also be liable for fringe benefits tax. There's a \$300 exemption from paying FBT per employee per quarter and provided the total value of the goods and services to all employees does not exceed \$22,500 for the year. However, if the value of total benefits for an employee goes over \$300 for the quarter year, the full value of the benefit is subject to FBT.

As for entertainment events, if you invite your team to an event that qualifies as a business-related entertainment expense which is only 50% deductible, you are not liable for FBT as well. So if you are entertaining employees at a party or you've hired a launch or holiday accommodation and the expenses for that are only 50% deductible, it isn't subject to FBT. (On the other hand, if the event is being held outside New Zealand, it will be subject to FBT.)

There are exceptions to this that make it a tricky area so if you'd like more information on a whether a specific event you're hosting is 50% deductible but may also be liable for FBT, please contact us.

*Wishing you a safe and happy Christmas and
a wonderful new year!*

Our office will close on Thursday 22nd December 2016 and reopen in the New Year on Thursday 12th January 2017. Thank you for all your support this year.

From the team at Sinko & Associates:



Disclaimer

This publication has been carefully prepared, but it has been written in general terms only. The publication should not be relied upon to provide specific information without also obtaining appropriate professional advice after detailed examination of your particular situation.



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