



Merry Christmas & Happy Holidays

from the team at
CCH New Zealand

.....and here are a few things to keep
in mind for the holiday season!



Welcome to the 2013 CCH Christmas Newsletter!

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Wow, what a year it has been.

We have seen some nail-biting sporting events like the America's Cup, Scott Dixon winning his third IndyCar championship and the All Blacks' winning streak. We have also seen musician Lorde and newly pro golfer Lydia Ko named Time magazine's most influential teens, Eleanor Catton becoming the youngest Man Booker Prize winner, and some bright new beginnings like Christchurch's new Cardboard Cathedral.

From new beginnings come new strengths and new opportunities. Businesses are picking up from the recent recession, and professional advisors are seeing some exciting fresh work come through the doors and are adjusting their service offerings to suit.

In 2013 we have also seen the introduction of mandatory CPD for the law fraternity and accountants have voted for a new Institute, with major changes coming in April 2014 for both.

At CCH New Zealand, we're working behind the scenes to ensure you have the support you need to advance in this new post-recession environment as well-informed, up-to-date, technology-savvy professionals.

With that, we look forward to a bustling, busy and bright 2014 and I and all the CCH New Zealand team wish you and your teams and families a happy holiday and a promising New Year.

Julie Benton
General Manager, CCH NZ



Seasonal Questions and Answers

Santa Claus runs a small workshop in the North Pole with the assistance of a dedicated group of hardworking elf employees.

Santa has read on the Inland Revenue website that everyone must pay their fair share of tax and is worried - perhaps there are some tax or employment law issues he has overlooked?



Christmas party

Question

Each year Santa holds a Christmas party for the elves in early December.

He is thinking of inviting the Iceland division up for the Christmas party this year. Santa would pay the airline costs for ten elves to travel from Iceland to the North Pole.

Are there any tax issues with this?

Answer

Christmas party costs

The cost of the Christmas party itself will be subject to the entertainment rules, so Santa's deduction for this expenditure will be limited to 50%.

Travel costs

The travel costs to the party will be deductible to Santa as staff remuneration costs.

The travel costs will be subject to FBT unless the de minimis exemption applies. Providing travel to a Christmas party is a fringe benefit.

De minimis exemptions

For employers paying FBT on a quarterly basis, no FBT is payable provided that:

- the total taxable value of unclassified benefits provided in the quarter to each employee does not exceed \$300; and
- the total taxable value in the last four quarters, including the current quarter, of all unclassified benefits provided by the employer, or an associated person, to all of the employer's employees does not exceed \$22,500.

For employers accounting for FBT on an annual or income-year basis, the total taxable value of unclassified benefits must not exceed:

- \$1,200 per employee pa
- \$22,500 per employer pa.

References: Income Tax Act 2007, ss CX 29, DD 2, DD 9, RD 45.



Question

Santa decides he may as well invite the reindeer to the Christmas Party too. They are engaged as independent contractors, rather than employees.

The reindeer are based in Greenland, so Santa will incur airline costs in flying the Reindeer to the party. Will FBT apply to the travel costs?

Answer

Maybe.

Whether FBT applies will depend on whether the independent contractors are treated as employees for FBT purposes.

For FBT purposes the definition of employee is wide and catches some relationships which might not intuitively be classified as employment relationships. Examples of relationships caught by the FBT rules include:

- past, present and future employees;
- anyone associated with past, present or future employees;
- shareholder-employees; and
- people receiving schedular payments (other than payments to non-resident contractors).

Therefore, FBT will not apply to the travel costs provided the reindeer have never been Santa's employees, they have never been associated with any of Santa's employees, and payments to the reindeer are not schedular payments. (Examples of schedular payments include sales commission payments, directors fees, and payments to models, photographers, journalists, writers artists, entertainers, farm and forestry workers and labour-only builders).

Reference: Income Tax Act 2007, s YA 1 "employee".



Question

Santa is also going to splash out on a band at this year's party. He has booked the elves' favourite band, The Pixies.

Does Santa need to deduct tax when he pays the band?

Answer

Santa will have to deduct tax if The Pixies are not a company.

Payments to musicians and members of a band are treated as "schedular entertainment activities" and subject to tax. Payments to the members will therefore be subject to a deduction at the flat rate of 20c for every \$1 of payment if they have given Santa a tax code declaration form (IR 330). If no such form is provided, the tax is increased by 15c in the dollar on the usual withholding rate, ie, 35c in the dollar.

If The Pixies hold a valid certificate of exemption (COE), or if The Pixies are a company, no tax is required to be deducted.

Reference: Income Tax Act 2007, ss RD 8, sch 4.



Driving under the influence

Question

During the Christmas party, Santa gets a bit tipsy drinking the sherry. Encouraged by some of the naughtier elves, he decides to take the sleigh on a joy-ride.

Unfortunately for Santa, he runs into a drink-drive checkpoint (his red nose is a bit of a giveaway). The evening ends with Santa in a police cell, charged with excess breath alcohol and his sleigh impounded.

Santa is distraught. How will he drive his sleigh on Christmas Eve if he has lost his licence?!

Santa's lawyer tells Santa he will probably be landed with a large fine but is confident that Santa will be able to obtain a limited licence for work purposes.

1. Would the fine be deductible?
2. What about the legal fees for obtaining a limited licence for work?



Answer

1. No, the fine would not be deductible. The traffic offence for which Santa is facing prosecution was not conducted in the course of any income-earning process. The expenditure is therefore of a private character and could not be deducted. In addition, Inland Revenue has made it clear that a deduction would be disallowed on public policy grounds.

2. The legal fees incurred on obtaining the restricted licence should be deductible provided:

- the licence only applies to business use in Santa's business vehicle; and
- it is restricted to Santa's business hours.

Arguably, the expenditure has been incurred in obtaining a licence that allows Santa to continue his business and as such should be deductible.

Reference: Income Tax Act 2007, s DA 1, DA 2(2). Case L15 (1989) 11 NZTC 1,113 IS 09/01, "Fines and penalties — Income tax deductibility".



Christmas bonuses

Question

Santa usually pays his elves a bonus at Christmas time. Are bonuses included in the calculation of an employee's annual holiday pay?

Answer

This depends.

Two rates are used to work out an employee's annual holiday pay: "ordinary weekly pay" and "average weekly earnings". Once each is calculated, the higher of the two is used as the rate of payment for annual holiday pay.

Ordinary weekly pay

When calculating an employee's ordinary weekly pay, it is unlikely that a bonus will be included. The definition of "ordinary weekly pay" under s 8 of the Holidays Act excludes any one-off or exceptional payments. If bonus payments were paid regularly, they might be included in the ordinary weekly pay calculation. Section 8 also excludes any discretionary payments that the employer is not bound by the employment agreement to pay. If the bonus entitlement is expressed to be discretionary, this would exclude the bonus from the calculation of "ordinary weekly pay".

Average weekly earnings

The "weekly earnings" calculation, on the other hand, is more likely to include a bonus payment. This is because the meaning of average weekly earnings is 1/52 of an employee's gross earnings. One-off payments can be included in an employee's gross earnings.

Discretionary payments are, however, specifically excluded from the definition of gross earnings.

Therefore:

- If the bonus is payable at the employer's discretion, the bonus payments are not included in the weekly earnings calculation
- If the bonus is calculated on some other basis – eg with reference to staff productivity or business turnover – and this bonus payment is referred to in the employment contract, the bonus will be included in the weekly earnings calculation.

References: Holidays Act 2003, ss 5, 8, 14, 22.



CCH Question and Answer Service



The CCH Question & Answer Service is an online facility to provide you with answers to your Tax, Company, Employment, Trust, Property and Business Law questions.

- Access to the combined wealth of experience of the CCH ensemble of tax and legal experts, authors and consultants
- Fully researched and referenced answers
- Very cost effective in comparison to out-sourcing or seeking legal advice
- Stay compliant with up-to-date and accurate advice
- Reduce your research and reading time



Annual holidays

Question

One of Santa's elves has been working non-stop all year without a break. Will he lose his annual holidays if he does not take them in a year?

Answer

No. Even if the employment agreement says that annual holidays will be forfeited if not taken, it is unlawful for an employer to enforce such a clause.

The Holidays Act makes it clear that an employee cannot lose annual holidays until the holidays are taken. If an annual holiday balance is becoming unsatisfactorily large, the employer's remedy is to get the employee to take the holidays.

The employer and the employee must agree on the dates the holiday will be taken. If no agreement is reached, the employer is entitled to require an employee to take annual holidays by giving 14 days' notice to the employee.

Reference: Holidays Act, s 16.



Question

What if the elf decided to cash up some of his annual holidays. Can he do that?

Answer

Yes, it is possible to cash up a maximum of one week of annual holidays if both the employer and employee agree. In cases where employees receive more than the statutory minimum (ie four weeks leave) they can agree with their employer to cash up the additional days as well.

However, an employer is entitled to have a policy stating that employees may not cash up their annual holidays.

Reference: Holidays Act, ss 28A - 28E.



Due dates over the Christmas break

Remember that over the Christmas break, the usual dates for payment of GST and provisional tax, and payment of PAYE for large employers, are pushed out to January 15, 2014.

	Usual date	Xmas extension
PAYE payments for large employers	5 Jan 2014	15 Jan 2014
GST payment date	28 Dec 2013	15 Jan 2014
Provisional tax due date	28 Dec 2013	15 Jan 2014



Team celebration

Question

After Christmas Eve Santa, the elves and the reindeer return to the North Pole absolutely exhausted. Santa is proud of the team effort and would like to reward them by taking them to Hawaii for some sunshine.

Santa would pay for all of the expenses – food, accommodation and airfares to and from Hawaii.

Is the cost of such an overseas trip deductible?

Answer

Yes, the cost is fully deductible to the company.

Santa will have an FBT liability for the benefit provided to the employees.

None of the expenditure is subject to the entertainment rules because the holiday will be enjoyed outside New Zealand.

References: Income Tax Act 2007, ss CX 2, CX 29, DA 1, DD 7.



Question

After chatting to his accountant, Santa is having second thoughts about Hawaii. It really is quite expensive, and it turns out some of the elves have prior convictions that might prevent entry into the United States.

What about a domestic trip instead? The team could travel to the Elf-tin Hotel and have a few days of pampering there.

Are there any tax issues associated with this?

Answer

Yes.

Some of expenses will be only 50% deductible as they are subject to the entertainment regime.

For example, expenditure on food and beverages (including any portion of the accommodation costs which are food and beverages) would be subject to entertainment tax and only 50 % deductible. No FBT is payable if the expenditure is subject to the entertainment regime.

Accommodation at the Elf-tin hotel would be 100% deductible, but would be subject to FBT.

References: Income Tax Act 2007, ss CX 2, CX 29, DA 1, DD1, DD 2.



News from CCH New Zealand

AgriVisor launched at Big Day Out

CCH Business Fitness has joined forces with ANZ bank to develop **AgriVisor** - an innovative collection of tools to help accountants work with their farming clients to improve financial and business literacy within the agricultural sector.

Launched in October at the Accountants Big Day Out Conference, **AgriVisor** is a palette of tools for accountants enabling them to assist their farming clients with their business issues from the get-go, covering compliance matters and dealing with bankers as well as other useful resources to make their business more efficient and profitable.

What's in AgriVisor?

- Procedures for evaluation client meetings
- FAQ on benchmarking
- Steps for creating and checking in with business plans
- Guides to facilitate family advisory board meetings
- Procedures and tools to conduct planning sessions for clients
- FAQ on common business structures
- FAQs on running family businesses and succession planning
- Interactive budgeting tool

For further information or to view a demo visit <http://www.agrvisor.co.nz/>

CCH Webinars

2013 has been a busy year for CCH Webinars. With Richard Dams joining the team as Webinar Manager and facilitator extraordinaire, we have been able to increase our offering and expand into providing more webinars for the accountancy, legal and SME markets.

As all CCH webinars are run on a one connection/one fee basis, they are an incredibly cost effective way to up skill your team. Professional development made easy and affordable.

We pride ourselves on partnering with excellent presenters to bring you relevant, topical and practical webinars and moving forward into 2014 we have some fantastic new presenters and webinar topics coming up.

And keep a look out for the new CCH Learning website which will launch in the middle of January showcasing our 2014 programme.

If you have any comments or would like to suggest topics you'd like to see in 2014, please contact our Webinar Programme Manager, Dione Kimpton at dkimpton@cch.co.nz.

The Good, the Bad and the Ugly of the NZ Accounting Profession

The GBU is an annual benchmarking survey that analyses a wide range of key performance indicators and management trends within New Zealand accounting firms. Designed to provide accountants with the financial performance analysis and management trends that are affecting your business, the GBU report identifies the challenges faced in accounting practices across the country.

Highlights of this year's report include:

- 2013 versus 2012
- Performance infographics and comparison
- Thought-leadership articles from industry specialists
- Financial performance, clients and team KPI analysis
- The Best vs The Rest comparison - what are the successful firms doing?
- Management trends
- A special feature on succession planning
- Action plan/strategies for improvement
- Performance summaries and regional analysis

For more information and to purchase the report: <http://www.businessfitness.co.nz/benchmarking/index> (Price \$150.00 exc GST, \$172.50 incl GST)

Business Fitness123 Helps Small and Sole Practitioner Accounting Firms

CCH Business Fitness have designed an essential toolkit tailored to the needs of small firms and sole practitioners. The BusinessFitness123 content suite includes:

- ACC Administration Tool Kit
- Company Administration Tool Kit
- Dealing with Debtors
- FAQs
- Client questionnaires and newsletters
- IRD registrations
- Rates and thresholds
- Tax Management NZ
- Workpapers
- Working for Families kit
- Provisional Tax
- Client bank accounts

For further information: http://www.businessfitness.co.nz/products/123_content_suite



Best Wishes for a happy and successful 2014 from the team at CCH New Zealand



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Special Christmas Offer!

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Promotion code: BB14

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We are Moving!

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