

News

October 2006

Our Partners Are Your Partners



Generation Y

... LOVE THEM OR LOATHE THEM, YOU NEED THEM

There are 4.5 million Australians classified as Generation Y - 1 in 5 of the population. They were born between 1978 and 1996 so are now aged 10 to 28. Gen X employees should be maturing. Having reached or near age 30, a majority will focus more on their careers. As an employer you now need to recruit and make good use of the elder half of the next generation - the Gen Ys in their 20s. The thing is... they wish to make good use of you.

Gen Y is Australia's most educated generation with 70% likely to complete high school and 40% likely to pursue further study and qualifications. If you can understand and identify the characteristics of this generation, you are on the way to harnessing some of their talent and employing their skills to drive your business on. You will need to address these employees differently bearing in mind what is in their mind. Old fashioned master-servant attitudes will wear thin quickly with them. In this 'skills shortage' era employers must consider the advantages of addressing their employees according to the employees' needs or face the disadvantage of further recruitment costs.

Of course the bargaining position is not all in favour of the employees. Many employers are realising the benefits of employing mature workers and appreciating the qualities offered by many people aged 40 and above.

To make some Gen Y generalisations, they:

- Are hungry to learn and finish the interesting tasks
- Would rather not get stuck doing mundane tasks - are likely to question why those mundane tasks cannot be skipped/changed delegated/outsourced/shortened
- Have an excellent handle on technology and its uses
- Enjoy a fast pace where things get finished rather than gradually processed
- Are pragmatic and want to move quickly and get to the point - they will focus on the key issues while ignoring the peripheral details
- Would rather enhance a process than slowly step through it
- Don't have trouble finding another job - unemployment is only 5%
- Are keen to see the benefits here and now as well as knowing there is more opportunity to be taken
- Live on the web - they communicate by email and txt msg, research on the internet, and look to the net first for information, directions, and assistance
- Want to know - they want access to knowledge and communication

- Want to contribute ideas, to be heard and be mentored
- Want a positive feeling in their work environment
- Will be entrepreneurial and take (sometimes uncalculated) risks.

Gen Y will also consider the triple bottom line. They have a social and environmental consciousness which can influence their work practices and consumer choices.

Gen Y are accustomed to change and new developments. The world is a dramatically different place to what their parents and most of their employers lived in. How many of their employers had a mobile phone at the age of 12?

Everyone in business needs to recognise and embrace the employment and consumer needs of this generation of individuals to harness the power and profits on offer.

Part of the 'here and now' attitude of Gen Y is a propensity to spend now and pay off later. Supposedly safe in the knowledge that they live in prosperous times and will always have a job, they can buy a plasma TV, upgrade their mobile phone, and get a flash car on various finance and payment plans where their parents were more inclined to save the money before spending it. Rather than dampen this enthusiasm and 'can do' attitude, entrepreneurial business owners will facilitate it and work it.

INSIDE

> More Detail On Super Changes

> Employer Liability

AUDIT AND INVESTIGATION

ADELAIDE

LITIGATION SUPPORT

CORPORATE ADVISING

BRISBANE

STRATEGIC PLANNING

FRANCHISING

GLADSTONE

INSOLVENCY

INFORMATION SYSTEMS

MELBOURNE

SUPERANNUATION AND PERSONAL INVESTMENT

TAXATION

PERTH

Super Details

Some more detail has been released on the superannuation changes that were proposed in the May Federal Budget (see June '06 issue). Following the release of the draft proposals, the consultation period has ended but legislation is still to be drafted.

- The Budget announcement restricted undeducted contributions to \$150,000 per year. Recent announcements indicate that the \$150,000 limit for undeducted contributions will be introduced as \$450,000 over 3 years from 1 July 2007 for people under age 65. In the interim, from 10 May 2006 until 30 June 2007 a limit of \$1 million will apply.
- The maximum deductible contributions on aged based limits are to be replaced with one annual limit of \$50,000. Transitional rules will allow people over aged 50 and over an annual limit of \$100,000 until 30 June 2012. Recent news is that the \$50,000 limit will be indexed in \$5,000 increments.

Superannuation funds will be required to report each member's contributions to the Australian Taxation Office to facilitate ATO monitoring. Contributions in excess of the limits will be taxed at 46.5%.

- The new system for employer eligible termination payments will allow existing employment contracts paid out before 30 June 2012 to be concessionally taxed up to 30 June 2012. After 2012 there will be a limit of \$140,000 on ETPs and they cannot be rolled into a superannuation fund.

Other new announcements include:

- The small business capital gains tax rollover exemption will be a lifetime limit of \$1 million and can include the proceeds from the disposal of assets held for more than 15 years.
- Existing complying income streams such as defined benefit pensions and market linked pensions will not be able to be commuted so must run their course. Allocated pensions

will simply adopt the new pension standards from 1 July 2007.

- Death benefits may be paid as a pension to a minor child before being converted to a tax free lump sum at age 25.
- A time limit of 30 days will be placed on superannuation funds to act on requests to transfer account balances. Funds are to be provided with a standard form to use.
- If 46.5% tax is to be applied to excess contributions, the individual can pay the tax or nominate a superannuation fund to pay the liability.

The only change that has already been legislated is the compulsory cashing rule. People who had reached age 65 and were drawing a pension merely because it was compulsory to start withdrawing their superannuation may consider returning their benefits to 'accumulation mode'. They may wish to recommence withdrawals from 1 July 2007 when they are tax free.

Same Sex – Different Treatment?

The tax legislation provides rollover relief from capital gains tax following the breakdown of marriages and de facto relationships. Should this rollover relief be allowed to same sex couples or should they be treated differently?

A recent tribunal decision held that capital gains tax ("CGT") rollover relief was not available to a taxpayer on the transfer of a property following the breakdown of her relationship with her partner. It was held that the definition of spouse did not extend to same sex de facto relationships.

The couple had acquired two properties during their 11 year relationship which ended in 2002. In 2004, the taxpayer and her partner executed a termination agreement to transfer the interests in the properties such that each person was left with one property. The taxpayer realised that the transfer agreements triggered CGT events and court orders were sought sanctioning the transfers. The taxpayer subsequently applied for a private ruling as to whether she was entitled to CGT rollover relief by reason of the court order. The tax act provides rollover relief for a capital gain in respect of an individual and his/her spouse or

former spouse because of a court order relating to a de facto marriage breakdown. The ruling of the Tax Commissioner stated that there was no entitlement to rollover the capital gain made on their transfer.

The tax act defines a spouse to include a person who, although not legally married to the person, lives with the person on a genuine domestic basis as the person's husband or wife (ITAA 1997 section 995-1 Definitions). The taxpayer submitted that the definition of "spouse" is wide enough to include a de facto relationship between two persons of the same sex.

The tribunal decided that the transfer occurred because of the agreement between the taxpayer and her partner and not because of the court order. It also said there was no evidence that the word "spouse" has a meaning which could encompass



persons of the same sex. It claimed that the tax act was amended to treat a man and a woman in a de facto relationship as spouses and did not go so far as to include persons of the same sex

Understandably, it is reported that the decision will be appealed seeking to allow the same treatment to same sex couples as to heterosexual couples.

Advice Corner

Q: IS MY GOWN TAX DEDUCTIBLE?

A: IN MOST CASES, THE COST OF A GOWN IS NOT DEDUCTIBLE.

Being conventional clothing it will usually be deemed a private cost. However if you consider a gown worn by a doctor in surgery then that item can be deductible as it is a protective or occupation specific gown.

The cost of hiring an academic gown to wear to a graduation ceremony is not deductible. Even though the costs of the study may be tax deductible, the Tax Office will deny a deduction for the graduation ceremony costs. In fact, a Tax Office employee was denied deductions for the costs of attending his graduation ceremony. The argument put against him was that while that the study course was accepted as relevant to his employment, the cost of attending a graduation ceremony was not an expense of that study, did not involve any acquisition of knowledge or skills, and there was no requirement or expectation for the applicant to attend the ceremony in order to receive his certificate.

The Tax Office will allow a deduction for an employee teacher who wears a graduation gown at school as it would be considered 'occupation specific' clothing.

The cost of an evening gown worn by a television game show hostess would be deductible. A tax ruling allows her a deduction for clothes purchased to wear on the television show to showcase the prizes. Although the gown is conventional clothing, which is usually not deductible, the deduction is allowed as it is directly related to and contributes to the performance of her employment activities in the clothing. If she bought the gown to audition for the game show it would not be deductible as such costs are incurred too soon to be incurred in producing assessable income. Audition expenses are incurred in getting work rather than doing work.

For conventional clothing to be deductible the circumstances need to be peculiar or exceptional. In most cases, expenses for conventional clothing are considered to be of a private nature. One case which established deductibility in exceptional circumstances saw a personal secretary allowed the costs of evening gowns and formal wear worn to functions and events to accompany her employer. She was able to establish that her additional clothing expenses were allowable in her

particular circumstances which included additional changes of clothes throughout a working day.

Maintaining a separate wardrobe of conventional clothing to meet work requirements will not make it deductible - even if that separate wardrobe is worn exclusively for work. Regardless of any expectation to dress in a specific manner, to present a professional image, or a need to dress up to secure business or perform employment duties the essential character of conventional clothing is private - it is not a labeled or 'logo'ed' uniform, occupation specific, nor protective.

A violinist in a symphony orchestra would not be allowed a deduction even if the orchestra required her to wear a black evening gown for performances. The fact that the employer requires garments worn to be a particular colour, even if employment would be terminated if another colour was substituted, still does not allow a deduction for conventional clothing.

If you think that your circumstances do warrant a deduction, contact your Sothertons partner.

Vicarious Liability

EMPLOYERS MUST BE AWARE OF THE ACTIONS OF THEIR EMPLOYEES

A recent High Court case has clarified the extent of one person's vicarious liability for another person's negligence. Whilst the court observed that the law was somewhat unclear, it also observed that:

- There is a fundamental distinction between a person's liability for the conduct of their employees compared to independent contractors engaged. The case involved the negligence of a contractor and the question of whether the person engaging the contractor was liable for the contractor's negligence. The court noted that vicarious liability has clear potential application in respect of employees but generally not in respect of contractors.
- An employer incurs vicarious liability only for negligence occurring in the course of employment.

Employers should note the potential liabilities and ensure that employees act appropriately in

performing their employment duties. As well as the specific tasks that a person is employed to do, employers should also consider the areas of discrimination, sexual harassment, and occupational health and safety. Even if the employer is not willingly or recklessly a party to an employee's negligence or wrongdoing, the employer still carries the risk of being liable for their employee's actions.

vicarious *adj.* ... suffered in place of another; the substitution of one for another.

CPI Index

The ABS recently published the latest CPI figures being the 'All groups' weighted average of 8 capital cities:

March 2006	151.9
June 2006	154.3

The 2006 financial year increase is almost 4% (June 2005 - 148.4).

DESK DIARY

"If you cannot decide in one day, then you cannot decide."

Ephraim (Geoffrey Rush's character) in the film *Munich*.

Should I Salary Sacrifice?

Salary sacrifice to superannuation has always been a good strategy for medium to high income employees for personal income tax savings and building wealth for retirement. Salary sacrifice for most benefits other than superannuation will not be tax effective unless your taxable income exceeds \$150,000.

Essentially, salary sacrifice is an agreement between an employee and an employer to substitute part of the employee's cash remuneration for other benefits.

The tax cuts for individuals mean the tax savings from salary sacrifice reduced from 1 July 2006. Amounts contributed to superannuation (for most employees) bear 15% contributions tax in the superannuation fund. The personal income tax rate of 15% stops at \$25,000. So above that income level the difference is saved between the personal income tax rate and the contributions tax rate.

The proposed changes to superannuation soften the preservation dilemma as (after 1 July 2007) your superannuation benefits should be accessible tax free after age 60 and there is no Reasonable Benefit Limit.

The fringe benefits tax rate is 46.5% – equivalent to the top marginal tax rate (applied to taxable income over \$150,000) of 45% plus the 1.5% Medicare levy. Aside from FBT exempt or concessional tax benefits, there will be a tax cost to salary sacrifice in the lower tax brackets. Why salary sacrifice to enjoy fringe benefits when you save 31.5% or 41.5% in personal tax + Medicare levy to be hit with 46.5% fringe benefits tax rate?

Salary sacrificing is still very attractive for exempt benefits such as laptop computers and mobile phones and for employees of hospitals and public benevolent institutions.

IMPORTANT: Professional advice should be considered before acting in any area. Clients and readers should not act solely on the material contained in this newsletter which is in the nature of general comments only. Material may or may not be applicable to your particular circumstances and changes in legislation sometimes occur quickly.

For details of each firm's financial planning arrangements and assistance with your financial affairs, please contact your Sothertons partner. Any decision to invest or not to invest should only be made after considering the specific advice of a licensed financial adviser.

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