



# News Bulletin

Accountants &  
Business Advisors



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**Merry Christmas!**

KAIAS PHILLIPS

129 Station St. Fairfield

Ph. (03) 9489 5888

[www.kaiasphillips.com.au](http://www.kaiasphillips.com.au)



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## TAX DEVELOPMENTS UPDATE



### ATO Cryptocurrency Crackdown

Cryptocurrencies (also known as virtual currencies or digital currencies) such as Bitcoin, Ethereum are becoming increasingly popular with many investors.

However, many do not realise that the buying, selling and exchanging Cryptocurrency has tax implications if it is kept as:

- an investment,
- part of a profit-making scheme or
- part of trading.

The ATO treats cryptocurrency like shares and many other investments. As such, it is generally regarded as a CGT asset.

A CGT event occurs when disposing of cryptocurrency. Events can include selling cryptocurrency for a fiat currency, exchanging one cryptocurrency for another, gifting it, trading it, or using it to pay for goods or services.

To ensure that individuals and businesses are fulfilling their tax and superannuation reporting obligations, the ATO will carry-out data-matching to acquire account identification and transaction data from cryptocurrency designated service providers for the 2021 financial year through to the 2023 financial year inclusively.

The ATO estimates that the records relating to approximately 400,000 to 600,000 individuals will be obtained each financial year.

Data items collected by the ATO will include identification details including names, addresses and phone numbers, as well as transaction details such as bank accounts, transaction dates, and coin type.

According to the ATO, the data will uncover individuals who have failed to report a disposal of cryptocurrency and the appropriate capital gain or loss in their income tax return.

Data collected under the program will be retained for seven years to enable the ATO to cross-reference taxpayer records retrospectively

### Implications of Lost Trust Deeds

A recent Supreme Court case (*Mantovani v Vanta Pty*) starkly provides a timely reminder of the serious consequences that can flow from the loss of the original trust deed.

Where, as in this case, the deed has been lost, the trust must be held to have failed due to the lack of certainty of its terms.

As a statement of general principle on trusts failing, the Court stated that:

- where an express trust fails (or is ineffectually declared, or becomes incapable of taking effect), an automatic resulting trust arises by operation of law, and
- the trustee holds the trust property on trust for the settlor or the settlor's estate.

In other words, where a trust fails, the trustee holds all property, rights and assets it acquired in its capacity as trustee, as well as any further income arising from the trust property, *on a resulting trust for those who contributed property to the trust.*

The Court also confirmed that the making of distributions by the trustee, in the absence of a trust deed, was a clear breach of duty. Therefore, the trustee was ordered to account to the beneficiary of the resulting trust, from the point in time it was determined the trust deed had been lost.

### SME Recover Loan Scheme extended

The Federal Government has [extended the SME Recover Loan Scheme](#) by a further six months to 30 June 2022.

Under the scheme, SMEs dealing with the economic impacts of COVID-19 with a turnover of less than \$250 million will be able to access loans of up to \$5 million over a term of up to 10 years.

However, the Government will reduce its loan guarantee from 80% to 50%.

## TAXATION OF CHRISTMAS BENEFITS

Every year, we are asked about the tax impact of various Christmas or holiday related gestures. Here are our top issues:

### Staff gifts

The key to Christmas presents for your team is to keep the gift spontaneous, ad hoc, and from a tax perspective, below \$300 per person.

As a general position, where the gift has a value of less than \$300 GST inclusive per person, and it is a once off gift, it will be exempt from FBT as a minor benefit and provided it is not considered to be entertainment, will be tax deductible with input tax credits available.

To qualify as a minor benefit, the gifts also have to be ad hoc (no ongoing gym membership payments or giving the same person regular gift vouchers amounting to \$300 or more).

A question we often get is what is the tax impact if you give your team say a hamper and a gift card? The good news is that the tax rules treat each item (the hamper and the gift card) separately. FBT won't necessarily apply as long as the value of each item is less than \$300. However, the minor benefits exemption is a bit more complex than this. For example, you need to look at the total value of similar benefits provided to the employee across the FBT year etc.

If you are planning to provide your team with a cash bonus rather than a gift voucher or other item of property, then this will be taxed in much the same way as salary and wages. A cash bonus at Christmas is not a gift; it's still income for the employee regardless of the intent. A PAYG withholding obligation will be triggered and the ATO's view is that the bonus will also be treated as ordinary time earnings which means that it will be subject to the superannuation guarantee provisions unless it relates solely to overtime that was worked by the employee.

### The staff Christmas Party

As a general rule, Christmas parties constitute "entertainment benefits" and as such are subject to FBT unless specifically exempt, or the "minor benefits" exemption applies

To avoid tax on your work Christmas party, its best to host it on your business premises on a work day. Expenses such as food and drink (including alcohol), are exempt from FBT for employees with no dollar limit, but no tax deduction or GST credit can be claimed. However, where only finger food or a light meal and **no alcohol** is provided, then the entire cost is also tax deductible

If your work Christmas party is out of the office, keep the cost of your celebrations below \$300 per person. This way, you won't generally pay FBT because anything below \$300 per person is a minor benefit and exempt. However, an income tax deduction and GST credit will *not* be able to be claimed.

If your business hosts slightly more extravagant parties and goes above the \$300 per person minor benefit limit, you will generally pay FBT but you can also claim a tax deduction and GST credits for the cost of the event.

Amounts attributable to clients/suppliers attending will not be subject to FBT but an income tax deduction and GST credit will *not* be able to be claimed

### Client gifts

As long as the gift you give to the client is given for relationship building with the expectation that the client will keep giving you work (that is, there is a link between the gift and revenue generation), then the gift is generally tax deductible as long as it doesn't involve entertainment.

Entertaining your clients at Christmas is not tax deductible. If you take them out to a nice restaurant, to a show, or any other form of entertainment, then you can't claim it as a deductible business expense and you can't claim the GST credits either.

## SEASONS GREETINGS!

*We would like to take this opportunity to wish all of our clients the very best for the festive season and for a happy, safe and prosperous New Year.*

*Thank you for your support over the past year, and we look forward to continuing our association in 2022.*

*Please note that our Offices will closed for the festive season from Thursday 23rd of December, 2021 and will re-open on Monday the 17<sup>th</sup> of January, 2022.*



#### **Disclaimer:-**

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