



News Bulletin

Accountants &
Business Advisors



DECEMBER 2022
Merry Christmas!

KAIAS PHILLIPS

129 Station St. Fairfield

Ph. (03) 9489 5888

www.kaiasphillips.com.au



IN THIS ISSUE:

- ❖ ATO Taxpayer Alert – Taxation of Foreign “Gifts” and “Loans”
- ❖ Fringe Benefits Tax & Christmas Parties
- ❖ The Government’s “Secure Jobs, Better pay” Legislation.

ATO: TAXPAYER ALERT – TAXATION OF FOREIGN ‘GIFTS’ AND ‘LOANS’



The ATO recently released A Taxpayer Alert “*Disguising undeclared foreign income as gifts or loans*”.

The alert highlights the ATO’s focus on families that are potentially attempting to avoid or evade tax on foreign income by treating payments to Australian residents as loans or gifts from a foreign related party.

Identification and Reviews

The ATO is working with AUSTRAC and foreign tax authorities to identify cash transfers to Australia that could potentially fit this fact pattern.

We are advised that the ATO is conducting an increasing number of reviews/audits for families that have received foreign cash transfers, and it is increasingly becoming a question of when, not if, the ATO will query the transactions.

Under such ATO reviews and audits, the taxpayer will generally need to supply evidence to support a loan/gift designation, otherwise the ATO’s position will be that the transfer is to be treated as income and taxed at rates of up to 47%.

Support for a Genuine Gift or Loan

The Alert provides that a payment may be treated as a genuine gift or loan where:

- the characterisation of the transaction as a gift or loan is supported by appropriate documentation
- the parties’ behaviour is consistent with that characterisation; and
- the monies provided are sourced from funds genuinely independent of the taxpayer.

FRINGE BENEFITS TAX AND CHRISTMAS PARTIES

As Christmas is almost upon us, it may be worth having a refresher of the Fringe Benefit Tax (FBT) implications of providing Christmas parties and gifts to your employees, to make sure that you do not also bestow to the taxman a present in the form of additional FBT and associated income tax or GST.

There is of course no separate FBT category for Christmas parties, so with this in mind, here are our top tips on how to keep your staff and the taxman happy this Christmas.

For your business customers

The most effective way of sharing the Christmas joy with customers is not necessarily the most tax effective. If, for example, you take your client out or entertain them in any way, it’s not tax deductible and you can’t claim back the GST.

There are specific rules designed to prevent deductions and GST credits from being claimed when the expenses relate to entertainment, regardless of whether there is an expectation of generating goodwill and increased business sales. Restaurants, a show, golf, and corporate race days all fall into the ‘entertainment’ category.

However, if you send your customer a gift, then the gift is tax deductible as long as there is an expectation that the business will benefit (assuming the gift does not amount to entertainment).

Director Penalty Notices: Beware of Risks

All company directors should be aware that, directors can be personally liable for their company’s tax and superannuation debts.

The Director Penalty Notice regime is a powerful tool available to the Australian Taxation Office (ATO) to hold directors liable for company tax and superannuation debts, unless the company pays those debts, or the director puts the company into an insolvency administration.

Where the tax and superannuation debts relate to late lodgements, the only way a director can avoid personal liability is for these debts to be paid by the company or through external financial support.

The ATO is presently issuing in excess of a hundred Director Penalty Notices a day.

TAX, FBT & GST ON CHRISTMAS FUNCTIONS AND CHRISTMAS GIFTS

The table below provides a summary of Income Tax, FBT & GST implications for GST registered businesses (not tax exempt) that are not using the 50-50 split method for meal entertainment.

	Exempt from FBT?	Tax deductible	GST credits
Christmas party on employer premises on a weekday			
Employees	Yes	No	No
Associates of employee (spouses etc.)	If <\$300 per head	If \$300 or more per head	If \$300 or more per head
Customers	N/A	No	No
Christmas party on employer premises on a weekend or external venue			
Employees	If <\$300 per head	If \$300 or more per head	If \$300 or more per head
Associates (spouses etc.)	If <\$300 per head	If \$300 or more per head	If \$300 or more per head
Customers	N/A	No	No
Christmas gifts (assuming the gift doesn't involve entertainment)			
Employees	If <\$300 per head	Yes	Yes
Associates (spouses etc.)	If <\$300 per head	Yes	Yes
Customers	N/A	Yes	Yes
Christmas lunch with customer at external venue			
Employees	If <\$300 per head	If \$300 or more per head	If \$300 or more per head
Associates (spouses etc.)	If <\$300 per head	If \$300 or more per head	If \$300 or more per head
Customers	N/A	No	No

Christmas parties for your team

Christmas parties constitute “entertainment benefits” and to the extent that the expenditure relates to employees or their associates attending the function, the expenses may be subject to fringe benefits tax (FBT) unless an exemption (e.g. the “minor benefits” exemption) applies.

A minor benefit is one that is provided to an employee or their associate (e.g. spouse) on an “infrequent” or “irregular” basis, which is not a reward for services, and at a cost less than \$300 (inclusive of GST) “per benefit”.

To avoid tax on your work Christmas party you should host it in the office on a workday. This way, Fringe Benefits Tax (FBT) is unlikely to apply regardless of how much you spend per person.

Costs (such as food and drink) associated with Christmas parties are exempt from FBT if they are provided on a working day, on your business premises and consumed by current employees.

These costs are known as an “Exempt Property Benefit”. The property benefit exemption is only available for employees, not family members.

If your work Christmas party is out of the office, keep the cost of your celebrations below \$300 per person if you want to avoid paying FBT. The downside is that the business cannot claim deductions or GST credits for the expenses if there is no FBT payable in relation to the party.

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

Christmas Gifts for your team

Generally, it is considered that the best tax outcome for businesses is to give employees non-entertainment type gifts that cost less than \$300 (inclusive of GST) per employee as the cost is

fully tax-deductible, with no FBT payable and GST credits can be claimed.

Non-entertainment gifts include Christmas hampers, bottles of wine or spirits, gift vouchers/cards, flowers or other similar type gifts.

Entertainment gifts include recreational-basis gifts – including but not limited to theatre/musical tickets, movie tickets, tickets to sporting events, flights and accommodation for holiday, membership to a club.

Unlike non-entertainment gifts, gifts classified as entertainment, including recreation, are non-deductible and GST credits cannot be claimed. A tax deduction and GST credits can only be claimed on entertainment or recreation gifts where Fringe Benefit Tax applies.

This means that while the minor and infrequent exemption could still apply for entertainment and recreation gifts costing less than \$300 (GST inclusive), tax deductions and GST credits can only be claimed where FBT applies to entertainment and recreation gifts.

Gifts of cash from the business are treated as salary and wages – PAYG withholding is triggered, and the amount is subject to the superannuation guarantee.

When are FBT returns due?

Employers must lodge an FBT return if they have a liability (also known as a fringe benefit taxable amount) during an FBT year (1 April to 31 March).

THE GOVERNMENT'S 'SECURE JOBS, BETTER PAY' LEGISLATION

The Fair Work Legislation Amendment (Secure Jobs, Better Pay) Bill 2022 passed Parliament on 2 December 2020. The legislation is extensive and brings into effect a series of changes and obligations that will impact on many workplaces.

The Bill also addresses many of the complexities of the enterprise bargaining process by streamlining the initiation and approval process. For example, to initiate bargaining to replace an existing single-employer agreement, unions and representatives no longer need a majority work determination and instead can make the request to initiate bargaining in writing to the employer.

Fixed term contracts limited to 2 years

Employers are prohibited from entering into fixed-term employment contracts with employees for a period of longer than two years (in total across all contracts).

The prohibition also prevents a fixed term contract being extended or renewed more than once for roles that are substantially the same or similar.

Some exclusions exist such as for casuals, apprentices or trainees, high income workers (\$162k pa), work covering peak periods of demand, where the work is performed by a specialist engaged for a specific and identifiable task, or where the modern award or FWA allows for longer fixed term contracts.

Employers will need to provide employees with a Fixed Term Contract Information Statement (to be drafted by the Fair Work Ombudsman) before or as soon as practicable after entering into a fixed term contract.

From 1 January 2023, the maximum penalty for contravening the 2 year limitation is \$82,500 for a body corporate and \$16,500 for an individual.

MISSED THE DIRECTOR ID DEADLINE? NOW WHAT?

If you missed the 30 November 2022 deadline for obtaining a Director ID, the [Australian Business Registry Services](#) have stated that they will not take action against directors that apply for their ID by 14 December 2022.

If you are required to but have not yet applied for your ID, you should [seek an extension](#) immediately to avoid fines and penalties applying (https://www.abrs.gov.au/sites/default/files/2021-10/Application_for_an_extension_of_time_to_apply_for_a_director_ID.pdf), or contact the ABRS on 13 62 50 (+61 2 6216 3440 outside of Australia)

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 2023.

Please note that our Offices will closed for the festive season from Friday

23rd of December, 2022 and will re-open on Monday the 16th of January, 2023.



Disclaimer:-

The News Bulletin is distributed by Kaias Phillips to provide information of general interest to their clients. The content of this newsletter does not constitute specific advice.