

Year-end and other staff parties

With the December/January break on the way, many employers and businesses will be planning to reward staff with a celebratory party or event.

However, an important issue for our clients to consider is the possible FBT and income tax implications of providing 'entertainment' (including Christmas parties) to staff and clients.

Under the Tax Act, employers must choose how they calculate their FBT entertainment liability and most use either the actual method or the 50/50 method.

Under the actual method, entertainment is normally split up between employees (and their family) and non-employees (e.g., clients/suppliers).

Expenditure on employees is liable to FBT and deductible. Expenditure on non-employees is not liable to FBT, and is not tax deductible.

Using the 50/50 method instead?

Rather than apportion entertainment expenditure between staff, associates and business clients, etc., many employers choose to use the more simple 50/50 method.

Under this method, (irrespective of where the party is held or who attends) – 50% of the total expenditure is subject to FBT and 50% is tax deductible.

However, the following traps must be considered:

- ◆ even if the function is held on the employer's premises – food and drink provided to employees is not exempt from FBT;
- ◆ the minor benefit exemption* cannot apply; and
- ◆ the taxi travel exemption cannot apply.

(* Minor benefit exemption

The minor benefit exemption provides an exemption from FBT for benefits of 'less than \$300' which are provided to employees (and their family/associates) and which are infrequent and irregular.

The Tax Office accepts that different benefits provided at (or about) the same time are **not** added together when applying this threshold.

Basically, this means that a Christmas party and gift may be exempt from FBT, even if provided at the same time, as long as the cost of each benefit is less than \$300.

Editor: And that's 'less than' \$300, i.e., no more than \$299.99. A \$300 gift to an employee will be caught for FBT, whereas a \$299 gift is exempt.

Example: A Staff Christmas party

An employer holds a Staff Christmas party for its employees and their spouses.

The cost of food and drink per person is \$250, and no other benefits are provided.

If the actual method is used:

- ◆ For employees attending on their own or with their spouse – no FBT is payable (i.e., the per head cost is less than \$300) and no tax deduction will be allowed.

If the 50/50 method is used:

- ◆ 50% of the total expenditure is subject to FBT and is tax deductible.

Gifts which ARE NOT considered to be entertainment

These generally include, for example:

- ◆ a Christmas hamper, a bottle of whisky, wine, etc.; and
- ◆ gift vouchers, a bottle of perfume, flowers, a pen set, etc.

Briefly, the general FBT and income tax consequences for these gifts are as follows:

- ◆ gifts to employees and family members – FBT is payable (except where the less than \$300 minor benefit exemption applies) and a tax deduction is allowed; and
- ◆ gifts to clients, suppliers, etc. – no FBT, and a tax deduction is allowed.

Gifts which ARE considered to be entertainment

These generally include, for example:

- ◆ tickets to attend a theatre, live play, sporting event, movie or the like; and
- ◆ a holiday airline ticket or admission ticket to an amusement centre.

Non-entertainment gifts at functions

What if a Christmas party is held at a restaurant at a cost of less than \$300 for each person attending, and employees with spouses are given a gift or a gift voucher (for their spouse) to the value of \$150?

Under the actual method, for employees attending with their spouses – no FBT is payable because the cost of each separate benefit (including the gift) is less than \$300 (i.e., the benefits are not aggregated).

No deduction is allowed for the food and drink, but the gift is deductible.

Where the 50/50 method is adopted:

- ◆ 50% of the total cost of food and drink is subject to FBT and deductible; and
- ◆ the total cost of all gifts is not subject to FBT because the individual cost of each gift is less than \$300.

As the gifts are not entertainment, the cost is deductible.

Record-keeping for businesses

Editor: With the introduction of benchmarking, record-keeping has become the name of the game when a taxpayer is audited so they can prove their figures are correct. The following is an excerpt from the ATO's stance on record-keeping.

The ATO would expect a retail business to:

- record each individual sales transaction through their cash register or point-of-sales system;
- conduct a daily sales reconciliation between the 'z' total (or end-of-day report if they use an electronic system) and cash in the register, taking into account cash taken from the register for business and personal expenses;
- transfer the daily sales total into a cash receipts book regularly;

- perform bank reconciliations between bank statements and the cash receipts book, at least monthly;
 - retain for a period of five years:
 - the 'z' totals or point-of-sales system end-of-day reports;
 - daily reconciliations;
 - bank records and cash receipts book; and
 - till rolls or end-of-day reports that record details of each individual transaction (if 'z' totals have been reconciled with actual cash sales and banking, detailed till rolls may be discarded after one month); and
 - maintain a filing system to keep track of paid and unpaid accounts.
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ATO warns us again about scams

The Tax Commissioner, Michael D'Ascenzo, has reminded the community to be aware and alert to scams claiming to be from the ATO.

"We are seeing an increase in the number, creativity and sophistication of scams being reported," Mr D'Ascenzo said.

"Scammers are ramping up their efforts and we are seeing a range of sophisticated scams, including:

- ◆ phone calls that play a legitimate-sounding recorded 'training and monitoring' message at the start of the call;
- ◆ phone calls from people posing as 'tax officers' that provide fraudulent ATO call-back details;
- ◆ emails about 'the recipient's tax refund, special deals and donations' that are made to appear to have come from the ATO and use 'ATO or government' in the email address; and
- ◆ emails containing a dangerous virus, which when opened or downloaded will crash the recipient's computer.

"You can forward suspect email scams to ReportEmailFraud@ato.gov.au or call us during business hours on 1800 060 062 to discuss a suspected scam.

"Anyone can be the victim of a scam. If something seems suspicious, too good to be true, asks you for personal details or cannot be verified by contacting an official source, it is likely to be a scam and you should report it."

GST case on promotional discounts

Editor: Following a Full Federal Court decision that did not go the Tax Office's way, it has issued a 'draft ruling' explaining its new stance in relation to sales of products which contain discounts in some shape or form.

In this case, the taxpayer was a manufacturer and distributor of luxury spectacles, frames and sunglasses. As part of its marketing strategy, it discounted the frames, not the lenses, and was able to successfully argue that the sales price of GST exempt lenses could be separated from the GST taxable frames.

The Full Federal Court said that:

"Promotions that offer lower prices or greater value subject to conditions are common practice in many, if not every, arena of retail sale."

"The offer may be "two for the price of one", or "buy one, get one free", or, as here, a reduction in the price of the frame on condition that the lenses are purchased at the same time."

"How a promotion is structured is a matter for the commercial judgment of the seller. In the present case, it has clearly been decided that the discount offered should be applied to the price of the frames rather than the lenses."

ATO's new stance on mixed supplies

The term 'mixed supply' is used to describe a supply that has to be separated or unbundled as it contains separately identifiable taxable and non-taxable parts that need to be individually recognised.

The Tax Office states that apportionment must be undertaken as a matter of practical commonsense. Taxpayers can use any reasonable and supportable basis to apportion the consideration.

Editor: As the Federal Court states, promotions that offer lower prices to increase sales of bundled goods are commonplace in most areas of retail sales.

The ATO has now accepted that as long as there are separately identifiable taxable and non-taxable parts, taxpayers can apportion values on a reasonable basis. The 'ruling' contains a number

of examples which are too long to replicate here.

If clients would like to discuss how this 'ruling' may apply to their business, please contact our office.

Employer super guarantee contributions to lift to 12%

The government has introduced legislation to the House of Reps to provide for an increase in the rate of the superannuation guarantee to phase in to 12% over 7 years starting 2013/14 as follows:

Year starting	Super guarantee rate
1 July 2013	9.25
1 July 2014	9.5
1 July 2015	10
1 July 2016	10.5
1 July 2017	11
1 July 2018	11.5
1 July 2019	12

CPI – September quarter 2011

The CPI indexation factor for the September 2011 quarter is 179.4 (an increase of 1.1 from the June 2011 quarter of 178.3).

Please Note: Many of the comments in this publication are general in nature and anyone intending to apply the information to practical circumstances should seek professional advice to independently verify their interpretation and the information's applicability to their particular circumstances.