

# Client Information Bulletin

## Summer 2009

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## Christmas and FBT

With the festive season fast approaching it is opportune to provide some brief comments regarding the fringe benefit tax (FBT), GST and income tax implications associated with Christmas functions and gifts that businesses may provide to staff and clients at this time of the year.

### Gifts

As a broad position, the costs associated with providing Christmas gifts to clients will not give rise to any FBT liability but they will still be tax deductible to the business, and GST input tax credits can be claimed.

Gifts provided to employees and their families will have FBT implications and they will also be tax deductible to the business, and GST input tax credits can be claimed.

However, as a general position where the gift has a value of less than \$300 per person (Example: \$250 for employee and \$250 for spouse) and it is a one off gift, it will be exempt from FBT as a minor benefit but it will continue to be tax deductible with input tax credits available.

Certain other gifts may be exempt from FBT where they fall within specific limited exemptions within the FBT legislation such as airport lounge memberships and tools of trade.

### Functions

The correct tax treatment of costs associated with Christmas functions will depend on the tax status of the employer and the method used to value

entertainment for FBT purposes. The following is a summary of the treatment for tax paying businesses.

<b>Xmas Party &lt; \$300 per head (On or off business premises)</b>	
<b>Actual Method</b>	Minor benefit for employee/associate costs - no FBT. No FBT on client costs.
<b>50/50 Split Method</b>	Include all costs. 50 per cent subject to FBT and 50 per cent exempt.
<b>Register Method</b>	Include all costs. Register percentage subject to FBT.

<b>Xmas Party &gt; or = \$300 per head (On business premises)</b>	
<b>Actual Method</b>	Exempt benefit for employee. FBT payable on associate costs. No FBT on client costs.
<b>50/50 Split Method</b>	Include all costs. 50 per cent subject to FBT and 50 per cent exempt.
<b>Register Method</b>	Include all costs. Register percentage subject to FBT.

<b>Xmas Party &gt; or = \$300 per head (Off business premises)</b>	
<b>Actual Method</b>	FBT on employee & associate costs. No FBT on client costs.
<b>50/50 Split Method</b>	Include all costs. 50 per cent subject to FBT and

	50 per cent exempt.
<b>Register Method</b>	Include all costs. Register percentage subject to FBT.

In summary, if you are not a tax-exempt organisation and do not use the 50-50 method for meal entertainment, follow these simple rules:

1. Ensure the cost of the party is less than \$300 per employee (Example: Spend \$150 per head if partners are invited).
2. Give gifts at a separate occasion if the combined total of gifts and the party will exceed \$300 per employee
3. If a function is held on the business premises, on a working day for current employees there are no FBT implications regardless of whether food was prepared on premises or catered
4. If a function is held on the business premises on a working day and employees *and* associates attend – employees are exempt, and there is budget to spend up to \$300 per associates thereby effectively doubling the cost of an off-premises party.

For more information please contact us.

## FBT motor vehicle log book reminder

If you use the operating cost method for calculating your motor vehicle FBT and you have not completed a log book now is the time to start.

If you complete a logbook within 12 weeks of the end of the FBT year it can be used for the proceeding year. You also need to complete a new logbook every five years.

A logbook must be maintained for a continuous period of 12 weeks and contain the following information.

- The date journey began and ended (multiple journeys are treated as a single entry)
- Odometer readings of the car at the start and end
- Number of kilometres travelled by the car
- The purpose of the travel.

For each FBT year odometer readings of the car must be maintained at the start and end of the FBT year.

## December 31 deadline for investment allowance

The Federal Government Investment Allowance ends on 31 December 2009 so if you are planning on buying a depreciating asset don't delay.

For small businesses with a turnover of less than \$2m per year an asset qualifies if it cost more than \$1,000 and will be first used or installed ready for use on or before 31 December 2010. For a business with a turnover exceeding \$2m per year the threshold is \$10,000.

Assets that form part of a set and are identical, or substantially identical, may be added together.

The asset must be a new tangible asset however it does exclude software, most intangible assets, land and trading stock.

If you have any questions regarding the investment allowance please contact us.

## Tax office limits use of offset rules

An 'exposure draft' released by the Tax Office in June may affect those that operate loss-making businesses, such as hobby farms, even if their taxable income is below \$250,000.

The draft clarifies the Budget announcement that people earning over \$250,000 cannot offset any losses made in 'hobby' businesses against their personal income even if these losses pass the non-commercial business tests.

The \$250,000 limit is calculated by adding taxable income, reportable fringe benefits, reportable superannuation contributions plus total net investment losses.

People with loss-making businesses will need to make sure they have correctly estimated their income for 2010 to include all these elements.

This can be difficult for those taxpayers with businesses that have large fluctuations in profit, are eligible for discretionary bonuses or even unexpected capital gains. For example, a business that is facing a company take-over or forced sale of an asset may encounter difficulty.

The non-commercial rules are still limited to individuals.

## R&D tax offset

The Federal Government's May 2009 Budget proposed replacing existing R&D tax concessions with a new R&D tax offset from the 1 July 2010.

On 18 September 2009 the Treasurer and Minister for Innovation Industries, Science and Research released a consultation paper setting out the principals for the new concession.

The current arrangements provide for a tax deduction for R&D expenditure however the new system will allow for a non-refundable 40 per cent R&D tax offset for companies and 45 per cent refundable R&D tax offset for smaller companies (turnover less than \$20m).

For small companies this will equate to a deduction of 150 per cent effectively on the current corporate tax rate at 30 per cent.

For example if a small company has a zero tax payable position the offset can be applied to reduce other tax liabilities (such as GST) and any other residual unused amount can be refunded as cash to the company.

However there is a need for some planning to be done as there is now a more stringent definition of eligible R&D activity.

In the consultation paper eligible R&D activity is defined as systematic, investigative and experimental activity that:

- Involves both innovation and high levels of technical risk
- Is for the process of producing new knowledge or improvements.

The consultation paper also proposes that supporting R&D will be subject to limitations.

Further it provides that the location of the R&D activity is to be in Australia and this is a crucial factor for determining eligibility.

For those who carry on R&D activity there is a need to do some careful planning and preparation as this new arrangement will be effective from 1 July 2010.

## Gearing through a SMSF

Borrowing through a superannuation fund as a way of building wealth can be an

attractive option for some trustees.

Legislative changes introduced in September 2007 allow self-managed superannuation funds (SMSF) to borrow under what is currently known as an instalment warrant or limited-recourse arrangement.

An instalment warrant allows a SMSF trustee to pay a small part of the cost to purchase an asset upfront, and borrow the rest. The asset is then held in trust for the life of the loan but the SMSF has the 'beneficial interest' in the asset.

So if, for example, the asset is shares in a company, the SMSF will receive the dividends during the course of the loan. Another popular use of instalment warrants is to purchase property.

A superannuation gearing strategy will not be suitable for everyone and the merits of the strategy should be examined on a case by case basis. Please contact us to discuss further.

## Small business Fair Dismissal Code

Under the new national workplace system, there are new unfair dismissal laws for small businesses and their employees. Small businesses are defined as those with fewer than 15 full-time equivalent employees.

### Special arrangements

There are special unfair dismissal arrangements that apply to small businesses.

These arrangements simplify the dismissal process for small businesses.

They recognise that small businesses usually:

- Do not have big human resource departments to help them
- Cannot afford lost time

- Cannot find other positions for employees.

Small business employers will benefit from:

- A minimum employment period of 12 months instead of six months (employees cannot make an unfair dismissal claim in this 12 month period)
- A simple Fair Dismissal Code which has been developed to help employers ensure dismissals are not unfair
- A specialist service for small and medium sized businesses from the Fair Work Ombudsman.

The Fair Dismissal Code addresses summary dismissals, other dismissals and procedural matters. The code is as follows:

### Summary dismissal

It is fair for an employer to dismiss an employee without notice or warning when the employer believes on reasonable grounds that the employee's conduct is sufficiently serious to justify immediate dismissal. Serious misconduct includes theft, fraud, violence and serious breaches of occupational health and safety procedures. For a dismissal to be deemed fair it is sufficient, though not essential, that an allegation of theft, fraud or violence be reported to the police. Of course, the employer must have reasonable grounds for making the report.

### Other dismissal

In other cases, the small business employer must give the employee a reason why he or she is at risk of being dismissed. The reason must be a valid reason based on the employee's conduct or capacity to do the job.

The employee must be warned verbally or preferably in writing,

that he or she risks being dismissed if there is no improvement.

The small business employer must provide the employee with an opportunity to respond to the warning and give the employee a reasonable chance to rectify the problem, having regard to the employee's response. Rectifying the problem might involve the employer providing additional training and ensuring the employee knows the employer's job expectations.

### Procedural matters

In discussions with an employee in circumstances where dismissal is possible, the employee can have another person present to assist. However, the other person cannot be a lawyer acting in a professional capacity.

A small business employer will be required to provide evidence of compliance with the Code if the employee makes a claim for unfair dismissal to Fair Work Australia, including evidence that a warning has been given (except in cases of summary dismissal).

Evidence may include a completed checklist, copies of written warning(s), a statement of termination or signed witness statements.

The Small Business Fair Dismissal Code also includes a helpful checklist that small business employers can follow to ensure the dismissal is not deemed unfair.

## The costs of holding your stock

Did you know that while you have stock on your shelves you are incurring costs?

When businesses hold stock possible costs may arise such as:

- Insurance costs

- Damage and obsolescence costs and/or
- Stock maintenance costs, including interest on borrowings

Some estimate the figure for keeping stock on your shelves is 20 per cent of the value of that stock.

Good stock management needs to be employed to ensure a profitable and successful business.

Look carefully into your stock levels, your customer desires and your stock turnover rate to ensure you are managing your stock efficiently.

Effective stock management is knowing what stock to buy, when to buy, how often to buy and at what quantities to meet customers' demands. The lower the level of stock sitting in the storeroom, the lower the holding costs.



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