

***As we approach Christmas and the New Year once more, Butlers would like to wish all of our clients, colleagues, and community a joyous and prosperous season.***



At this time of year, it is traditional for businesses to celebrate and provide benefits to employees, clients, and their families. This might include an end of year party, food, drinks, entertainments, gifts, or other concessions. This is a wonderful tradition which encourages generosity and rewards all of the hard work of the previous year. However, these benefits are also subject to complex tax laws, and it is wise to be mindful of some of the ways your Christmas celebrations might be affected.



**This article outlines the various income tax, GST, and fringe benefits tax (“FBT”) laws and how they might apply to your end of year business celebrations.**

#### **What is FBT?**

Fringe Benefits Tax (“FBT”) is a tax paid on certain benefits that employers provide to their employees or their employees’ associates (spouses or children). FBT is separate from income tax and is based on the taxable value of the various fringe benefits provided. The FBT year runs from 1 April to 31 March.

FBT may apply to many different situations where fringe benefits are provided by you, an associate, or under an arrangement with a third party such as a supplier to current, past or future employees and their associates. As an employer, you have to pay FBT; it makes no difference whether you are a sole trader, partnership, trustee, corporation, unincorporated associations or government body, or whether you pay other taxes such as income tax. Special rules do apply to tax-exempt bodies.

There is no separate FBT category for Christmas Parties. However, if you are not a tax-exempt organisation, and you do not use the 50-50 split method for meal and entertainment, the following guidelines should apply.

#### **Venue:**

Costs associated with your Christmas Party (such as food and drink) are generally exempt from FBT if they are provided on a working day on your business premises and consumed by current employees. If associates of employees attend, a taxable fringe benefit will arise, unless exempt under the minor benefits exemption (below).

***‘Consider holding your Christmas Party on your business premises- it can be very tax effective.’***

The costs of Christmas parties which are held off business premises (perhaps in a restaurant) will be taxed as fringe benefits for employees and their associates unless the benefits are exempt minor benefits (see below).

### **Food and Drink:**

The cost of providing your Christmas Party may qualify as a 'minor benefit' and may therefore be exempt from FBT if the cost of the party is less than \$300 per employee. The minor benefits threshold applies to benefits that are provided on an infrequent or irregular basis and not as a reward for services. The threshold applies to employees and also associates of employees. Where employees attend a Christmas party with their spouses, each will be calculated separately. So as long as the cost per person is below \$300, the minor benefit exemption applies, with the result that no FBT is applied to your Christmas party.



***'Keep your costs below \$300 per person to qualify your party for the minor benefit exemption.'***

The cost of providing a Christmas party is income tax deductible only to the extent that it is subject to FBT. Therefore, any costs that are exempt from FBT cannot be claimed as an income tax deduction. The costs of entertaining clients are not subject to FBT and are not income tax deductible.

### **Gifts:**

The provision of a gift to an employee at Christmas time may be a minor benefit that is exempt from FBT if the value of the gift is less than \$300. Where a Christmas gift is provided to an employee at a Christmas party that is also provided by the employer, the benefits are associated benefits, but each benefit needs to be considered separately to determine if they are less than \$300 in value. If the Christmas party and the gift are each less than \$300 (per person) in value and the other conditions of a minor benefit are met, they will each be exempt benefits.

'Non-entertainment' gifts provided to employees (like flowers, wine, and gift vouchers) are usually exempt from FBT where the total value is less than \$300 inclusive of GST. You can also claim a tax deduction and GST credit. Non-entertainment gifts given to clients and suppliers do not fall within the FBT rules and they are not provided to employees. Generally a tax deduction and GST credit can be claimed for these gifts, provided they are not excessive or overly valuable

***Non-entertainment gifts provided to employees are usually exempt from FBT where the total value is less than \$300 inclusive of GST.***



The provision of 'entertainment gifts' (like theatre tickets, tickets to sporting events, or holidays) has different tax implications. Where the cost for the employee and their associate is less than \$300 per person GST inclusive, there is no FBT, no tax deduction is allowed, and no GST credit can be claimed. However, if the cost for the employee and their associate is \$300 per person or more GST inclusive, a tax deduction and GST credit can be claimed, but FBT is payable.

The cost of any entertainment gifts provided to clients is not subject to FBT and no tax deduction, or GST credit can be claimed.

### **After the party:**

FBT is self-calculated, so you need to keep a necessary record of benefits given to employees, and register for payment of FBT if appropriate. If you are planning to pay FBT, you need to lodge an FBT return.

### **Finally:**



***Don't forget that the 50% government investment allowance expires on 31 December 2009.***

The Investment Tax Break offers a temporary additional tax deduction on the cost of most new tangible depreciating assets, such as plant and equipment. A bonus tax deduction of 50% of the cost of an asset is only available to small businesses that acquire an eligible new tangible depreciating asset between 13 December 2008 and 31 December 2009, and install it ready for use by 31 December 2010.

A small business is a business with a turnover of less than \$2 million. For small businesses the minimum expenditure to claim a deduction on the asset is \$1,000.

If your business is going to enter a contract to acquire the eligible asset, you need not have paid for the asset outright or taken delivery of it, but you must commit to the investment by executing the contract before 31 December 2009 to benefit from the full 50% deduction. Resist the temptation to backdate a contract in order to catch the deductions as to do so is a serious offence.

If the contract contains a right to terminate without penalty, or if the contract does not specify some inessential terms, you can still be considered to have committed to the investment. However these cases will depend on the individual facts and circumstances. If the contract contains an option to acquire the eligible asset at a later point in time, the investment commitment will be deemed to have occurred only when the option is exercised. This means, to benefit from the tax deductions, you must exercise the option before the 31 December 2009 cut-off.

A 10% tax break is also available to businesses that earn over \$2 million. Investment in an eligible asset must occur between 1 July 2009 and 31 December 2009, and the asset must be ready for use by 31 December 2010 to apply. All eligible assets must be for use in carrying on a business in Australia. The allowance can be claimed through the income tax return in which the first capital allowance is claimed for the asset.

**Please do not hesitate to contact us at Butlers for more information on how to plan your Christmas celebrations in a tax effective manner.**

***Have a Merry Christmas, and Best Wishes for the New Year!***

**Butlers Taxation and Business Lawyers Pty Ltd.**

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