

Client eBrief



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Annual Christmas Shutdown

Many businesses have a scheduled period of closing business operations during the Christmas and New Year period. How an employer must treat this depends on the award or agreement the employee is governed by. These guidelines apply to permanent employees - casual employees do not have to be paid during a scheduled shut down.

Award or Agreement allows employer to direct leave

If the award or agreement provides for the employer to direct leave to be taken at specific times, then the employer can do this so long as they follow the guidelines about how much notice is required.

Example: The Clerks Private Sector Award does allow employers to direct employees to take leave during an annual shutdown, and they must be given at least 4 weeks' notice (before the first day of leave), in writing.

What if the employee doesn't have enough leave?

The employer can agree to pay annual leave in advance or the employee can take unpaid leave. However, from FairWork: "If an employee doesn't agree to either, they have to be paid their ordinary pay rate for the shutdown. They can't be forced to take unpaid leave".

Award or Agreement is silent

If the award or agreement is silent on the issue, then the employer may not force an employee to use their leave during a scheduled closure. The employer can negotiate with the employee to take paid or unpaid leave, or half pay leave if the award/agreement allows this.

The employee is not covered by an award or agreement

Note that this is rare - the majority of employees are governed by an award.

If there truly is no award or agreement governing the employee, then the employer can direct the employee to take leave if the direction is 'reasonable'. See below for detail on what is 'reasonable'.

Public holidays during leave

Public holidays that fall during a period of paid leave are always paid as normal work days; they should not be taken as annual leave days. If an employee usually works a given number of ordinary hours and overtime hours, then they will be paid only for the ordinary hours on a public holiday, they will not be paid for the usual overtime hours.

ATO Lodgement Dates

These dates are from the ATO website and do not take into account possible extensions. You remain responsible for ensuring that the necessary information is with us in time.

BAS/IAS Monthly Lodgement –
November Activity Statement: 21st
December, 2016 final date for lodgement and payment.

BAS/IAS Monthly Lodgement –
December Activity Statement: 21st
January, 2017 final date for lodgement and payment.

BAS/IAS Monthly Lodgement – January
Activity Statement: 21st February, 2017
final date for lodgement and payment.

2nd Quarter of FY 2017: BAS
Lodgement – October to December 2016
(including PAYGI) 28th February, 2017
final date for lodgement & payment

3rd Quarter of FY 2017: BAS
Lodgement – January to March 2017
(including PAYGI) 28th April, 2017 final
date for lodgement & payment

When a due date falls on a Saturday, Sunday or Public Holiday, you can lodge or pay on the next business day.

A public holiday is a day that is a public holiday for the whole of any state or territory in Australia.

Due date for super guarantee contributions, for **2nd Quarter of FY 2017**, October to December 2016 - contributions to be made to the fund by 28th January, 2017

The super guarantee charge is not a tax deduction if not paid by these dates.

Refer to the ATO for details regarding any SGC charges applicable if not paid by due date.

If a public holiday falls during a period of agreed unpaid leave, the public holiday is not paid.

What is 'Reasonable'?

From FairWork Best Practice Guidelines: "What is 'reasonable' will depend on factors such as the kind of business run by the employer, the nature of the work performed by the employee, the employee's personal circumstances (including family responsibilities) and how much notice was given to the employee".

An employer can refuse a request from an employee if they do not feel it is reasonable; this applies also to the employee refusing a request from an employer they do not feel is reasonable.

This will be governed by factors such as: the effect on the workplace and the employer's business of approving the request, including the costs of doing so and negative impacts on efficiency, productivity or customer service; the inability to organise work among existing staff; and, the inability to recruit a new employee or the practicality or otherwise of the arrangements that may need to be put in place to accommodate the request.



Christmas Parties and Fringe Benefit Tax How should you Treat these Expenses?

Christmas Parties

The boss decides to throw a Christmas party for the staff. Can you claim this as a business expense? Does Fringe Benefits Tax apply? This depends on who attends and where the party is being held.

The provision of a Christmas party for an employee may be a minor benefit and exempt from FBT if the cost of the party is less than \$300 per employee and certain conditions are met. This provision also applies to the employee's associate (family member) or spouse.

The cost of providing a Christmas party is income tax deductible 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. GST credits can only be claimed to the extent that a cost is tax deductible. Therefore, if you cannot claim it as a deduction, you cannot claim the GST credits either.

The ATO have guidelines in regards to FBT as it relates to different business structures. See the links below for more detail.

What can you Claim

Christmas party held at your premises on a work day	
If only employees attend	No FBT, not tax deductible
Current employees and spouses @ \$180pp	No FBT (minor exemption applies for spouse)
Employees and clients @ \$385pp	Employees – No FBT and not tax deductible Clients – No FBT and not tax deductible
Employee associate @ \$385pp (family members)	FBT applies as value more than \$300pp

Christmas party held at other premises	
Only employees attend @ \$195pp	No FBT (minor exemption applies), not tax deductible
Employees and associates @ \$195pp	No FBT (minor exemption applies for both), not tax deductible
Employees, associates and clients @ \$365pp	Employees and associates – FBT applies as value more than \$300pp Clients – No FBT and NOT tax deductible

Minor Benefits Exemption

The \$300 threshold is applied separately to each benefit, gift or party. So for example, an employee could attend the workplace party at a cost to the employer of \$280 and receive a gift worth \$250, but because these amounts are treated separately there are no FBT implications.

The minor benefit exemption does NOT apply to any party other than employees. Therefore if a non-entertainment gift is given to a client or supplier this can be deductible expense and therefore GST can be claimed.

Christmas Gifts for your Employees

Are gifts to your employee claimable? Gifts may be classified as "entertainment" or "non-entertainment".

The provision of a gift to an employee at Christmas time, such as a hamper, may be a minor benefit that is an exempt benefit where the value is less than \$300. Where the gift is given at the Christmas party, each benefit can be considered separately.

1. For gifts such as wine, food, hampers, vouchers, etc., these are not considered to be entertainment.

- If the gift is a minor benefit (i.e., less than \$300 value), then the gift is NOT tax deductible, and therefore GST is not claimable for gifts to employees and their family members, clients and suppliers. No FBT applies to gifts of less than \$300.
- For gifts over \$300, FBT may apply for employees and their family members.

2. Gifts such as a holiday, membership to a club, or tickets to a theatre, sporting or musical event are considered to be entertainment.

- For minor benefits, as above, the gift is not tax deductible and no FBT applies.
- For employees this is not a minor benefit, the gift is tax deductible but it is also subject to FBT.

Christmas Gifts for your Clients and Suppliers

Are gifts to your clients and suppliers claimable? Gifts may be classified as "entertainment" or "non-entertainment".

1. For gifts such as wine, food, hampers, vouchers, etc., these are not considered to be entertainment.

- Non-entertainment gifts to clients or suppliers are deductible and GST is claimable.

2. Gifts such as a holiday, membership to a club, or tickets to a theatre, sporting or musical event are considered to be entertainment.

- For clients and suppliers, the entertainment gift is NOT tax deductible, and no FBT applies, no GST is claimable.

Giving your clients a gift at Christmas is a personal choice that you as the business owner can make. Be aware that some clients may not be allowed to accept gifts due to their business's Code of Conduct (e.g., government workers).

We remind you that the topic of entertainment, tax deductibility and fringe benefits tax is complex and not always straightforward. Check with your tax agent if in doubt and refer to the ATO website for detailed guidance.

Disclaimer: All or any advice contained in this newsletter is of a general nature only and may not apply to your individual business circumstances. For specific advice relating to your specific situation, please contact your accountant or contact me for further discussion.

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