

We wish you a Merry Christmas.....

Can you believe another year is almost over? We are hanging tinsel and singing Christmas carols in the office, looking forward to our Christmas break. The Office will be closed from Friday December 21 and re-opening (bright and fresh) on January 7.

Our Banklink system is now up and running, and we've had lots of positive feedback. As with anything new, it takes awhile to learn and get use to different programs, but we look forward to more time savings as we progress. If you are not on Banklink and would like a demo, please contact Erin..

We have re-branded, so lookout for our new logo and new uniforms that will be here in the new year.

Relief for employers who fall behind on super guarantee

Employers who fall behind with their quarterly superannuation guarantee (SG) obligations are liable for the SG charge. The SG charge generally includes the amount of the late contribution even where the employer has paid the amount into a superannuation fund, albeit late. In other words, employers are often paying their SG obligations twice under this penalty system.

The Government has announced that it will amend how the rules work to ensure that employers do not pay the contribution twice (better late than never I suppose). Other penalties and interest will still apply, of course.

This change does not come into effect until it has been legislated. Until then, the only option is to work closely with the Tax Office to try and limit the impact of the SG charge.

Couple fined for breaching SMSF rules

The trustees of a self managed superannuation fund have been issued penalties of \$30,000 and ordered to pay \$32,500 in costs for breaching the rules relating to their fund.

In a further warning to Trustees of self managed superannuation funds (SMSF), the penalty highlights just how easy it is to cross the line.

Mr and Mrs Fitzgeralds, a Queensland couple running a business did what many business operators do; they established a SMSF with the company as trustee. The company then purchased a commercial property. Title to the property however was registered in the name of the company without specific reference in the title register to its ownership in the capacity of trustee. Despite this, the property was the principal asset noted in the financial statements of the fund. Following the purchase the couple then became Trustees of the fund.

Unfortunately for them the company got into financial difficulty and earlier this year, the Supreme Court ordered the company be wound up. The liquidation left the couple with a debt of \$129,994 of which they paid \$30,000 in partial satisfaction of that claim (the liquidator accepted that the commercial property was the property of the fund and not the company).

Just prior to the partial payment, the fund paid Mr Fitzgeralds \$12,000 and soon after another sum of \$23,000.

Late that month the liquidator caused the commercial property to be sold. The \$155,000 sale was procured by the Fitzgeralds as trustees of the fund. By arrangement with the liquidator, the proceeds of the sale were dispersed to the liquidator in final settlement of the debt and the remainder to Mr Fitzgeralds.



Mid October the Federal Court found that the Fitzgeralds contravened Section 62 (1) of the *Superannuation Industry Supervision Act*. That is, the couple had accessed assets in the superannuation fund before meeting any conditions of release such as retirement or reaching preservation age. In addition, the Court also found the couple contravened section 65 which prevents the fund giving financial assistance using the resources of the Fund to a Fund member.

In effect the \$115,000 property transaction and the extension of the loan cost the couple an additional \$62,500.

If you are uncertain about what you can do with the assets of your superannuation fund, talk to us today or visit the Tax Office website at www.ato.gov.au where you will find a range of information and guides to assist trustees.

Fringe benefits tax and Christmas parties

Implications for taxpaying body

If you are not a tax-exempt organisation and do not use the 50-50 split method for meal entertainment, the following explanations may help you determine whether there are FBT implications arising from a Christmas party.

Exempt property benefits

The 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. A taxable fringe benefit will arise in respect of an associate of an employee who attends the party if not otherwise exempt under the minor benefits exemption.

Exempt benefits – minor benefits

You should note the change in our view to the application of the minor benefits exemption to Christmas parties and gifts. The minor benefits threshold of less than \$300 applies to each benefit provided, not to the total value of all associated benefits.

The provision of a Christmas party to an employee may be a minor benefit and exempt if the cost of the party is less than \$300 per employee and certain conditions are met. The benefit provided to an associate of the employee may also be a minor benefit and exempt if the cost of the party for each associate of an employee is less than \$300. For the FBT year beginning 1 April 2006 and prior years, the minor benefits threshold was less than \$100 rather than the \$300 it is currently.

Gifts provided to employees at a Christmas party

The provision of a gift to an employee at Christmas time may be a minor benefit that is an exempt benefit where 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 both the Christmas party and the gift are less than \$300 in value and the other conditions of a minor benefit are met, they will both be exempt benefits.

Tax deductibility of a Christmas party

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 (that is, exempt minor benefits and exempt property benefits) cannot be claimed as an income tax deduction.

The costs of entertaining clients are not subject to FBT and are not income tax deductible.

Christmas party held on the business premises

A Christmas party provided to current employees on your business premises or worksite on a working day may be an exempt benefit. The cost of associates attending the Christmas party is not exempt, unless it is a minor benefit.

Example	
A small manufacturing company decides to have a party on its business premises on a working day before Christmas. The company provides food, beer and wine. The implications for the employer in this situation would be as follows.	
If...	Then...
current employees only attend	there are no FBT implications as it is an exempt property benefit.
current employees and their associates attend at a cost of \$180 per head	<ul style="list-style-type: none"> employees – there are no FBT implications as it is an exempt property benefit, and the minor benefit exemption could also apply* associates – there are no FBT implications as the minor benefit exemption applies.*
current employees, their associates and some clients attend at a cost of \$365 per head	<ul style="list-style-type: none"> employees – there are no FBT implications as it is an exempt property benefit associates – a taxable fringe benefit will arise as the value is equal to or more than \$300 clients – there is no FBT payable and no income tax deduction.

Where the benefits are indicated as qualifying for the minor benefits exemption, it is on the basis that the necessary conditions have been satisfied.

Christmas party held off business premises

The costs associated with Christmas parties held off your business premises (for example, a restaurant) will give rise to a taxable fringe benefit for employees and their associates unless the benefits are exempt minor benefits.

Example	
Another company decides to hold its Christmas function at a restaurant on a working day before Christmas and provides meals, drinks and entertainment. The implications for the employer in this situation would be as follows.	
If...	Then...
current employees only attend at a cost of \$195 per head	there are no FBT implications as the minor benefits exemption applies.*
current employees and their associates attend at a cost of \$180 per head	there are no FBT implications as the minor benefits exemption applies.*
current employees, their associates and clients attend at a cost of \$365 per head	<ul style="list-style-type: none"> employees – a taxable fringe benefit will arise associates – a taxable fringe benefit will arise, and clients – there is no FBT payable and the cost of providing the entertainment is not income tax deductible.

* Where the benefits are indicated as qualifying for the minor benefits exemption, it is on the basis that the necessary conditions have been satisfied