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# END OF YEAR UPDATE '13

*The end of year guide for you and your business*



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## FBT at Christmas time

*As the holidays approach many businesses are planning for Christmas functions.*

During this time, employers should be thinking about tax deductions and the fringe benefits tax (FBT). Employers often find themselves caught out for failing to understand the FBT impact of Christmas.

Employers planning a Christmas party should be aware that the Christmas party costs are exempt from FBT provided that they are:

- on a working day
- on the businesses premises
- for current employees only

However, if a spouse or associate of a current employee attends the Christmas party a FBT will arise, unless these costs satisfy the minor benefits exemption.

Employers who choose to host the Christmas party off business premises will

also be subject to FBT, unless they satisfy the minor benefits exemption. The minor benefits exemption has a \$300 threshold per employee, which applies to each benefit provided.

Christmas gifts can be treated separately with respect to \$300 threshold. It is important for employers to take note that this means they must spend less than \$300 per employee; otherwise they will be subject to FBT.

A tax deduction for costs associated with the provision of Christmas parties and gifts which are not entertainment (e.g. bottle of wine, ham, store gift card) are not subject to FBT but are deductible. If this all seems too complicated, businesses can choose to simplify their FBT paperwork.

The 50/50 split method allows for 50 per cent of costs associated with entertainment to be subject to FBT and therefore tax deductible and the other 50 per cent non-deductible regardless of whether it was provided to an employee, associate or spouse.

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# Property investment options

*Investors may be interested in borrowing in a self managed super fund (SMSF) to invest within a residential property.*

However, investors need to be wary as this is not always the most financially effective way to buy property.

Self managed super has grown from a specialised strategy into a massive market comprising about one-third of the nation's superannuation savings.

This can be attributed to a number of factors, including marketing hype and expectations of continuing low interest rates fuelling demand for property. As the popularity of buying property through SMSFs grows, so too does the need for awareness and understanding.

It is essential that investors fully understand

the benefits and consequences of borrowing to own a property in a SMSF compared to owning it in their own right.

Generally speaking, investors who pay the top marginal tax rate could be better off with a personal loan after set-up costs, management fees, and capital gains tax are deducted from the gross gains.

Buying a residential property through a SMSF carries additional responsibilities such as the fund's trustees only being allowed to rent to tenants under "arms length" arrangements.

Also, any rise in interest rates, falls in property value or overpriced properties would eat away at the profits.

Even negative gearing, which allows property investors to deduct interest costs against other income sources may not be enough to offset the SMSFs higher legal and borrowing costs.



# Take precautions when Christmas party planning

*Smart employers take precautions when planning the work Christmas party, to prevent being left faced with post-party legal and HR issues.*

It is important that employers inform their employees that normal disciplinary procedures will apply for any forms of misconduct at the Christmas party.

For serious matters, formal action should be taken as soon as possible and not simply left to deal with in the New Year.

Here are some simple steps that an employer can take to ensure the Christmas party runs smoothly:



## Set boundaries

Employers need to communicate the company's code of conduct prior to the holiday season. This may require reminding employees what is appropriate and what isn't in terms of Kris Kringle presents, or fancy dress themes.

Employers can also be liable for any form of sexual or emotional harassment an employee is subject to, so it is important to discuss the company's policies and procedures in regards to this prior to the party.

## Be responsible with alcohol

Ensure that there is enough non-alcoholic drinks and food available to guests. Companies are also responsible for the safety of employees after they leave the party, so it is a good idea to have sober people present to act as supervisors.

Employers should consider organising safe travel arrangements for employees, such as a mini bus or taxi.

## Keep safety in mind

Employers can be held liable for any injuries staff members receive at the Christmas party, so it is important to assess the venue beforehand to identify any safety hazards.

This involves arranging the furniture to ensure it is not a tripping hazard or an obstruction to any walkways.

# Employee leave during the holidays

*Employees may find that their employer is temporarily shutting down operations during traditionally slow periods, such as between Christmas and New Year.*

Employees should be aware that their employer needs to abide by procedural requirements when asking them to take leave. Strict penalties apply for those employees who fail to comply.

Most modern awards and enterprise agreements will set out the strict rules and requirements that employers must comply with if they require an employee to take paid annual leave during a period of shut-down.

An employee must receive advanced notice (typically four weeks) in writing that they are required to take annual leave.

If there is no modern award or enterprise agreement applicable, the Fair Work Act 2009 (Cth) allows an employer to require an employee to take a period of leave only if the requirement is reasonable.

In determining whether a requirement is reasonable consider the following factors:

- customs of the business
- pre-arranged agreements with employers
- length of the period required to take leave

## SuperStream is here

*SuperStream is the name for the range of proposals designed to improve the processing of everyday superannuation transactions.*

From 1 July 2014, SuperStream will affect the way employers meet their superannuation contribution obligations. The standard process as it exists, involves a combination of paper and electronic transactions. This makes for a complex and inefficient system.

The concept behind SuperStream is to increase the processing speed of transactions, reduce error and remove

human involvement from the system to reduce the time between the employer's contribution being made and its allocation into the member's account, and also to reduce the costs of administration through increased electronic processing.

SuperStream compliant enrolments and contributions are being progressively introduced with the ATO taking an oversight role of its implementation.

Employers with twenty or more employees will have to be compliant with contributions and enrolments for SuperStream from 1 July 2014, with smaller employers being compliant from 1 July 2015.

SuperStream is built around "Standard Business Reporting" which is designed to be integrated with accounting systems, using standard terms, messaging language and packaging rules for data and payments transactions.

The SuperStream rules are set by the Superannuation Data and Payment Standards 2012.

These prescribe contributions payments forms (BPay or direct entry), standard information requirements and the language and formats to be used.

There are also some transitional arrangements where there is existing electronic commerce.

## Increases to flexible work arrangements

*Australians will now have the express right to request flexible working arrangements under changes to federal workplace laws.*

The Government has amended the Fair Work Act to broaden the right to request flexible working arrangements.

Since July 2013 a number of legislative changes concerning the rights of employees to request flexible working arrangements commenced. It is important that all businesses are aware of these changes and have implemented them into their business.

These changes benefit employees who may otherwise feel they have no choice but to leave employment. It also benefits employers as they are able to retain skilled and experienced staff.

These changes provide a framework for workers and employers to discuss the employee's needs for flexible working arrangements. Many workers are currently unaware of their rights to request flexible work arrangements.

Due to this the Government will amend the Fair Work Information Statement to ensure that new employees are aware of their rights.

The National Employment Standards and the Fair Work Act 2009 outlined the legal right of employees, in certain circumstances, to request flexible working arrangements from their employer.

Initially this right only applied for an

individual who is a parent or has the responsibility for the care of a child under school age, or under 18 with a disability.

However, the application to request flexible working arrangements has been broadened to include a wider range of employees. It has also been broadened to clarify the reasons for which employee requests can be denied.

The current legislation gives examples of flexible working arrangements to be changes in hours of work, changes in patterns of work and changes in location of work.

The circumstances in which workers can request flexible work arrangements will be extended to include:

- workers with caring responsibilities
- employees who are parents, or who have responsibility for the care of a child of school age
- employees with a disability
- mature age employees (55 or older)
- workers experiencing family violence
- workers providing personal care, support and assistance to a member of their immediate family or member of their household who is experiencing family violence

The Act outlines that the request for flexible working arrangements must be made in writing and clearly outline the changes that are sought by the employee.

The employer must provide a written response

to the request within 21 days, stating whether the employer grants or refuses the request, and if applicable the reasons for the refusal.

Employers can only refuse a request on reasonable business grounds. Some examples of this are:

- the requested working arrangements are too costly for the employer
- the requested working arrangements would be likely to have a significant negative impact on customer service
- it would be impractical to change the working arrangements of other employees, or to hire new workers to accommodate the requested changes
- the requested working arrangements would be likely to result in a significant loss in efficiency or productivity





## ATO lifts the bar on super

*The ATO has indicated that it will commence sending out initial notices to employers about unpaid superannuation obligations.*

Failing to meet superannuation obligations will generate significant penalties for employers. In addition to interest and administrative penalties, employers lose the tax deduction that would normally be available for superannuation payments made on time.

The total cost to businesses found to have underpaid their super or paid it late can be substantial. The ATO has no discretion to waive or reduce these penalties.

Recent changes to the superannuation legislation also mean that company Directors may be held personally liable for any unpaid superannuation contributions and the associated interest and administration charges.

The ATO has regularly undertaken reviews of superannuation in the past. Penalties have greatly contributed to revenue for the ATO and with the increased resources now to be provided to the ATO by the Government it is likely the regularity of these reviews will be increased.

Considering the potential financial penalties and increased scrutiny, it is essential that employers take the opportunity to review their internal systems and ensure that superannuation payments are being made correctly, consistently and in a timely manner.

## Wills and blended families

*In recent years there has been a rise in the number of blended and stepfamilies within Australia.*

Figures from the Australian Bureau of Statistics showed that one in five families is a blended or stepfamily.

Today, the issue of passing assets to beneficiaries on death is becoming increasingly risky.

As the numbers of blended and stepfamilies continues to rise it is important to ensure a Will reflects an individual's wishes.

Due to this, families should consider incorporating a Mutual Will into their estate planning. Mutual Wills can be an effective tool in an estate plan for couples where one or both partners have children from pre-existing relationships.

They can provide a degree of certainty that the gifts in the Will pass to the intended

beneficiaries after the death of one party.

A Mutual Will is a Will that includes a binding contract between two parties stating that:

1. Each party will leave their property to the mutually agreed beneficiaries
2. During their lifetime neither party will revoke or change their Will without the consent of the other party
3. After the death of one party the surviving party will not alter or revoke their Will to change the mutually agreed beneficiaries

If the surviving partner makes a new Will and departs from the original agreement, the effect of the contract means that the courts will impose a constructive trust over the property inherited by the survivor.

The new year is on the horizon. It may be a good opportunity for individuals who have not considered or adequately planned what would happen in the event that they were to pass away to take action.

## Protecting company revenue

*Business owners should take the time to recognise and plan for any potential challenges that could affect their revenue over the Christmas period.*

The festive season is often a time of increased sales activity. Business owners need to consider strategies on how to effectively manage this busy period in order to protect their business.

An unorganised and badly managed business could have a negative impact on the company's overall revenue.

Business owners should also be aware of the impact a reduction in demand could have on their business and overall profitability. There are a number of issues that owners should plan for prior to the Christmas period.

### Supplies

Business owners need to ensure that they have enough supplies over the holiday period. It is important to be aware of supplier companies trading hours as some restrict their opening times over Christmas.

It is a good idea to organise how much stock will be needed before companies begin to close for the holidays.



### Legal requirements

Employees may be interested in celebrating Christmas with an end-of-year party; however they need to be aware of their legal requirements and liabilities during this time. Employers should also take the time to reiterate their code of conduct to employees prior to the holiday season.

### Security

Businesses generally hold higher amounts of cash over Christmas so it may be necessary to increase security measures. If businesses are closing down over the holiday, ensure that the security measures in place are enough to prevent the business being a target for robbery.