

## Merry Christmas

***“As we express our gratitude, we must never forget that the highest appreciation is not to utter words, but to live by them.”***

John F. Kennedy’s words are just as pertinent now as in 1963. In uncertain times it’s more important than ever to embrace the spirit of the season. Share the joy. Be merciful and kind with your words and your actions. Make a difference. Be generous. Act with courage and grace. Be present. Make sure those you love know it and are able to bask in the glow of this knowledge.

We wish you the very best of the season and all the joy it brings. We look forward to working with you and helping you to navigate the challenges and opportunities ahead in 2016.

## Naughty or nice? Xmas tax checklist

It’s that time of year again - what to do for the Christmas party for the team, customer gifts, gifts of appreciation for your favourite accountant (just kidding), etc., etc. Here are our top tips for a generous and tax effective Christmas season:

### For your business

#### ***What to do for customers?***

The most effective way of sharing the Christmas joy with customers is not necessarily the most tax effective. If, for example, you take your client out or entertain them in any way, it’s not tax deductible and you can’t claim back the GST. There are specific rules designed to prevent deductions and GST credits from being claimed when the expenses relate to entertainment, regardless of whether there is an expectation of generating goodwill and increased business sales. Restaurants, a show, golf, and corporate race days all fall into the ‘entertainment’ category.



However, if you send your customer a gift, then the gift is tax deductible as long as there is an expectation that the business will benefit (assuming the gift does not amount to entertainment). Even better, why don’t you deliver the gift yourself to your best customers and personally wish them a Merry Christmas. It will have a much bigger impact even if they are not available and the receptionist tells them you delivered the gift.

From a marketing perspective, if your budget is tight, it’s better to focus on the customers you believe deliver the most value to your business than spending a small amount on every customer regardless of value. If you are going to invest in Christmas gifts then make it something people remember and appropriate to your business.

You could also make a donation on behalf of your customers (where your business takes the tax deduction) or for your customers (where they receive the tax deduction). Donations to deductible gift recipients (DGRs) above \$2 are tax deductible and can make an active difference to a cause (see *For you* below).

## What to do for your team?

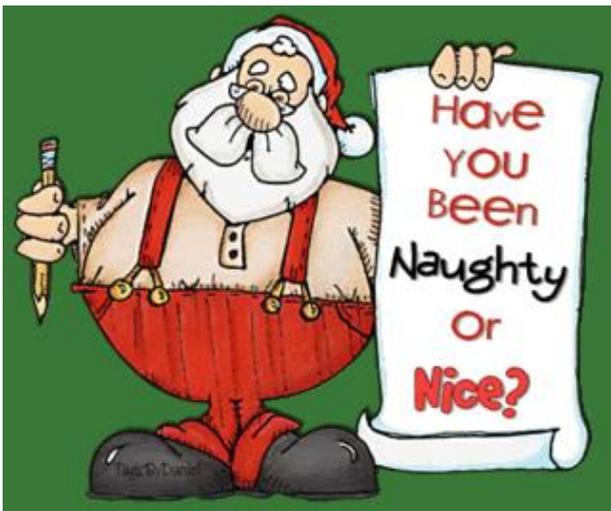
Christmas is expensive. Some businesses simply can't afford to do much because cashflow is too tight. Expectations are high so if you are doing something then its best not to exacerbate cashflow problems and take advantage of any tax benefits or concessions you can. Let's have a look at the impact of your options.

### Christmas parties

If you really want to avoid tax on your work Christmas party then host it in the office on a workday. This way, Fringe Benefits Tax (FBT) is unlikely to apply regardless of how much you spend per person. Also, taxi travel that starts or finishes at an employee's place of work is exempt from FBT.

So, if you have a few team members that need to be loaded into a taxi after over indulging in Christmas cheer, the ride home is exempt from FBT.

If your work Christmas party is out of the office, keep the cost of your celebrations below \$300 per person. This way, you won't pay FBT because anything below \$300 per person is a minor benefit and exempt. Be careful though as the \$300 includes all the costs of the event so meals, drinks, entertainment, etc.



If the party is held somewhere other than your business premises then the taxi travel is taken to be a separate benefit from the party itself and any Christmas gifts you have provided. In theory, this means that if the cost of each item per person is below \$300 then the gift, party and taxi travel can all be FBT-free. However, the total cost of all benefits provided to employees needs to be taken into account in

determining whether the benefits are minor across the FBT year.

Just remember that if entertainment is provided to employees and an FBT exemption applies, you will not be able to claim tax deductions or GST credits for the expenses.

If your business hosts slightly more extravagant parties and goes above the \$300 per person minor benefit limit, you will pay FBT but you can also claim a tax deduction for the cost of the event. Just bear in mind that deductions are only useful to offset against tax. So, if the business is paying no or limited amounts of tax, a tax deduction is not going to help offset the cost of the party.

### Christmas gifts for staff

\$300 is the minor benefit threshold for FBT so anything at or above this level will mean that your Christmas generosity will result in a gift to the Tax Office as well at a rate of 49%. To qualify as a minor benefit, gifts also have to be ad hoc - no monthly gym memberships or giving the one person multiple gift vouchers amounting to \$300 or more.

Gifts of cash from the business are treated as salary and wages – PAYG withholding is triggered and the amount is subject to the superannuation guarantee.

Aside from the tax issues, think about what will be of value to your team. The most appreciated gift is the one that means something to the individual. Giving a bottle of wine to someone who doesn't drink, chocolates to a health fanatic, or time off to someone with excess leave, isn't going to garner much in the way of goodwill. A sincere personal message will often have a greater impact than a uniform gift.

### For you

#### *Spread the joy with charitable gifts*

I have a relative who doesn't need or want anything material and who is very socially aware. This Christmas I am gifting her a well in a third world country. And, to make sure there is something to open at Christmas, I plan on packaging the donation in a drinking bottle. Assuming the gift is made through a deductible gift recipient (DGR), then the donation of the well will be tax deductible - either for me or her - as it is the money

equivalent of a well for projects of this type, not an actual well.

If I had made a donation and received something for that donation like a toy or raffle ticket, then it would not be tax deductible.

## 600 Targeted in Random ATO Audits

Back in June, the Australian Tax Office told a Parliamentary standing committee on tax and revenue that it was "considering" reintroducing random audits. Now the ATO has confirmed random audits will commence in 2016. The compliance program targeting 600 individuals and small businesses will focus on tax evasion and underreporting.

The stimulus for the reinvigorated approach appears to be advice from the ATO's counterparts in Britain and the US noting that they could not truly estimate the level of non-compliance and tax evasion without random audits.

The ATO advised *Fairfax* that only a handful of the 600 individuals and businesses targeted will be physically audited where they found grounds to investigate further.

On a more positive note, 500,000 taxpayers have been contacted by the ATO advising that their tax returns will not be subject to further review. The pilot project is aimed at taxpayers with 'straightforward' affairs and taxable incomes of less than \$180,000. The 'certainty letter' is an assurance that the ATO will not review the return unless there is evidence of fraud or deliberate avoidance.



## PROPERTY PRICES

The CoreLogic quarterly "Pain & Gain Report" shows us what percentage of residential dwellings sell at a loss or a profit.

As you can see for this terrific table below, only 1.8% of Sydney units sold at a loss throughout the June quarter whilst the regional NSW figure were significantly higher.

The story is much better for Newcastle and Lake Macquarie with only 2.8% of resales recorded as loss making meaning that 97.2% of all sales recorded a profit.

There are two clear messages in this data.

1. Capital city dwellings are far less likely to sell at a loss but large regional centres are not far behind.
2. Houses are generally more likely to sell for a profit than units.

Of course, there are plenty of exceptions to these two messages but at this point in time the results are striking.

(Margaret Godfrey - Smartline Personal Mortgage Advisers)

**Proportion of total resales at a loss/gain, houses vs. units, June 2015 quarter**

Region	Houses		Units	
	Pain	Gain	Pain	Gain
Sydney	2.2%	97.8%	1.8%	98.2%
Regional NSW	8.1%	91.9%	13.1%	86.9%
Melbourne	3.5%	96.5%	10.5%	89.5%
Regional VIC	8.4%	91.6%	10.3%	89.7%
Brisbane	7.2%	92.8%	16.6%	83.4%
Regional Qld	17.1%	82.9%	31.3%	68.7%
Adelaide	8.9%	91.1%	11.6%	88.4%
Regional SA	19.1%	80.9%	36.1%	63.9%
Perth	11.5%	88.5%	18.7%	81.3%
Regional WA	19.6%	80.4%	22.1%	77.9%
Hobart	7.4%	92.6%	14.1%	85.9%
Regional TAS	23.0%	77.0%	40.4%	59.6%
Darwin	13.2%	86.8%	25.3%	74.7%
Regional NT	20.9%	79.1%	52.6%	47.4%
Australian Capital Territory	4.5%	95.5%	22.5%	77.5%
National	7.7%	92.3%	12.6%	87.4%
Capital City	5.0%	95.0%	8.4%	91.6%
Regional	12.5%	87.5%	23.8%	76.2%

## HR MATTERS

Sorry to alert you, but there is less than three weeks until Christmas Day: the 'silly season' is upon us and some businesses will be experiencing pre-Christmas panic and requiring their employees to work additional hours to fulfil orders, meet targets, or just go that 'extra mile' to deliver great customer service.

So what happens when your budget doesn't stretch for additional overtime payments to staff, or employees would rather take advantage of the sunshine and take time off in

lieu of payment to spend with their kids on school holidays? Can everyone have their cake and eat it, too? Time Off in Lieu (TOIL) arrangements allow an employee to take time off from work in lieu of overtime payment. As part of the four-yearly review of modern awards, the Full Bench of the Fair Work Commission has recently finalised a model TOIL term to be inserted into particular modern awards

The term will facilitate employees reaching an agreement with their employer to take TOIL instead of payment for overtime. The clause requires that:

- the employee and employer agree to take TOIL at a mutually-agreed time;
- TOIL will be taken within six weeks of the overtime being worked. If this does not occur, the overtime is to be paid to the employee at overtime rates;
- a separate written agreement is made for each occasion that overtime is to be taken as TOIL;
- any accrued, but untaken, TOIL must be paid to the employee on termination at overtime rates; and
- if requested by the employee, the employer must pay the employee for any accrued but untaken TOIL entitlement at overtime rates.

### Non-award covered employees

While the National Employment Standards in the *Fair Work Act 2009* (Cth) (Act) do not provide for compensation, whether monetary or otherwise, for employees who work overtime, both award-covered and award-free employees could reach a TOIL agreement with their employer. An employment contract or enterprise bargaining agreement may also facilitate the making of a TOIL agreement between an employee and their employer.

## OVER AWARD PAYMENTS

Since their commencement on 1 January 2010, all Modern Awards have had a standard clause 2.2 which allows employers to absorb monetary obligations imposed by the Modern Award into over award payments (Absorption Clause).

This clause has allowed employers, who pay employees above the minimum award rates, to offset the over award payments against Modern Award obligations and successfully defend claims for additional Modern Award entitlements (including overtime, penalty rates and allowances) by establishing that the over award payments made to the employees meet or exceed the Modern Award obligations.

This is an extremely convenient clause for employers, as it clearly identifies the interaction between payments made above the minimum award rates (**Over Award**

**Payments**) and monetary obligations imposed under a Modern Award.

Although properly drafted employment contract clauses can allow employers to offset Over Award Payments against Modern Award entitlements, the Absorption Clause can be relied upon by employers who do not have appropriate clauses in their employment contracts (or no written contract at all) for award covered employees.

However in the course of the current *4 Yearly Review of Modern Awards (Review)*, the Full Bench of the Fair Work Commission has considered the Absorption Clause and concluded that the Absorption Clause has served its purpose and is no longer necessary to achieve the objectives of modern awards as specified in the *Fair Work Act 2009*.

The Full Bench observed that "*Modern Awards are part of the minimum safety net of the terms and conditions established by the Act*" and that "*it is not the function of such a minimum safety net to regulate the interaction between minimum award entitlements and overall award payments*" which are "*adequately dealt with by common law principles of set off*".

Although it seems clear that the Full Bench intends to remove the Absorption Clause from Modern Awards, it has decided not to fully determine the issue at this time.

### What should employers do?

Employers who pay Over Award Payments should take immediate steps to ensure that they have maximum protection against any potential claims from employees for additional Modern Award entitlements and against allegations that they have not correctly made payments under the relevant Modern Award.

It is otherwise risky for employers to simply rely upon common law principles of set off. Employers should review their employment contracts, for all levels of employees, to ensure that they include an appropriate clause that clearly identifies and specifies the basis on which Over Award Payments are made



## Affording a Higher Education

School leavers furthering their studies face university costs that leave many with a legacy of debt while others won't be able to attend uni at all. A fortunate few have parents who planned ahead. Which best describes your situation?

According to the last government figures, the cost of a university degree can be around \$37,000 per annum – higher for courses like medicine.

Parents are known to mortgage family homes to fund their child's tertiary education, while students rely on part-time jobs to follow their dreams.

These are common solutions to an increasingly costly problem, but there are alternatives.

## Help Debt

This is a government-support loan provided to eligible students to assist in meeting education costs.

The HELP scheme encourages student contributions to their university fees by reducing the overall cost of the course, although this may change if proposed legislation is passed.

The Australian Taxation Office (ATO) is advised of the amount of debt accruing on your HELP account. If your income exceeds \$54,126 in the 2016 tax year you must start

repaying some of your debt – even if you're still studying. This figure increases each year.

HELP debt repayments are deducted from your income a submitted to the ATO by your employer in addition to your PAYG tax.

(Price Williams Whyte Financial Planners – Newsletter Spring 2015)

## CBA Threw Customers Under the Bus

13<sup>th</sup> November 2015 was a day of shame for Commonwealth Bank. Several "BankWest victims" related to a joint parliamentary committee the destruction of their business and lives at the hands of our biggest bank.

The BankWest saga is a story of a power imbalance so massive that even the legal system is made to serve the interest of the powerful rather than the wronged.

It is a story of ruthless, untrammelled abuse of power by CBA, an institution that seems to be untouchable precisely because it is too big to be allowed to fail.

These were individual stories that were never meant to see the light of day.

The first victim, property development Rory O'Brien, was able to tell his story only because of the parliamentary privilege the inquiry provides.

Otherwise – the final twist of the knife – he was subject to a gag order imposed by CBA as part of his paltry settlement.

All because CBA, which did handsomely out of the BankWest purchase, decided that it didn't want the commercial loan book of BankWest.

Rather than deal with these customers in an orderly and civilised fashion, CBA threw them under the bus.

Loan agreements have always been one sided in favour of the bank; never before have they been so ruthlessly

and capriciously enforced as they were by CBA against this group of unwanted BankWest customers.

The most explosive allegation is that CBA in some cases manufactured defaults, because it could claw back the write-offs from the vendor of BankWest; HBOS and ultimately, the British taxpayer.

If this is true, heads should roll.

Scarcely two weeks earlier, another parliamentary committee heard evidence of the manipulation of the compensation process for victims of the long-running CBA financial planning scandal. This is a scheme where all the shots are called by CBA.

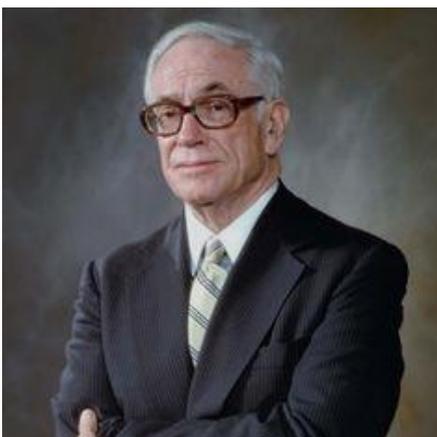
You would have thought that CBA wouldn't monkey around with after their near-death encounter with a royal commission last year but then again, why wouldn't they?

Nobody was held accountable for attempting to mislead the Senate inquiry that recommended the royal commission, a virtually unprecedented disaster for a private company that seems to have been shrugged off with serene complacency.

No, part of the problem at CBA is precisely that the board has not been held to account for it in relation to BankWest scandal

Where there is smoke there is fire. CBA is Australia's VW scandal with an extra letter.

(Jeff Morris- Sydney Morning Herald, 17<sup>th</sup> November 2015)



***“Christmas is a tonic for our souls. It moves us to think of others rather than of ourselves. It directs our thoughts to giving.”***

B.C.Forbes