

5 Steps to a Tax-Free Christmas

OK, we know tax is not the most exciting thing to think about in the lead up to Christmas, but these are the questions we get asked all the time, and if you are familiar with all the tricks and traps you can save yourself and your business hundreds, if not thousands, of dollars.

1. Spontaneous, Well Thought Through Team Gifts

The key to Christmas presents for your team is to keep the gift spontaneous, ad hoc and, from a tax perspective, below \$300 per person. \$300 is the minor benefit threshold for fringe benefits tax (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 47%. To qualify as a minor benefit, the gifts also have to be ad hoc - no once a month gym membership payments or giving the one person multiple gift vouchers amounting to \$300 or more.

2. The Work Christmas Party Options

If you really want to avoid tax on your work Christmas party then host it in the office on a work day. This way, 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 also 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: meals, drinks, entertainment, etc.

If the party is not held on 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.

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.

3. Give a Gift Rather Than Doing Lunch

Few of us have that much time in the diary for lots of Christmas lunches so why not give a gift instead? In addition to a few extra hours saved and a lot less calories to work off, there is also a tax benefit. As long as the gift you give to the client is given for relationship building with the expectation that the client will bestow your business with more work (that is, there is a link between the gift and revenue generation), then the gift is tax deductible.

Entertaining your clients at Christmas is not tax deductible. So if you take them out to a nice restaurant, to a show or to any other form of entertainment, you can't claim it as a deductible business expense and you can't claim the GST credits either. It's goodwill to all men, but not much more.

4. Give a Charity a Cash Donation

Charities love cash. They don't have to spend any of their precious resources to receive it – unlike a lot of charity dinners, auctions and promotional campaigns. And from a tax perspective it's the safest way to ensure that you or your business can claim a deduction for the full amount of the donation.

There are a few rules to giving to charities that make the difference between whether you will or won't receive a tax deduction:

- The charity must be a deductible gift recipient (DGR). You can find a list of DGRs on the [Australian Business Register](#).
- If you buy any form of merchandise for the 'donation' – biscuits, teddies, balls or you buy something at an auction – then it's generally not deductible. Your donation needs to be a gift, not an exchange for something material. Buying a goat or funding a child's education in the third world is generally ok because you are generally donating an amount equivalent to the cause rather than directly funding that thing.
- The tax deduction for charitable giving over \$2 goes to the person or entity whose name is on the receipt.

5. Christmas Bonuses

If you are planning to provide your team with a cash bonus rather than a gift voucher or other item of property then remember that this will be taxed in much the same way as salary and wages. A PAYG withholding obligation will be triggered and the ATO's view is that the bonus will also be treated as ordinary time earnings, which means that it will be subject to the superannuation guarantee provisions.

Is Santa a Tax Cheat?

A lighter look at the complexity of Australian taxation laws:

Dear Santa,

Thank you for the opportunity to provide tax advice for your operation. We're pleased you have initiated this advice as the ATO is looking closely at any business or individual that operates within Australia, but has significant transactions or operations internationally. The fact that you run a global business that generates no profit but 'gifts' millions of toys each year produced by your offshore factory, have never lodged a tax return or paid tax in Australia, is likely to trigger an investigation. We have identified a number of issues as a starting point for further discussions. These are:

Tax Resident or Non-Resident?

We note that you have a secret Australian warehouse to aid distribution and Christmas Eve logistics across the region. The warehouse domiciled in Australia may mean that you have a permanent establishment in Australia which could mean you are taxed like an Australian entity on profits made from the warehouse. As there is no Double Tax Agreement between Australia and the North Pole, it's possible you will be subject to local tax laws in both countries. You might be able to claim a tax credit to help reduce the impact of double taxation. We note that this same situation is likely to apply in many countries not just Australia.

Representation in a particular country may also be enough to make your operation subject to local tax laws. You appear to have local agents – several thousand Santa representatives – with authority to operate on your behalf in shopping centres across Australia. These agents commit the operation with the promise of toys to millions of children. A local agent acting with authority may expose you to local tax laws. This is an issue that may extend well beyond Australia. This issue requires immediate formal assessment.

Santa's Little Helpers: Volunteers or Underpaid Employees?

A review should be completed of the employment status of "Santa's little helpers" based in Australia to determine if they are contractors or employees. If the helpers are deemed to be employees, you may be liable for the superannuation guarantee for this year (9.5% from 1 July 2014) and all previous years. It may be hard to argue that they are truly independent given the level of corporate branding involved. If the helpers are indeed "volunteers" we will need to consult an employment lawyer regarding potential slave labour issues and discrimination of a minority group.

Importing Goods into Australia

Most goods imported into Australia with a value above \$1,000 are subject to GST. With approximately 4,503,075 children in Australia on your list, averaging \$40 per gift (depending on whether they have been naughty or nice), we estimate that you will be liable for GST in excess of \$18,012,300. We need to discuss tax structuring urgently.

Reindeers: Beasts of Burden?

If you are subject to Australian tax laws, a number of deductions may be available to you. Your flying reindeer, for example, are likely to be considered beasts of burden and as such can be depreciated as plant.

There are currently no provisions within Australian tax law to allow the Taxation Commissioner the discretion to ignore your tax liabilities as a goodwill gesture. Please contact us urgently regarding these issues.

Office Closure

Our office will be closed from 24 December 2014 and will re-open on 5 January 2015.

We wish you and your families best wishes for the festive season and a happy and healthy year in 2015.

Head Office

Suite 12 Level 3,
Gateway Building
1 Mona Vale Road
Mona Vale NSW 2103

Sydney Office

Level 6
280 George Street
Sydney NSW 2000

T 02 8973 2222

admin@waterhouseca.com.au

www.waterhouseca.com.au

ABN 60 535 258 608

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Chartered
Accountants