



Christmas gifts for employees: deductibility and FBT implications

Modest Christmas gifts for employees, usually less than \$100, are deductible and are exempt from FBT as they are considered to be infrequently provided benefits. (Ex HIH accountants take note of 'modest!'). However the exemption from FBT will only apply if the Christmas gifts are consumed in the employees own home. If enjoyed at work, then gifts will be regarded as entertainment, not a gift and incur FBT. (Ruling MT 2042).

NSW LAND TAX Limit for 2003

The NSW Valuer-General has set the threshold for the 2003 land tax year at \$261,000. They also determined that the change in average land values in NSW between 1 July 1997 and 1 July 2002 was 63%.

Source: NSW Government Gazette No 170, 11 October 2002 p 8769

Tough penalty overturned for a favour to the folks

The NSW Administrative Decisions Tribunal overturned the Chief Commissioner of State Revenue's decision to disallow a First Home Owner's grant to Mr Marsh.

Mr Marsh had been the registered proprietor of a residential property in Woodenbong. However, he had not paid for the property, and had never lived, nor intended to live in it. Rather, his parents had at all times lived at the property and they had paid for it and for all the outgoings related to it. Because his parents were unable to obtain a bank loan in their name Mr Marsh had legal title to it as the registered proprietor.

The Chief Commissioner had held that the property arrangement had caused an implied trust to be created for his parents and he refused Mr Marsh's application for the First Home Owner's grant on the basis that he held a "relevant interest".

Source: Marsh v Chief Commissioner of State Revenue [2002] NSWADT 203, NSW Administrative Decisions Tribunal, Higgins (Judicial Member), 17 October 2002

SMSF's can't share with unit trusts

Assets of a self managed superannuation fund must be kept separate from assets of other parties. This means that they cannot share a bank account. For example, when the trustees of the SMSF are members of a family and there are several unit trusts owned and operated by the SMSF and/or the trustees but even for administrative simplicity and cost savings, they cannot share a bank account. Source ATO Case 2002/976

Do Partners need to register for GST?

A partner in a partnership is not required to be registered for GST when the only activity of that entity is being a partner in a partnership that is registered for GST. That is, the entity is not carrying on an enterprise. The partnership only needs to be registered for GST. Source: ATO Case 2002/988

P.S. Refund Rumour

Rumour has it that the ATO reviews tax returns that produce large tax refunds before those refunds are issued. Apparently the "high risk" tax refund amount is \$6000.

Test Case blooms for tax benefits in Investment schemes

Many so called "Tax effective investment schemes" are scrutinised by the Federal Commissioner of Taxation. It seems that these investment projects are often agriculturally orientated and draw the Commissioner's interest because of their seemingly large tax deductions. In an investment of the growing and exporting of native flowers, the Commissioner was unsuccessful in arguing that the taxpayers were not entitled to deductions for management, licensing and "guaranteed income return" fees.

The Federal Court overruled the Commissioner by finding that the investments were made for a genuine commercial purpose rather than for a tax benefit despite the project's failure.

While the projected income did not eventuate it did not mean that the investment was unreasonable or non commercial at the time it was made.

Even though the deductibility of the outgoings was an integral part of the arrangement, it did not mean there was a dominant purpose of producing a tax benefit and the Court considered the taxpayers' dominant purpose was the generating of income for their retirement. The Court also commented that the guaranteed return did not entirely protect the taxpayers as the amount of the return was taxable in their hands and only the after-tax portion would be available for repayment of the loans. Source: *Cooke v's FCT* 2002 FCA 1315, Federal Court, Stone J, 29 October 2002

Travel for shopping

Travel in a person's own time is not deductible even when the travel is made to purchase work related items.

There must be a **nexus** between an outgoing expense and the assessable income, so as the outgoing is **incidental** and **relevant** to the gaining of assessable income. When the travel is not in the course of their duties but done in order to prepare themselves for later carrying out their duties, the requisite connection between the expense and the earning of income does not exist. Source: ATO Case 2002/1005

Gym equipment deductible in rental property

A recent case showed that an automatic hydraulic door closer, a smoke alarm, gymnasium equipment and security swipe card system contained in a rental property were all allowable depreciation deductions because they are defined as 'plant'. Plant and capital works includes articles and machinery for depreciation deductions claimed in relation to rental properties. This is because an item that falls within the meaning of machinery will always be plant, irrespective of whether or not it is annexed to land or buildings. As the plant is owned and used for the required purpose of producing assessable income, a depreciation deduction is available. Source: ATO Case 2002/1001

Rare renovation is deductible

The currently fashionable renovation of removing worn carpets and repolishing the existing floorboards may qualify for deduction as a repair, according to Interpretative Decision ID2002/330. Polished floorboards perform substantially the same function as the carpet, so the materials and processes used in the work do no more than restore the floor to a functional walking surface. The change is therefore properly treated as a deductible repair rather than a non-deductible improvement. Certain expenses do not qualify as repairs may be deductible under the environmental protection provisions. These include certain expenditures; including those of a capital nature that are incurred for the sole or dominate purpose of preventing, fighting or remedying certain business-related pollution.

Longer life for Car Leases

From 1 July 2002, the effective life for cars has increased from 6 & 2/3 years to 8 years for leased cars acquired after this date.

Minimum residual value - percentage of cost	
Term of lease	Effective Life 8 years
Year 1	65.63%
Year 2	56.25%
Year 3	46.88%
Year 4	37.5%
Year 5	28.13%