MT 2042 - Christmas presents to employees; income tax and fringe benefits tax consequences

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TAXATION RULING NO. MT 2042

CHRISTMAS PRESENTS TO EMPLOYEES; INCOME TAX AND FRINGE BENEFITS TAX CONSEQUENCES

F.O.I. EMBARGO: May be released

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REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1011305	CHRISTMAS PRESENTS	
	MINOR BENEFITS EXEMPTION	58P FBTAA
	ENTERTAINMENT EXPENDITURE	51AE ITAA

PREAMBLE This Ruling is in response to enquiries the Australian Taxation Office has received from people wanting to know if there is any fringe benefits tax payable when an employer gives relatively inexpensive Christmas gifts to employees. Employers have also asked if they can get a tax deduction for the cost of such gifts.

RULING 2. The question arises as to whether relatively inexpensive Christmas gifts such as a bottle of whiskey or wine or perfume or a hamper of food would be subject to fringe benefits tax. Section 58P of the Fringe Benefits Tax Assessment Act (FBTAA) provides an exemption for minor benefits that are infrequently provided and/or difficult to record and value.

3. In looking to the scope of the exemption it is not seen as appropriate to apply a simple dollar limitation. What may be an appropriate measure of 'small' in one case will be inappropriate in another where, for example, recording and valuation requirements that would otherwise apply if it were sought to subject the particular benefit to tax would weigh in favour of applying the exemption. In other words, in considering the scope of the exemption it will be necessary to look to the nature of the benefit provided and give due weight to each of the elements of the exemption - value, frequency of provision and recording and valuation difficulties - before concluding whether the exemption should apply.

4. As a general rule in weighting such things as the value and frequency of provision of a particular form of benefit given to numbers of employees, the application would be considered by looking at the matter on a per head basis. For example, in the case of gifts of bottles of whiskey, wine or perfume, an employer making gifts to many employees could obtain the benefit of the concession if, looked at individually, the gifts were modest in value and were confined to a few special occasions during the year, like Christmas.

5. The criteria for determining whether it would be unreasonable to treat the gifts as a fringe benefit are set out in section 58P

FBTAA. Broadly these are:

- The number of times during the year that minor benefits are given. The more frequently and regularly small benefits of a similar kind are provided, the less likely they are to qualify as exempt minor benefits. However, if the minor benefits are confined to a few special occasions like Christmas, this would be a factor in favour of applying the exemption.

- The total value of the benefits provided. As with the previous test, the greater the cumulative value of small benefits, the less likely it is they may qualify as exempt minor benefits.

- Similarly, it is necessary to assess the likely total taxable values of the minor benefits and other associated benefits, i.e., those provided in conjunction with the minor benefits.

- The practical difficulty in determining what would be the taxable value of the benefit and any associated benefits. This would include consideration of the difficulty for the employer in keeping the necessary records in relation to the benefits.

- The circumstances in which the minor benefit and any associated benefits were provided. In considering this criterion, regard must be taken of whether or not the benefit could be considered principally as being in the nature of remuneration.

6. It should be noted that the exemption for minor benefits does not extend to airline transport benefits and other 'in-house' fringe benefits. In any case, no fringe benefits tax is payable on these benefits where they are not more than $500 for the year (section 62 of the FBTAA).

7. As to the tax deduction question, the cost of a Christmas gift for an employee is not deductible where the gift directly provides entertainment by way of food, drink or recreation (subsection 51AE(4) of the Income Tax Assessment Act). Examples of such gifts would include a holiday, tickets to sporting events, the theatre or cinema and the cost of a night out at a restaurant. Similarly, the expense of a staff Christmas function would not be deductible as it would involve the provision of entertainment.

8. On the other hand, relatively inexpensive Christmas gifts of food or drink that will be consumed by the employees at home (such as a bottle of whiskey or wine or a hamper of food) are not regarded as being the provision of entertainment for the purposes of subsection 51AE(4). Expenditure incurred on such gifts will be treated as an allowable deduction in calculating the taxable income of the employer.

COMMISSIONER OF TAXATION
1 June 1989