

The holidays are upon us...



But before we all disappear to the beach, here are a few things you might find useful....

Pre-Christmas Shutdown Business Guide



Merry Christmas and Happy Holidays!

We all look forward to the holiday break. There are a number of special considerations for business owners at this time around employment, leave and holiday pay, as well as providing gifts to staff and clients. There is also a number of office management and marketing considerations. This informative brochure, with its light hearted approach from Basil and his staff at Fawltly Towers, has been prepared by Cuffs in conjunction with CCH to assist with your business closure processes.



Grog, Kai and Presents – How to calculate “Te Taake’s” (IRD’s) Share

Let's look at the tax treatment of saying thanks to customers and staff typically with gifts, wining and dining.

Inland Revenue's IR268 guide gives the following examples of where entertainment expenses are 50% deductible:

- Taking customers, suppliers and business associates out for dinner or putting on a function for them
- The traditional Christmas party for staff
- Shouting customers, suppliers and staff to an event, e.g. a rugby game or a show
- Taking them on a jaunt in your launch (running/hireage costs and food and alcohol)
- Giving them the use of your bach or time share apartment as a thank you gesture (the occupancy costs)

We've been asked 'why only 50% deductible?' Apparently it's because we get some personal enjoyment or benefit from quaffing a wine and tucking into a steak (too right!).

In lieu of a Christmas party you may give your employees restaurant vouchers to use at their discretion. This cost is fully deductible but is subject to fringe benefit tax (FBT), although there is an exemption of \$300 per employee per quarter (a maximum exemption can apply). The same treatment applies to staff gifts, again fully deductible but subject to FBT under the 'other benefits' category.

As a thank you gesture, many firms give their customers gifts during the festive season. The cost of the gifts is fully tax deductible as marketing and promotion expenditure.

Many firms pay their staff a Christmas cash bonus. These payments are classed as 'extra emoluments' and are fully deductible but have PAYE deducted at the employee's marginal tax rate e.g. 33% if earning over \$70,000 per annum.

If in doubt about where you stand tax deductibility-wise with your generosity to customers and staff, check with us and we'll help you get it right.

Basil and Sybil Fawlty run a small hotel in the seaside town of Torquay. They operate the business through their company "Fawlty Towers". Each year, over the Christmas period, they invariably encounter a surprising number of employment and tax-related issues...



Christmas party for employee's children

Question

Sybil decides that it would be nice to organise a Christmas party at the hotel for the children of staff members. Basil will dress up as Father Christmas and hand out presents (valued at around \$15 each) for the children.

Would the Christmas gifts be caught by the FBT rules?

Answer

Yes. FBT is payable on the value of presents given out to the employees' children. An employer's liability for FBT extends to benefits provided to associates of employees.

There is a de minimis threshold that applies to unclassified benefits, so depending on whether Fawlty Towers provides any other fringe benefits to staff during the year, and depending on whether FBT is paid annually or quarterly, the presents may not be subject to FBT.

For employers paying FBT on a quarterly basis, no FBT is payable provided that:

- the total taxable value of unclassified benefits provided in the quarter to each employee does not exceed \$300, and
- the total taxable value in the last four quarters, including the current quarter, of all "unclassified benefits" provided by the employer, or an associated person, to all of the employer's employees does not exceed \$22,500.

For employers accounting for FBT on an annual or income-year basis, the total taxable value of unclassified benefits must not exceed:

- \$1,200 per employee pa, or
- \$22,500 per employer pa.



Christmas party for staff and their partners

Question

After suffering a blow to the head (when a cast-iron frying pan fell out of an overhead cupboard in the kitchen) Basil decides to really splash out for this year's staff Christmas party.

Basil is going to take the staff and their partners out to dinner in town. The company is also going to pay for staff and partners to stay the night at a hotel in town, with breakfast.

Will this expenditure be subject to the entertainment rules or the FBT rules?

Answer

Staff Christmas parties are subject to the entertainment regime and therefore the expenditure on drink and food is only 50% deductible.

A one-night stay in a hotel, and travel costs to and from, would not be subject to the entertainment tax rules. However, both items of expenditure will be subject to FBT and will be fully deductible to the employer. The employer's liability for FBT extends to benefits provided to associates of employees (ie, the partners of staff in this case).

The cost of breakfast will be subject to entertainment tax so the deduction will be limited to 50%.



Can an employee be forced to work on a public holiday?

Question

One of the Fawlty Tower staff members, Polly, usually works Monday to Friday.

New Year's day this year falls on a Tuesday and Basil has asked her to work that day, as New Year's Day is usually one of the busiest days of the year for Fawlty Towers.

Polly is not impressed. She plans on nursing a sizeable hangover on New Year's day.

Can an employee be forced to work on a public holiday?

Answer

Yes - but only if the public holiday falls on a normal working day for the employee and the employee's employment agreement includes a clause allowing the employer to do this.

Payment of Christmas bonus

Question

The staff at Fawltly Towers usually receive a Christmas bonus.

Are bonuses included in the calculation of an employee's annual holiday pay?

Answer

This depends.

Two rates are used to work out an employee's annual holiday pay: "ordinary weekly pay" and "average weekly earnings". Once each is calculated, the higher of the two is used as the rate of payment for annual holiday pay.

Ordinary weekly pay

When calculating an employee's ordinary weekly pay, it is unlikely that a bonus will be included. The definition of "ordinary weekly pay" under s 8 of the Holidays Act excludes any one-off or exceptional payments. If bonus payments were paid regularly, they might be included in the ordinary weekly pay calculation.

Section 8 also excludes any discretionary payments that the employer is not bound by the employment agreement to pay. If the bonus entitlement is expressed to be discretionary, this would exclude the bonus from the calculation of "ordinary weekly pay".

Average weekly earnings

The "weekly earnings" calculation, on the other hand, is more likely to include a bonus payment. This is because the meaning of average weekly earnings is 1/52 of an employee's gross earnings. One-off payments can be included in an employee's gross earnings.

Discretionary payments are, however, specifically excluded from the definition of gross earnings.

Therefore:

If the bonus is payable at the employer's discretion, the bonus payments are not included in the weekly earnings calculation.



Employee falling sick on holiday

Question

One of the Fawltly Tower employees, Manuel, is on annual leave and has decided to visit his family in Barcelona. During the entire holiday he is sick with the flu.

Should Manuel be paid sick pay instead of holiday pay?

Answer

If the sickness or injury occurs just before the employee starts a period of annual holidays, the employer must allow the employee to take any period of sickness or injury as sick leave.

However, if the employee is taking annual holidays and falls sick or is injured (or his or her spouse or dependant falls sick or is injured) at some point during the holiday, the employee can use sick pay instead of annual holidays for that period only with the employer's agreement. An employee cannot insist that the sick leave entitlement is used in such circumstances.

Mandatory close-down over Christmas

Question

Basil has decided to close down the hotel from December 21 until December 29. Some of the staff are not happy about this and are unsure how it will affect their pay.

How is an employee's pay calculated if the employer imposes a closedown?

Answer

Employees who are eligible for annual holidays simply receive their annual holiday pay as they normally would when they take a holiday. (The entitlement to annual holidays becomes available to employees after 12 months' continuous employment). These employees receive payment at the rate of their ordinary weekly pay or average weekly earnings, whichever is higher. If an employee has insufficient holidays to cover the entire closedown period, the employer may agree to the employee taking annual holidays in advance.

For those employees who are not entitled to annual holidays (eg, casual staff and permanent staff who yet haven't worked for the employer for 12 months continuously), the employer has to pay the employee 8% of the employee's gross earnings since the commencement of the employee's employment or since the employee last became entitled to annual holidays.

Deducted from this amount is any payment made to the employee for annual holidays taken in advance or on as a "pay as you go" basis.

Note that the employer can agree with the employee that he or she will take annual holidays in advance. Otherwise, the employee must discontinue work and is not paid for the remainder of the period.



Provisional tax instalment payments due over the Christmas period

Question

Sybil always pays the company's provisional tax instalments.

With the hotel being so busy over Christmas time, she is nervous that she will run out of time to do the calculations by the usual payment date of the 28th of the month.

What is the last date that Sybil can pay her December provisional tax instalment?

Answer

To take account of the Christmas holiday period, the payment for 28 December is due on 15 January.

Generally an instalment date will be the 28th day of the month. However, to take account of the Christmas and Easter holiday periods, the payment for 28 December is due on 15 January and the payment for 28 April is due on 7 May.



Calculating Holiday Pay

Whichever of the following is the larger becomes the rate of the weekly holiday pay.

'Average weekly earnings': Calculate 'total gross earnings' for the 12 months before the end of the last pay period before the annual holiday and divide this figure by 52.

'Ordinary weekly pay': Multiply the ordinary hourly rate of the employee's pay as at the start of the holiday by the number of hours worked in a 'normal' week.

Calculating Pay for Statutory (Public) Holidays

'Relevant daily pay': Find the amount of pay that the employee would have received if he or she had worked on the day concerned.

'Average daily pay' is used when using relevant daily pay is not possible, or practical, or there is variation in the daily pay during the pay period when the holiday occurs. Calculate gross earnings for the 52 weeks before the end of the immediately preceding pay period and divide by the number of whole or part days during which the employee earned those earnings including days of paid holiday or leave.

In the case of employees who have commenced employment during the year, their average weekly earnings are calculated by taking the amount of their gross earnings from starting work until the last pay period before the holiday and dividing that amount by the number of weeks worked. For examples on holiday pay please visit the Department of Labour's website: <http://www.dol.govt.nz/>

Pay calculations can be complex especially when employees receive allowances, (e.g. travel) and have deductions made (e.g. KiwiSaver, student loan) so contact us if you need assistance in getting these important calculations right.

Business New Year Resolutions

Generally, we want to indulge less, exercise more and be better people.... However it's time to ponder some specific (and accomplishable) new year's resolutions for your business.

1. **Nurture your most loyal and profitable clients.** Chances are they'll sing your praises and refer more business to you.
2. **Give something back to your community.** Help a cause that matters to you and you'll potentially give your team new purpose whilst boosting your reputation.
3. **Promote your business effectively.** Join a networking or business group and get your business in the public arena. Consider the benefits of social networking and marketing.
4. **Read a business book every month.** Keep up with the changing world, enhance your knowledge and leadership skills.
5. **Get professional education and development.** As a leader you must continue evolving, extend your education to remain engaged and focused on the future of your business.
6. **Learn to listen more.** Be available and engage your team daily to see how they're tracking. You'll diffuse potential problems before they arise and witness valuable raw idea creation.
7. **Empower your team.** Only your team can grow your business - they need to share your vision and have the necessary drive or incentive to achieve the goals that you set.
8. **If it's not working, get rid of it.** Whether it be a product offering, a machine, a supplier or even an employee, don't waste time and energy squeezing a round peg through a square hole. Trim the fat and invest in new muscle.
9. **Prioritise and leverage your time.** Implement efficient systems to allow effective delegation. Employees with greater responsibility often have greater job satisfaction. Work more on the future direction of your business rather than in the everyday running of your business.
10. **Take time for yourself!** Be a good role model - don't skip lunch or work endless overtime. It could lead to burnout. Enjoy breaks for exercise or a new hobby and achieve a healthy work-life balance.



*Merry Christmas
from the team at Cuffs*

*Happy New Year
from the Dynamic Team @*



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