

# JR news



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## Editorial

**At the time of writing this newsletter more than 75% of Queensland has been flood affected and North Queensland is facing Cyclone Yasi. Our thoughts and best wishes go out to those who have been impacted by the floods and cyclones.**

This edition of JR News discusses Fringe Benefits Tax (FBT), the ongoing changes to taxation of trusts and private companies, changes to self education expense deductions and the flood levy proposed by the Federal Government in late January.

FBT is again in the ATO's spotlight with the end of the FBT year approaching (March 31) and the ATO increasing its audit and review activities with respect to compliance. This is a clear warning for employers to review their FBT obligations and ensure future returns are correct.

Trusts and private companies continue to be the hot topic amongst accountants and tax lawyers since our last publication.



Our previous edition of JR News covered off in some detail the complicated changes to Division 7A and unpaid present entitlements. This edition of JR News discusses a recent ATO ruling outlining when the ATO will exercise its discretion to relieve taxpayers from the application of Division 7A and what steps a taxpayer should be taking.

Changes are afoot with respect to self-education deductions, thanks to a recent high court case. JR News outlines the impact of the decision and what it means to certain taxpayers.

The floods have caused untold damage to homes and businesses. We issued a bulletin in mid January covering the tax benefits and government assistance that may be

available to those affected. Julia Gillard recently announced a 'Flood Levy', for the 2012 financial year which we cover in this edition.

As always the information contained in JR News covers a broad audience. Please contact one of my Partners for more detail on the specific topics.

Once again we thank our affiliates, Pitcher Partners, for their contribution to material in this publication.

We hope you enjoy this edition of JR News.

*Brett Headrick*  
The Editor

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# Xmas Parties and Gifts – FBT & Income Tax Issues

## Summary

**With the festive season once again drawing to a close, we thought it opportune to provide some brief comments regarding the FBT, GST and income tax implications associated with the Xmas functions and gifts that businesses may provide to staff and clients at this time of the year. Sadly, whilst Xmas is a time of giving and good cheer it often leads to considerable confusion as to the tax implications of those gifts and that cheer!**

## Gifts (not entertainment)

The costs associated with providing Xmas gifts (e.g. hampers, gift cards etc) to clients will not give rise to any FBT liability but they will still be tax deductible to the business and GST input tax credits can be claimed, where appropriate.

Gifts provided to employees and their families will have FBT implications but they will also be tax deductible to the business and GST input tax credits can be claimed. However, as a general position where the gift has a value of less than \$300 per person (e.g. \$250 for employee and \$250 for spouse) and it is a one off gift, it will be exempt from FBT as a minor benefit but will continue to

be tax deductible with input tax credits available. Certain other gifts may be exempt from FBT where they fall within specific limited exemptions within the FBT legislation (e.g. airport lounge memberships, tools of trade, etc) regardless of cost.

## Functions

The correct tax treatment of costs associated with Xmas functions can be confusing. It will depend on the tax status of the employer and also the method used to value entertainment for FBT purposes. The table below is a summary of the treatment for tax paying businesses (i.e. it does not apply to tax exempt businesses).

Entertainment costs (e.g. Xmas party costs) are only tax deductible, and GST input tax credits only available, to the extent that FBT is paid on the costs.

The FBT position for a tax exempt employer (not being one which is otherwise exempt from FBT) in relation to costs associated with Xmas functions is as stated in the table where either the 50/50 Split or Register Methods are elected. The only difference relates to where the Actual Method is used. In that case, FBT is always payable on costs relating to the employee and associate regardless of the cost or location of the function (i.e. minor benefit exemption and food and drink on premises exemption are not available). The costs relating to the entertainment of clients will remain exempt from FBT.



	Actual Method	50/50 Split Method	Register Method
Xmas Party < \$300 per head - on or off business premises	Minor Benefit for employee & associate costs - exempt from FBT. No FBT on client costs and not deductible.	Include all costs. 50% subject to FBT & 50% exempt. The portion of costs not included for FBT are non-deductible.	Include all costs. Register percentage subject to FBT. The portion of costs not included for FBT is non-deductible.
Xmas Party > or = \$300 per head - on business premises	Exempt Benefit for employee costs – non deductible. FBT is payable on associate costs. Associate’s costs are deductible. No FBT on client costs and not deductible.	Include all costs. 50% subject to FBT & 50% exempt. The portion of costs not included for FBT are non-deductible.	Include all costs. Register percentage subject to FBT. The percentage not included for FBT is non-deductible.
Xmas Party = or > \$300 per head - off business premises	FBT on employee & associate costs. Costs are deductible. No FBT on client costs.	Include all costs. 50% subject to FBT & 50% exempt. The portion of costs not included for FBT are non-deductible.	Include all costs. Register percentage subject to FBT. The percentage not included for FBT is non-deductible.

# Division 7A

## The ATO's Discretion to Disregard a Deemed Dividend or Allow a Deemed Dividend to be Franked

In December 2010 the ATO issued a Ruling outlining when it will make a decision to exercise its discretion to relieve taxpayers from the application of Division 7A.

The release of the Ruling brings to focus the potential difficulties that may occur in seeking the ATO's discretion. As outlined below, this highlights the need for taxpayers to take appropriate steps to mitigate Division 7A risks and (where appropriate) place themselves in the best position to satisfy the requirements to apply for the discretion.

The Ruling covers the gateway tests to the discretion by examining the meaning of the terms 'honest mistake' or 'inadvertent omission'.

It is noted that even if the gateway threshold test is satisfied, the discretion will only be exercised by the ATO having regard to all of the factors that contributed to the honest mistake or inadvertent omission. The Ruling highlights that the evidence required to show that:

(i) an 'honest mistake' or 'inadvertent omission' has occurred; and (ii) the contributing factors to that mistake/omission will be the subject of a Practice Statement, which the ATO will finalise in due course.

### What steps should a taxpayer be taking?

We expect that the ATO will set a very high threshold that will need to be satisfied before the discretion will be exercised in any particular case. It is therefore, difficult for a taxpayer to rely on the ability of the ATO to exercise its discretion.

This problem in accessing the discretion highlights the need for taxpayers to focus their attention on the appropriate steps to mitigate Division 7A risks in the first place (and, where appropriate, place themselves in the best position to satisfy the requirements to apply for the discretion).

Accordingly, it is important that taxpayers have some form of internal governance procedures that are aimed at ensuring maximum compliance with Division 7A.

Furthermore, due to the complexity of the provisions, it is also more important than ever to ensure that:

- an appropriate review of Division 7A is undertaken by your advisor on an annual basis (prior to the lodgement or due date of the tax returns – whichever comes first); and
- advice is sought where arrangements and transactions occur between a private company and related group entities where one of those entities is not a company.

Where a taxpayer can evidence that reasonable efforts have been made to comply with Division 7A, we believe that it will provide a stronger case for taxpayers to evidence that the relevant Division 7A error has been caused by an honest mistake or inadvertent omission.

# Proposed Flood Levy

**The Government is expected to introduce a one-off levy, payable by middle and high income earners during the 2012 financial year to assist funding the enormous clean up bill from the recent Queensland and Victorian floods.**

Any taxpayers earning less than \$50,000 in the 2012 financial year will not pay the levy, with those earning more paying 0.5% of each dollar earned between \$50,000 and \$100,000, and 1% for every dollar over \$100,000.

The levy, which is expected to raise \$1.8bn will be administered through the PAYG Withholding system for employees, with the levy deducted from their regular wages, or payable by non-employees on lodgement of their 2012 income tax return.

Those who were affected by the floods and claimed the Australian Government disaster recovery payment are not required to pay the levy.

Should you wish to discuss how the levy will affect you, or whether you may be eligible to claim the Australian Government disaster recovery payment, please contact your JR advisor.



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# Anstis Proves A Win For Students

**In November 2010 the Tax Office lost its final appeal in the Anstis case. The case involved a student claiming deductions for self-education expenses against their taxable youth allowance. This decision has paved the way for thousands of taxpayers to amend prior year income tax returns lodged to claim deductions which they may not have been aware they were entitled to.**

The Government has announced that they will be changing the law to deny such deductions, however the change will not be retrospective.

For administrative ease, the ATO will be automatically amending the income tax returns for the years ended 30 June 2007 to 30 June 2010 to include a standard deduction of \$550.

Those taxpayers who can substantiate a claim of more than \$550 can lodge their own amendments rather than accepting the ATO's standard deduction.

The ATO expects that it will issue around 460,000 tax refunds due to the changes and will start writing to affected taxpayers early in the 2011 calendar year to advise of the amendments.

If you received youth allowance in the years ended 30 June 2007 to 30 June 2010, reported the income in your tax return, paid tax in any of these years and did not claim a deduction for self-education, please contact your Johnston Rorke advisor to discuss your options.

## What's Happening at JR

Johnston Rorke ended the calendar year on another sporting high. After years of striving towards the finals in the annual Chartered Accounting Knock Out Touch Football tournament (and not quite succeeding), the 2010 tournament was destined to be our year. Even the postponing of the event numerous times due to wet weather did not dampen our spirits.

Despite waking up to an overcast day on Sunday the 21st of November, the event finally proceeded with both JR teams having a grueling roster of seven 15 minute games in three hours. The competition became even more interesting when the two JR teams finally had the chance to go head to head. This would later be described as the grudge match test to end all tests, and decide once and for all which team was truly better - the JR Jitterbugs (oldies who relied on experience) or the JR Jimmy Recards (young'uns who relied on enthusiasm). Through ups and downs (and injury) the final result was a tie.

However the real proof was in the pudding and in the end after several appeals to the adjudicators the JR Jitterbugs made it through to the finals, beating the Jimmy Recards by one point. From here the team went from strength to strength, to what became an undefeated finals round.

The glory and the trophy was finally ours...but is mysteriously missing from this photo.

This was a great ending to our year of winning. For those who don't remember or who enjoy reliving 2010 highlights, JR took first place in the inaugural MW Swimming Carnival in March 2010, (which current staff should begin training for now, if we are to maintain our winning streak in 2011).

The festive season also started off nicely with JR's Family Christmas Party attracting "adults" and kids. A big jolly guy in a red suit and his oddly dressed mate also showed up (uninvited), much to the delight of the children.

This was followed by the year end staff Christmas party at 'Ching Ching' in the city. The food and hospitality put on by Ching Ching was outstanding and the 2010 Christmas party was another great JR success.



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