A belated ‘Happy New Year’!

We have all been hard at work following the holiday break and I note that even our Federal Parliamentarians have resumed their interplay. It is to be hoped that, in the near future, some part of that interplay will involve publication of the long-awaited federal tax law proposals. Surely we are all tired of the allegations (from one side) of GST increases in quantum and scope and (from the other side) a response of ‘everything is on the table’. It’s time (not in the Whitlamesque sense) to have some substance to consider!

While we await the emergence of substance, this month’s newsletter offerings for your consideration include:

- some forward thinking in relation to the FBT changes in relation to meal entertainment;
- some cautions, following ATO indications that employers may not be conscious of car allowance changes that have now become law;
- some interesting Q&As dealing with such practical matters as GST on swimming lessons offered by some Councils, the FBT minor benefit exemption etc.

We also have a note to keep you up to date on fuel tax.

Regards,

Andrew Orange
TaxEd Team

Salary Packaging – Entertainment benefits to be amended

Last month's newsletter article outlined the practical implications for affected employers in regards to measures relating to changes to salary packaged meal entertainment and entertainment facility leasing expenses (EFLE).

The changes limit the concessional treatment of salary packaged meal entertainment benefits or EFLEs by:

- removing the reporting exclusion for salary packaged entertainment benefits;
- removing access to elective valuation rules when valuing salary packaged entertainment benefits; and
- introducing a cap on exempt or concessionally taxed salary packaged entertainment benefits available to certain employees.

The changes are now law and commence from 1 April 2016, i.e. the 2017 FBT year.

So, how can employees maximise their meal entertainment and/or EFLE concession before the changes take effect?

There does not appear to be any magic formula for employees of affected employers, other than to bring forward their meal entertainment and EFLE expenditure prior to 1 April 2016. Below, we set out three examples relating to:

(i) an all-inclusive holiday package;

(ii) pre-payment of venue hire;

(iii) meal cards.

(i) All-inclusive holiday package

If an employee is considering an all-inclusive holiday in the near future, it would be advantageous for them to fully pay for and have the holiday cost reimbursed by their employer prior to 1 April 2016.

The ATO, via private binding rulings it has issued, considers that an all-inclusive holiday package constitutes an EFLE.

The reimbursement by the employer constitutes an expense payment benefit and upon reimbursement a benefit in the form of an entertainment facility leasing expense has been provided.

Bringing forward such expenditure brings the benefit into the 2016 FBT year and outside of the changes that take effect from 1 April 2016.

(ii) Pre-pay venue hire

If a milestone function is on the horizon - e.g. 50th birthday, wedding - prepay for the function in full and have the employer reimburse the cost.

Such a venue will constitute an EFLE and the same FBT result as discussed in the prior example applies.

(iii) Meal Cards

Meal entertainment cards are commonly provided to employees of employers eligible to utilise the meal entertainment and EFLE concession as a salary packaging benefit.

Typically these cards work as follows:

- the employee is provided with a facility card (e.g. Visa, Mastercard etc.);
- a nominated amount is deducted and paid onto the card from their pre-tax salary each pay period; and
- the employee then uses the card to pay for their meal entertainment and/or EFLE items.

It is at the time of making the relevant purchase that the benefit arises and therefore employees with meal card facilities should ensure that any available funds on their card are utilised prior to 1 April 2016.

Conclusion

There does not appear to be any specific techniques that can be implemented to side step the pending entertainment changes other than to bring forward expenditure on meal entertainment and EFLEs.

Of course, even if this is done, the question will arise as to what the FBT ramifications are should the relevant prepaid expenditure be refunded (for example, if an all-inclusive holiday package is cancelled due to unforeseen circumstances)?

Presumably a loan benefit will arise as the employee now owes the employer an amount in respect of the expenditure that the employer has paid/reimbursed on their behalf. If the employer waives this loan a debt waiver benefit will arise. If the employer keeps the loan on foot on an interest free or low interest basis a loan fringe benefit is likely to arise.

As such, although the 'bring forward' technique has its advantages in regards to the pending entertainment changes, it could lead to unintended FBT consequences should such 'bring forward' expenditure be refunded to the employee.

FBT – Eligible work-related items

The FBT law provides a specific exemption for the provision of an 'eligible work related item' by way of expense payment, residual or property fringe benefit.

The exemption is generally limited to one item per FBT year where the items have substantially the same function, unless the item is a replacement item. The exemption is contained in section 58X of the *FBT Act* and the following items are specifically listed as eligible work related items:

(a) a portable electronic device;

(b) an item of computer software;

(c) an item of protective clothing;

(d) a briefcase;

(e) a tool of trade.

With the advent of technology, items that fall within category (a) above are becoming more and more alike in terms of functionality than ever before. Is a phablet the same as a mobile phone? Are a laptop and tablet substantially identical?

A 'portable electronic device' is not defined in the *FBT Act*. However, the ATO considers the following are common examples of portable electronic devices: a mobile phone, calculator, personal digital assistant (PDA), laptop, portable printer and portable global positioning system (GPS) tablet.

Whether an item has substantially the same function as to one provided earlier in the FBT year is a question of fact.

According to the ATO, 'it will come down to a question of fact and application of judgment based on an understanding of the specifications and functions of different devices as to whether two portable electronic devices have substantially identical functions'.

The ATO has agreed that the following devices are substantially identical:

- a smartphone and a phablet, and
- a tablet PC hybrid and a laptop computer.

However, the ATO has said the following were not substantially identical:

- a tablet PC and a laptop computer, and
- a phablet and a tablet PC

(Please refer to NTLG FBT Subcommittee minutes of meeting, 16 May 2013).

Employers will need to become more vigilant in regards to staff wishing to salary package portable electronic device items, given the ever increasing blur in technology and the functionality of such items. It may be prudent to only allow one item per FBT year if there is any doubt.

For employees keen to acquire, say, a laptop and a tablet PC hybrid, it is suggested this be done over the two months of March and April so that any reimbursement occurs in separate FBT years.

(Editor's note: From 1 April 2016 an employer will be able to provide more than one qualifying work related portable electronic advice with substantially similar functions in the one FBT year. However, this extension of the exemption is ONLY available to employers that qualify as small business entities, that is, entities with an aggregated business turnover of less than $2 million).

FBT – Updates from the ATO Website - Some Traps for Rebatable Employers

The ATO has recently posted on its website a reminder in relation to FBT matters relating to rebatable employers:

Rebatable employers are organisations that qualify for a fringe benefits tax (FBT) rebate.

Rebatable employers should be aware of the following:

- The rebate reduces but does not eliminate an employer's FBT obligation – they may still need to lodge an FBT return if they provide fringe benefits.
- Each employer needs to lodge their own FBT return. Make sure each employer reports separately from other employers who may be part of the same group as them.
- Charities that are institutions must first register with the Australian Charities and Not-for-profits Commission (ACNC) and then seek endorsement by ATO to access the FBT rebate.
- Public benevolent institutions and health promotion charities are not rebatable employers, but may be entitled to an FBT exemption. These employers must register with the ACNC and seek endorsement by it to access the exemption.

Payroll – ATO draws focus to cents per KM allowance changes

Recent press coverage suggests the ATO is concerned some employers may have overlooked changes to the cents per km business travel rules.

We have covered this issue in a previous newsletter. However, it appears that it may be worth another mention.

Effective **1 July 2015** there is only one ATO approved cents per km car rate – 66 cents per km. This rate is applicable to **all** engine sizes.

The ATO is concerned employers may not have considered the implications of the required changes.

Despite the ATO's best efforts to notify employers of the changes it would not surprise us that some (maybe many) employers may have not fully considered the implications of the change.

It should be noted that an employer need not adopt the ATO approved rate, but where the employer does not use the ATO approved rate it should be aware of the implications.

The key issues to keep in mind where an employer pays a cents per km allowance (for business travel) in excess of the ATO rate are:

- compliance with Pay As You Go Withholding requirements;
- The employee's tax position; and
- State Tax Issues.

When is Pay As You Go Withholding required?

Current ATO treatment (in the absence of a specific variation held by a payer) requires PAYG withholding where:

1. If the km rate is equal to or less than the ATO approved rate:
    - Where business kms are up to 5,000 kms – no withholding
    - Where business kms > 5,000 kms – withholding from payments for the excess over 5,000 kms
2. If the km rate paid exceeds the ATO approved KM rate:
    - Where business kms do not exceed 5,000kms per annum, withholding is required on the amount paid in excess of the amount otherwise payable using the approved rate; and
    - Where business kms exceed 5,000kms per annum, in addition to the above dot point, withholding is required on the full amount from payments for the excess over 5,000 kms.

Employee income tax position

Employees should be aware of the implications for claiming income tax deductions and how such deductions need to be substantiated (i.e. use of a log book, keeping of expenditure receipts etc.) where cents per km allowances are paid by an employer in excess of ATO approved rates. This issue is particularly relevant where employers have previously paid at per km rates approved by the ATO for larger engine sizes which have been impacted by the change to a single 66 cent per km rate.

State Tax Issues

State Payroll Tax (if applicable) and Workers Compensation schemes routinely provide an exemption from the definition of wages for amounts paid as allowances being cents per km business travel for amounts paid at or below the prevailing ATO approved rate. Regard should be had to the specific rules in each jurisdiction to ensure no issues exist where the rate paid by the employer exceeds the new ATO approved rate.

Further information:

- Further details regarding the changes are available here.
- The ATO rules regarding PAYGW withholding from allowances are conveniently summarised here.

Eligibility – Proposed Changes to the Guidelines for Public and Private Ancillary Funds

Treasury has proposed changes to the following legislative instruments:

- the *Private Ancillary Fund Guidelines 2009*, and
- the *Public Ancillary Fund Guidelines 2011*.

Although these legislative instruments are referred to as guidelines, you should be mindful that non-compliance attracts sanctions, so it is more appropriate to view them as rules.

Treasury is inviting submissions on the proposed changes. The submissions must be provided by 12 February 2016 (submissions can be made either online or via post). The instructions for making a submission include arrangements for confidentiality that can be invoked.

In addition to the formal text of the changes, there is an Explanatory Statement.

Treasury proposes that the changes will commence on 1 July 2016.

Proposed Changes affecting Public Ancillary Funds (Public Fund)

In overview, the more significant changes applicable to Public Funds comprise the following proposals:

(a) Guideline 14 - The Guideline presently requires that a majority of individuals involved in fund decision-making must be 'individuals with a degree of responsibility to the Australian community as a whole'. An amendment provides that an individual before whom a statutory declaration may be made is a person who meets the responsibility test.

(b) Guideline 17 - The amendment removes the need for notice to the ATO of changes to the Public Fund's governing rules, where the Public Fund is obliged to notify the Australian Charites and not for Profits Commission (ACNC). The proposed changes include other amendments which are designed to avoid performance of an obligation at the behest of the ATO where a similar obligation has already been performed in discharge of obligations to the ACNC. For example, a financial statement (Guideline 27) or audit report (Guideline 29) need not be provided at the request of the Commissioner of Taxation where the financial statement or, as the case may be, auditor report has already been given to the ACNC.

(c) Guideline 19 - The first limb of the minimum distribution requirement for a particular year currently provides for a minimum annual distribution of 4% of the market value of the Public Fund's net assets (as at the end of the previous financial year). The 4% rate is to be replaced by the lesser of two calculated rates - the average of the Reserve Bank's target cash rate over the previous financial year and a rate calculated as set out in a method statement. The rate under the method statement, basically, appears to represent the rate of increase in the market value of the Public Fund during the financial year prior to the year in which the rate applies. The Explanatory Statement describes the intention of the method statement as being a rate which is reflective of 'the investment earnings of the fund (less expenses)' and designed 'to provide greater flexibility in unexpected economic conditions'.

The second limb of the minimum distribution requirement currently provides for a minimum distribution of $8,800 in certain circumstances. It is proposed to omit one of those pre-requisite circumstances, in line with the removal of the 4% distribution requirement of the first limb.

(d) Guideline 26.1 - the note to be added at the end of Guideline recognises that 'A financial report prepared in accordance with Subdivision 60-C of the Australian Charities and Not-for-Profit Commission Act 2012' meets the requirement of Guideline 26.1.

(e) Guideline 30.2 - The investment strategy guideline is to be amended by the addition of two matters which must be considered when formulating the investment strategy. In particular, the investment strategy of a Public Fund is to have regard to 'real or perceived material conflicts of interest (note the difference in terminology between this amendment and the corresponding amendment to the Private Fund Guidelines), with special attention being directed to conflicts of interest affecting fund decision-makers. The Explanatory Statement notes the ATO had identified "a small number of ancillary funds that held substantial investments with related parties or had entered into a number of related party transactions with donors and founders of the fund. The investments of these funds tended to be undiversified, may have been structured to increase tax deductions available to donors, and did not reflect prudent investment strategies that trustees of charitable entities are expected to undertake".

The second new matter to be considered in formulating the investment strategy is, where the Public Fund is a registered charity, that charitable status. The Explanatory Statement suggests that this consideration is also underpinned by the ATO's concern with taxation drivers (rather than pursuit of charitable objects) as noted above.

The penalty for failing to comply with the investment strategy (Guideline 31) is also to be increased.

(f) Guideline 35.1 - This Guideline currently prohibits a Public Fund giving a security over its assets, with the exception of acquisition of financial instruments which the Commissioner allows. It is proposed to allow a further exception of a loan guarantee entered into for the sole benefit of one or more deductible gift recipients.

(g) Guideline 44 - A new note to be added at the end of the Guideline recognises the propriety of the trustee considering non-binding preferences indicated by donors: '… it is good practice for a trustee [of a Public Fund] to review, amongst other things, the purpose(s) of the fund and any non-binding preferences indicated by donors, before making distributions.'

(h) Guideline 50 - The Guideline deals with portability of Public Fund assets - i.e. it sets out the conditions for transfer of assets out of a Public Fund. One amendment makes clear that a Public Fund can only transfer assets to another Public Fund. The other amendment appears to provide that a transfer (the relevant transfer) can only occur where none of the assets of the transferring fund had been received from another Public Fund during the two financial years preceding the year in which a relevant transfer is to be made (although the grammar of the draft Guideline may need further attention).

(i) Repeal of certain Guidelines which provided for Public Funds transitioning under Part 3 of the *Public Ancillary Fund Guidelines 2011* - the repeals relate to Guidelines 52 to 55.

Proposed Changes affecting Private Ancillary Funds (Private Fund)

The changes affecting Private Funds are broadly aligned with those previously (operative in 2011) made, or now proposed, in relation to Public Funds. As readers interested in Private Funds are likely to by-pass the foregoing discussion on Public Funds, for reader convenience the following discussion is self-contained.

In overview, the more significant changes applicable to Private Funds comprise the following proposals:

(a) Guideline 14 - This Guideline presently requires the trustee to include a person, or (in the case of a corporate trustee) include a director, who is an 'individual with a degree of responsibility to the Australian community as a whole'. An amendment provides that an individual before whom a statutory declaration may be made is a person who meets the responsibility test. A further amendment makes clear that the Guideline does not apply to a State/Territory Public Trustee administering a Private Fund.

(b) Guideline 17 - The amendment removes the need for notice to the ATO of changes to the Private Fund's governing rules, where the Private Fund is obliged to notify the ACNC. The proposed changes include other amendments which are designed to avoid performance of an obligation at the behest of the ATO where a similar obligation has already been performed in discharge of obligations to the ACNC.

(c) Guideline 19 - The first limb of the minimum distribution requirement for a particular year currently provides for a minimum annual distribution of 5% of the market value of the Private Fund's net assets (as at the end of the previous financial year). The 5% rate is to be replaced by the lesser of two calculated rates - the average of the Reserve Bank's target cash rate over the previous financial year and a rate calculated as set out in a method statement. The rate under the method statement, basically, appears to represent the rate of increase in the market value of the Private Fund during the financial year prior to the year in which the rate applies. The Explanatory Statement describes the intention of the method statement as being a rate which is reflective of 'the investment earnings of the fund (less expenses)' and designed 'to provide greater flexibility in unexpected economic conditions'.

The second limb of the minimum distribution requirement currently provides for a minimum distribution of $11,000 in certain circumstances. It is proposed to omit one of those pre-requisite circumstances, in line with the removal of the 5% distribution requirement of the first limb.

(d) Guideline 28 - The audit obligation is to be amended in several respects. In particular, certain smaller Private Funds, will be able to elect for a review of its financial statements rather than having them audited.

(e) Guideline 30.2 - The investment strategy guideline is to be amended by the addition of two matters which must be considered when formulating the investment strategy. In particular, the investment strategy of a Private Fund is to have regard to perceived or actual material conflicts of interest (note the difference in terminology between this amendment and the corresponding amendment to the Public Fund Guidelines), with special attention being directed to conflicts of interest affecting fund decision-makers. The Explanatory Statement notes the ATO had identified 'a small number of ancillary funds that held substantial investments with related parties or had entered into a number of related party transactions with donors and founders of the fund'. It added that '[t]he investments of these funds tended to be undiversified, may have been structured to increase tax deductions available to donors, and did not reflect prudent investment strategies that charitable entities are expected to undertake".

The second new matter to be considered in formulating the investment strategy is, where the Private Fund is a registered charity, that charitable status. The Explanatory Statement suggests that this consideration is also underpinned by the ATO's concern with taxation drivers (rather than pursuit of charitable objects) as noted above.

The penalty for failing to comply with the investment strategy (Guideline 31) is also to be increased.

(f) Guideline 35.1 - This Guideline currently prohibits a Private Fund giving a security over its assets, with the exception of acquisition of financial instruments which the Commissioner allows. It is proposed also to allow a further exception of a loan guarantee entered into for the sole benefit of one or more deductible gift recipients.

(g) Guideline 37.1 - This is a new provision that qualifies the requirement (Guideline 37) that a Private Fund trustee must keep fund assets separate from all other assets. The new provision recognises the use, by Public Trustees and licensed trustee companies, of common funds for investment purposes.

(h) Guideline 40 - The Guideline prohibits a Private Fund from carrying on a business. The amendment provides a contravention of the prohibition does not occur 'merely because …[the Private Fund's] investment activities' amount to carrying on a business due to the repetition, volume and regularity of those activities. A corresponding qualification is already included as paragraph 40.1 of the *Public Ancillary Fund Guidelines 2011*.

(i) Guideline 43 - The Guideline qualifies the prohibitions on payments to certain persons listed in Guideline 42 by, *inter alia*, permitting Private Fund assets to be used to reimburse the trustee of the fund for reasonable expenses incurred on behalf of the fund. The amendments add an example of such reasonable trustee expenses - namely where the trustee provides reasonable remuneration benefits to individuals (e.g. these would include directors and employees of the trustee) who are listed in Guideline 42.

(j) New Guideline re: portability - A proposed new guideline (Guideline 51A will permit (with the agreement of the Commissioner of Taxation) one Private Fund (the transferring fund) to transfer assets to another Private Fund (the receiving fund) where the three specified conditions listed in the amendment are met. Basically, the three conditions are:
   - all of the net assets of the transferring fund must be transferred to the receiving fund;
   - the transferring fund has met its minimum distribution for the year in which the transfer occurs; and
   - none of the assets of the transferring fund were received from a third Private Fund during the two previous financial years.

(k) Repeal of certain Guidelines which provided for Private Funds transitioning under Part 3 of the *Private Ancillary Fund Guidelines 2009* - the repeals relate to Guidelines 53 to 58.

Conclusion - Public Funds and Private Funds

Overall, the respective proposed amendments affecting Public Funds or Private Funds are likely to be welcomed. However, trustees and other persons involved in the operation and management of such funds should consider the amendments in detail.

Eligibility – ACNC Focuses on non-lodgers

ACNC Media Release - Charities at risk of losing their status

On 12 January 2016, the Australian Charities and Not-for-profits Commissioner (ACNC) warned that charities that have not completed their 2015 Annual Information Statements (AISs) — which is a legal requirement to maintaining their registration — may face serious consequences, such as revocation of their status, for not meeting this obligation.

The due date for the 2015 AIS for charities that have a reporting period of 1 July to 30 June is **31 January 2016**. The ACNC has identified that 19,000, out of the 30,000 charities that are registered, have not yet submitted their AIS.

The ACNC has further identified that 3,200 charities are at immediate risk of losing their charity status for failing to submit two AISs.

The information in the AIS is used to populate the Charity Register. The ACNC is committed to providing an accurate and up-to-date register for members of the community to access when making decisions about where to donate or whom to volunteer with.

Charities that have their status revoked by the ACNC will also lose access to Commonwealth charity tax concessions such as deductible gift recipient status, income tax exemption, FBT rebates and GST concessions.

Further Information:

- ACNC's announcement
- More information for charities about reporting annually.

Fuel Tax – Updates on the ATO website

The ATO has reminded taxpayers that:

- fuel tax credit rates increased from 1 February 2016 - rates are indexed twice a year (February and August) in line with the consumer price index;
- taxpayers should check the applicable rate before completing their BASs - see business rates and, for certain additional information, non-business rates; and
- the ATO website has a Fuel tax credit calculator to assist in claiming the right amount.

FBT Q&A – Claiming car expenses in respect of a vehicle provided via novated lease

Question:

An employee is provided with a car by their employer via a novated lease arrangement. The car is available for the private use of the employee.

The employee salary sacrifices from pre-tax dollars the lease expenses as well as insurance and registration. The employee personally pays for all other running costs from their post-tax dollars.

Can the employee claim a deduction in his/her tax return for business use of the motor vehicle based on cents per kilometre?

Answer:

Under a novated lease arrangement, the employer is considered to be the holder and provider of the car for FBT purposes.

Where the employees' use of the vehicle includes private as well as work-related travel a fringe benefit is provided to the employee and this will generally incur a fringe benefits tax for the employer.

In instances where a motor vehicle is provided by an employer to an employee for their exclusive use with some portion of private use, section 51AF of the *Income Tax Assessment Act 1936* prohibits employees from claiming deductions in respect of a car expense. The section prevents double dipping so that an employee cannot claim expenses already factored into the formulas used to calculate fringe benefits tax assessed to the employer.

FBT Q&A – Loan benefit and minor benefit exemption

Question:

An employer purchases bulk annual Myki cards at a 10% discount for the benefit of their employees in effect, providing one Myki card per employee that they can use for 365 days.

To recoup the money the employer will deduct on a monthly basis the amount owed from employee's after tax salary.

The employer has effectively paid for the annual cards upfront and accounts for the transaction as a loan to the employee. No interest is charged to the employee.

Can the employer utilise the minor benefit section 58P exemption?

Answer:

For FBT purposes a "loan" includes an advance of money, the provision of credit, the payment of money on account of another if there is an obligation to repay or any other transaction that is a loan in substance.

Thus a loan fringe benefit arises if an employer makes a loan to an employee or allows a debt due to remain outstanding after the due date for payment has passed. The loan exists as long as the debt remains unpaid.

In this case the loan is interest free and therefore no 'deferred interest' loan arises after the first 6 months, so only one loan exists per employee for the 12 month period.

Such an arrangement should be eligible to benefit from the minor benefit exemption which appears to be confirmed by the ATO in their Interpretative Decision ID 2002/926.

GST Q&A – learn to swim programs

Question:

Are Council Learn to Swim program fees GST-free?

Answer:

For Learn to Swim fees to be GST-free (under section 38-85 of the GST law) they must be for a first aid or lifesaving education course. Such a course must meet two requirements.

The first requirement is that a first aid or lifesaving course is one that principally trains individuals in one or more of the following:

(i) first aid, resuscitation or other similar lifesaving skills, including personal aquatic survival skills but not including swimming lessons;

(ii) surf lifesaving; or

(iii) aero medical rescue.

It appears the ATO generally accepts that personal aquatic survival skills include:

- sculling;
- treading water;
- floating;
- basic swimming skills;
- safe entry and exit from the water, and
- techniques of clothed swimming survival.

Provided that the courses offered principally involve training adults and children in personal aquatic survival skills as described above, and are not considered general swimming lessons, the first requirement would be met.

The second requirement is that the course must be provided by an entity that is:

(i) registered or otherwise approved by a State or Territory authority that has the responsibility for registering (or otherwise approving) bodies that provide such courses; or

(ii) approved to provide such courses by a State or Territory body that has the responsibility for approving such courses; or

(iii) that uses, as the instructor for the course, a person who holds a training qualification for that course that was issued by Austswim Limited; or

(iv) that uses, as an instructor for the course, a person who holds a training qualification for that course that was issued by Surf Life Saving Australia Limited; or

(v) that uses, as an instructor for the course, a person who holds a training qualification for that course that was issued by the Royal Life Saving Society-Australia; or

(vi) that uses, as an instructor for the course, a person who holds a training qualification for that course that is a qualification (in life saving) specified in, or of a kind specified in the regulations.

Provided relevantly qualified instructors conduct all of the classes or programs the second requirement would also be satisfied.

Where both requirements are satisfied, the courses provided by would be GST-free as a first aid or lifesaving course. If either (or both) requirements are not met then the fees would be subject to GST.

GST Q&A – selling second-hand goods and tax invoices via auction

Question:

Local Council has some small plant and equipment items that are excess to our needs, and have organised for these to be sold by a local auctioneer business. Given that Local Council is registered for GST, we assume the items would be sold inclusive of GST. However, the question arising is regarding the paperwork. The auctioneer provides the buyer with a receipt detailing the items purchased and price paid (but without mentioning GST), along with the buyer's premium (with GST - auctioneer is registered).

Given that the auctioneer is acting as agent for Local Council in the sale of the goods, is it Local Council's responsibility to provide an invoice to the buyer for GST on the items sold?

Answer:

Based on the information provide to us in the question, we assume Local Council is selling the items to the customers and the auctioneer is simply engaged by Local Council to provide auctioneer services.

While the auctioneer may be acting as agent for Local Council, the responsibility for GST will rest with Local Council.

As Local Council is GST-registered the sale of the items are subject to GST. If the Purchaser requests a tax invoice Council would be required to provide one. We note that there are rules regarding agency in the GST law, and that an agent can issue a Tax Invoice (with the agent's name and ABN) and provided these rules are met the tax invoice is valid for the Purchaser to claim any GST credit. However, this does not change who is responsible for the GST - this rests with the principal (in this case the Local Council)

We have assumed the auctioneer's tax invoice is issued to Local Council, and this would allow Local Council to claim the GST credit on the auctioneer fee.

We expect that Local Council would only receive the net proceeds: sale price less auctioneer fee. However, this is two separate transactions for GST purposes. Unless there are fees also charged by the auctioneer to the Purchasers (i.e. buyers premium), the GST on sale by Local Council would be based on the total price the Purchaser pays for the items. The GST liability for Local Council would be 1/11th of that amount.