With the last seat declared, and the new Commonwealth Parliament commencing this month, the political foray of the past couple of months has concluded in one sense. However, one anticipates considerable ongoing political activity, as the Government seeks to secure passage of its budget through the Senate. It remains to be seen whether the focus on the budget diverts attention from consideration of more wide-ranging tax issues.

With the Government still shaking off the torpor of caretaker mode, this month newsletter includes discussion of the GST intricacies of insurance, the FBT treatment of HELP funded courses, and an alert in relation to the broader ramifications of the change to the cents per km rate. The Q&As provide a feast ranging over GST, Payroll, salary packaging and FBT issues – enjoy!

We are always keen to address topical matters – if something is causing you a problem, let us know.

For those few people who have not yet renewed your TaxEd membership, you will need to act quickly. From this month, the full text of most articles will only be accessible to current members.

Regards

Andrew Orange

TaxEd Team

GST – Insurance proceeds

The GST regime contains special rules for insurance.

There are two basic components of insurance: the premium and the settlement.

Premiums

The insurance premium is generally the consideration provided to obtain the benefits under the insurance policy. Depending on the type of insurance offered, the premium may be subject to GST or be GST-free. Below is a summary of common insurance types and the GST treatment:

- Health Insurance – GST-free
- Life Insurance - Input Taxed
- Commercial Property Insurance – GST
- Motor Vehicle Insurance – GST
- Workers Compensation Insurance – GST
- Residential Property Insurance – GST
- Contents Insurance - GST

Whether the entity paying the insurance premium can claim a GST credit will depend on whether:

- the premium is subject to GST;
- the entity paying the premium is GST-registered; and
- the acquisition is made for a creditable purpose.

Example 1:

Assume a GST-registered company carries on its consulting business from a commercial office building. The supplies made by the company are subject to GST. The company takes out contents insurance and pays the GST-inclusive premium to the insurer. The company would be entitled to claim a GST credit for the acquisition of the insurance policy as the company is GST-registered, carrying on an enterprise and makes the acquisition for a creditable purpose.

Example 2:

Assume an individual who is not GST-registered takes out contents insurance for the contents of their home and pays the GST-inclusive premium to the insurer. The individual would not be entitled to claim a GST credit for the acquisition of the insurance policy as the individual is not GST-registered and is not making the acquisition for a creditable purpose. Even if the individual is GST-registered (e.g. because they carry on an enterprise as a sole trader), we have assumed in this example that the contents insurance is a private acquisition that has no connection to the individual's sole trader business activities. Accordingly, the individual would not be entitled to claim a GST credit for the acquisition of the insurance policy.

Settlements

As mentioned above, there are special rules relating to GST and insurance particularly when considering the GST treatment of insurance settlements.

When an insurer settles a claim it will either make a payment of money, or a supply (or both a payment of money and a supply).

Broadly, the payment or the supply made by the insurer is not treated as consideration for a supply by the insured or any other entity. Similarly, the insured entity does not have a GST liability when receiving the payment or the supply from the insurer. However, the above rules only apply where the insured has notified the insurer of the extent to which the insured entity is entitled to claim a GST credit on the premium.

Therefore, the GST treatment of the settlement will depend on:

- whether the insured entity is entitled to claim a GST credit for the insurance policy taken out; and
- whether the insured entity has notified the insurer of the extent to which the insured is entitled to claim the GST credit.

To assist in illustrating these GST implications, we will use the two examples referred to above. For simplicity, we have also limited the examples to situations where the insurer is making a cash payment on settlement of the claim.

Example 1 continued:

The GST-registered company has paid a premium of $110 and is entitled to a full GST credit of $10. Assume the company has notified the insurer that it is entitled to a full GST credit.

There is an electrical accident at the Company premises which causes some fire damage to some office furniture and computer equipment. The GST-inclusive cost to replace the equipment is $11,000. The company makes the claim, which is accepted by the insurer. The insurer pays the company $10,000.

The payment by the insurer to the company is not treated as consideration for a taxable supply. Therefore the company is not making any taxable supply to the insurer and the company does not have any GST liability on the receipt of the $10,000. Similarly, the insurer has not made any creditable acquisition, and is not entitled to claim any GST credit based on the payment of the $10,000.

The company acquires replacement equipment from a third party supplier for $11,000 including GST. Provided the company holds a tax invoice and the company has made the acquisition for a creditable purpose, the company would be entitled to claim GST credits of $1,000. The net cost to the company is $10,000. As the company has received $10,000 from the insurer, the net position for the company is commercially neutral.

Example 2 continued:

The non GST-registered individual has paid a premium of $110 but is not entitled to any GST credit. Assume the individual has notified the insurer that it is not entitled to any GST credit.

A water leak at the individual's house causes some damage to some furniture and carpet. The GST-inclusive cost to replace the items is $11,000. Individual makes the claim, which is accepted by the insurer. The insurer pays the individual $11,000.

The individual acquires the replacement items from a third party supplier for $11,000 including GST. As the individual is not GST-registered it is not entitled to claim any GST credits for these acquisitions. The cost to the individual is $11,000. As the individual has received $11,000 from the insurer, the net position for the individual is commercially neutral.

The payment by the insurer to the individual is not treated as consideration for a taxable supply. Therefore the individual is not making any taxable supply to the insurer and the individual does not have any GST liability on the receipt of the $11,000. Similarly, the insurer has not made any creditable acquisition, and is not entitled to claim any GST credit based on the payment of the $11,000.

Decreasing Adjustments

While in Example 2 it appears that the cost to the insurer is greater ($11,000 instead of $10,000), the GST provisions contain a special rule for insurers for situations where there is no entitlement to a GST credit for the premium paid. In these circumstances the decreasing adjustment mechanism (DAM) is triggered, and the insurer is entitled to a decreasing adjustment of 1/11th of the settlement amount.

If a partial GST credit is available on payment of the premium then only a partial decreasing adjustment is available to the insurer.

Example 2 continued further:

As mentioned above, the individual was not entitled to claim any GST credit for the contents insurance premium paid, and notified this to the insurer. The insurer paid $11,000 to the individual.

The DAM will apply in these circumstances and the insurer will be entitled to claim a decreasing adjustment. As the individual is not entitled to any GST credits at all, the decreasing adjustment is 1/11th of the settlement amount - that is, $1,000 (being 1/11th of $11,000).

Under Example 2, the result for the insurer is that it will have a net settlement payment cost after taking into account GST of $10,000.

For completeness, if we assume the individual was entitled to a partial GST credit - say 30% - the decreasing adjustment available to the insurer is calculated based on the following formula:

Decreasing Adjustment = 1/11th x settlement amount x (1 - extent of GST credit)

= 1/11th x $11,000 x (1 - 30%)

= $1,000 x 70%

= $700

While the DAM does not appear to make sense when looking at a single insurance premium that has a claim against it - that is, only $10 of GST is collected on the premium whereas a $1,000 GST decreasing adjustment arises on the settlement - the DAM operates across all premiums and claims. An insurer will seek to charge total premiums which at least cover the expected settlement payments. If an insurer charges total premiums of $1.1m (to entities that are not registered) and has total settlement payments on those policies of $990,000 the overall result for the insurer from a GST perspective would be a GST liability of $100,000 and a decreasing adjustment of $90,000. In effect, the insurer has accounted for GST of $10,000 on the profit of $110,000 (aggregate premiums of $1.1m - $990,000 = $110,000).

GST – Changing to monthly tax periods if in GST refundable position

GST registered organisations occasionally go through periods of significantly increased expenditure (e.g. construction of new buildings). This can result in entitlements to input tax credits (ITCs) exceeding GST payable. If this occurs, consideration could be given to changing to monthly tax periods.

Tax Periods

Within the GST regime entities may be able to report for GST purposes annually, quarterly or monthly.

Entities with a turnover of greater than $20m are compulsorily required to adopt monthly tax periods.

Generally, entities would have quarterly tax periods ending on 30 September, 31 December, 31 March and 30 June. However, entities that are voluntarily GST-registered can elect to report GST annually. Also, entities that have quarterly tax periods and have an annual turnover under $20m can elect to adopt monthly tax periods.

The ATO website provides general information on tax periods.

Changing from Quarterly to Monthly

The major benefit of monthly tax periods is a quicker refund of any net GST receivable, which will assist with cash flow and budgeting. The downside is increased administration (having to prepare a BAS twelve times a year instead of only four).

An election to use one month tax periods is provided under s. 27-10 of the *GST Act*. There are no conditions that need to be met other than the entity needing to 'notify the Commissioner in the approved form'. As far as we understand the ATO has not developed any specific written election format to be used. It is also understood that the ATO will respond to a telephone request in which the election is made – in which case this is best (fastest) approach. However this must be done by an individual authorised to talk to the ATO on behalf of the organisation. Alternatively, the organisation can make the request in writing.

The election takes affect from the day specified in the notice, however it must be 1 January, 1 April, 1 July or 1 October. It should also be noted that the start date can generally (under ATO administrative practice) be backdated to the most recent of the above start dates, if the request is made in the first month of that quarter. In other words, a request made in the month of July to have a 1 July start date should be able to be processed by the ATO. However, it is understood that ATO practice is that a request made in August or September will have a 1 October start date.

Organisations should be mindful that once the election takes effect, they are generally required to continue using monthly tax periods for a minimum of 12 months. After that, the election can be withdrawn and the entity can revert to their previous tax periods (generally quarterly).

If the entity's tax period turnover threshold is below $20 million, organisations that have not been in the monthly tax period system for 12 months can nevertheless request the ATO to revoke their election. The Commissioner will make a decision on whether to revoke the monthly tax period election within 12 months of the start date on a case by case basis.

Payroll – PRT and Workers Compensation impact of ATO cents per km car allowances changes

In our previous article Payroll - ATO draws focus to cents per KM allowance changes from January 2016 newsletter we focused on the impact of ATO changes to cents per KM car allowances changes that took effect in July 2015.

With the commencement of the 2016/17 PRT and Workers Compensation years, the ATO changes will impact PRT compliance and may impact Workers Compensation compliance.

Issues for PRT compliance

Each State and Territory PRT system provides an exemption for cents per km car allowances that relate to business travel in an owned employee vehicle up to a prescribed limit. For the PRT year ended 30 June 2016, the prescribed limit was the former ATO large car limit for the preceding year (i.e. the year ended 30 June 2015). The prescribed threshold for 2015/16 PRT compliance was therefore 77 cents.

With the ATO's 1 July 2015 change to introduce a single cents per km rate of 66 cents, monthly PRT returns commencing July 2016 should now use the 66 cents per km rate as the prescribed threshold.

Accordingly, for PRT purposes, if you reimburse employees at a rate in excess of 66 cents, the excess will be subject to PRT.

Issues for Workers Compensation compliance

Care should be taken to ascertain whether precise treatment of car allowances in your jurisdiction to see whether equivalent changes are required to internal processes to ensure Workers Compensation rules. For example, Victorian and South Australian Workers Compensation compliance are impacted in the same way as PRT.

Other State and Territory rules however may vary and should be checked to determine your compliance obligations.

FBT – Do you need HELP with employee course fee reimbursements?

One of the most popular queries we receive on the Q&A is in relation to the reimbursement of employee HELP funded course fees.

The Issue

Where an employee is undertaking a course of study that is relevant to their income earning activity, then the costs associated with that study are allowable as self-education deductions. Thus where the employer pays or reimburses such costs, the taxable value of the expense payment fringe benefit is reduced to zero by application of the otherwise deductible rule.

The issues are whether:

- repayments of Government funding of course fees, or
- payment of Government subsidised course fees

are deductible, so as to enable the otherwise deductible rule to apply to these.

Types of Government Assistance

The HELP scheme provides assistance for students to pay their student contributions (HECS-HELP), tuition fees (FEE-HELP and VET FEE-HELP), overseas study expenses (OS-HELP) and student service and amenities fees (SA-HELP).

It seems that students enrolled in a Commonwealth supported place (CSP) are eligible to access HECS-HELP, whereas Fee-HELP is aimed at full fee-paying places. A Commonwealth supported place is a subsidised place at public universities and at a few higher education providers of national priority areas such as nursing and education. The Government subsidises a Commonwealth supported place by paying part of the fees directly to the provider and the Commonwealth supported student pays the reminder of the fees through a 'student contribution'.

Applicable Legislation

The effect of s. 26-20 of the *ITAA 1997* is that the following payments are not deductible:

- a student contribution amount within the meaning of the *Higher Education Support Act 2003* paid to a higher education provider (within the meaning of that Act);
- a payment made to reduce a debt to the Commonwealth under Chapter 4 of that Act (i.e. a HELP Debt);
- a payment made to reduce a debt to the Commonwealth under Chapter 3 of the *Trade Support Loans Act 2014*; and
- a payment made to reduce a debt to the Commonwealth, or to a participating corporation, under Chapter 2B of the *Social Security Act 1991* or Part 4A of the *Student Assistance Act 1973*.

Deductibility of Repayments/Fees

Under s. 20-10 ITAA 1997, repayments of HELP loans are not deductible, whether they be for:

- HECS-HELP;
- FEE-HELP;
- VET FEE-HELP;
- OS-HELP; or
- SA-HELP.

In regard to course fees, deductibility will come down to whether the course is a CSP. Even though the Australia Government subsidises CSPs, students still have to make a payment towards their education and this is known as the 'student contribution' amount. Students enrolled in a CSP will either pay their student contributions upfront or, if eligible, can access the HECS-HELP scheme to pay their student contributions. A student contribution paid to the higher education provider is not deductible.

If the course is not a CSP then no student contribution amounts are made. These are generally full fee paying courses. These course fees are not affected by s. 26-20 and are deductible where the relevant income earning nexus exists.

The following two Interpretative Decisions issued by the ATO provide a good summary of the issue:

- ID 2005/27 – This ATO ID notes that repayments of FEE-HELP debts are not deductible.
- ID 2005/26 – This ATO ID notes that a distinction has to be made between the deductibility of the FEE-HELP and the underlying debt which was paid with FEE-HELP:

> 'Even though the taxpayer has obtained a loan for all or part of the fees for the course under FEE-HELP, this does not preclude the taxpayer from claiming a deduction for the expenses incurred in relation to the course.'

In conclusion, the key for employers is to establish whether the particular course being undertaken is Commonwealth subsidised. If so, the fee amount paid by the student to the institution is a non-deductible student contribution. The easiest way to do this is for the employer or the employee to confirm this with the particular institution.

If the course is not Commonwealth subsidised, the fee is deductible to the extent the course is for self-education purposes. HELP funding is separate to the course fee and is merely a loan facility.

It is our understanding that most undergraduate courses (e.g. Bachelor of Business, Bachelor of Arts etc.) are Commonwealth subsidised and therefore no deduction is allowed for these course fees. Most post-graduate studies are not Commonwealth funded and therefore course fees can be deducted accordingly where the relevant income earning nexus exists.

Eligibility – Towards a one-stop charity shop

At present, Commonwealth legislation aims to have a single point for determination of charity status of an organisation – the Australian Charities and Not for Profits Commission (ACNC). The ACNC undertakes this administration through applying the Commonwealth statutory definition of 'charity', as set out in the *Charities Act 2013*. (The ACNC is established under its own legislation, which empowers it to regulate charities. In an article last month, we referred to one its regulatory powers in relation to responsible persons.)

Access to Commonwealth Tax Concessions

Access to Commonwealth concessions for charities is governed by further criteria administered by other Commonwealth bodies. Notably, taxation concessions for charities are administered by the ATO. Effectively, access to Commonwealth concessions is based on your organisation establishing it is a charity and this is established once, with special tax treatment available to such charities being contingent on meeting further conditions.

When your organisation registered with the ACNC, you would likely have sought access to various Commonwealth taxation concessions simultaneously with applying for ACNC registration. While the application for ACNC registration contains information pertinent to ACNC, the form also invites applicants to nominate the Commonwealth tax concessions that are sought and to supply the information needed to access these concessions. The result is a seamless process of a one-stop shop for Commonwealth recognition of a charity – albeit that, behind the scenes, multiple Commonwealth bodies are making decisions.

This is not to say that you must apply for the Commonwealth tax concessions which are relevant to your organisation at the time of its registration with the ACNC. Your organisation can apply for further Commonwealth concessions later, but without the need to again show it is a charity.

> Note:
>
> Your organisation will have to meet ongoing obligations in order to maintain its charity status, such as meeting the governance standards laid down by the ACNC. However, these continuing obligations affect both its continued access to previously obtained concessions as well as access to any new concessions.

The State Regime and Charities

State and Territory legislation grant concessions to charities or to charities that meet specified criteria. This legislation may contain a definition of 'charity' (which may be intermeshed with criteria used to limit the ability to access the concession) or utilise the general (common law) concept of a charity. A particular State or Territory will invoke the concept of 'charity' in multiple Acts, with each Act having its own definition of the term. The various Acts are likely to be administered by different government departments of the relevant State/Territory.

The outcome of this is threefold:

- Firstly, your organisation will have to establish it meets the Commonwealth test of 'charity' noted above, in order to access Commonwealth concessions.
- Secondly, it is likely to have to meet (multiple) State/Territory tests in order to access State/Territory special treatment of charities.

- Thirdly, it is likely to have to prove its requisite charitable status to each State/Territory government department which administers the relevant charity concession.

Action behind the Scenes

The ACNC is advocating that States and Territories join the Commonwealth streamlining process by:

(a) adopting the Commonwealth definition of ‘charity’ for all State/Territory legislative purposes – a common national definition;

(b) like the Commonwealth approach, where the State/Territory seeks to limit access to a concession to certain charities, the limitation could still apply - the relevant State/Territory government department would determine whether that limiting condition is met.

(c) States/Territories allowing the ACNC to determine whether an organisation meets the common definition of charity identified in item (a) above.

(d) In the alternative to applying approach (c) to the common national definition of ‘charity’, a State/Territory could have its own centralised State/Territory authority determine whether the national definition is met for all purposes of that State’s/Territory’s legislation. (This approach would involve a second layer of red tape. While this might give rise to a saving in allowing the same material to be given to Commonwealth and State/Territory decision-makers, it is not inconceivable that in some instances different cross border conclusions might be drawn.)

In essence, the ACNC is proposing a national approach to charity administration in which:

- An organisation meets the current Commonwealth statutory test of ‘charity’; and
- States and Territories would draft their tax and other concessions on the basis that they would apply to charities that meet that test and the State/Territory legislation would only impose such further conditions/limitations as the State/Territory decided its fiscal and government policy required – the State/Territory government departments would only need to consider those further conditions/limitations.

It is understood that to date, discussion has occurred between the ACNC and State/Territory Revenue Offices. One might anticipate that an administrative unification would not be feasible without State/Territory legislative change, so that reform in the short term is not anticipated.

However, the conversation has begun.

One suspects the conversation might be lengthy, as States/Territories will want to proceed warily where their revenue is involved. It is not quite as simple as ceding power to a national body such as Australian Companies Securities and Investment Commission (ASIC) as occurred when States/Territories closed their various Company Offices and, more recently, transferred responsibility for registration of business names to ASIC.

GST Q&A – Funding to upgrade club facilities

Questions:

A local cricket club (the Club) requires their cricket nets to be upgraded. The Club has $20,000 in funds and has also received $20,000 as a grant. Council will be completing the upgrade to ensure that the works are completed correctly as it is on Council land. The Club would have completed the upgrade if they were permitted to.

The total amount the Club has for the project is $40,000 and the Club has agreed to pay this to Council.

When Council invoices the Club, does the $40,000 include GST?

Answer:

The GST treatment between Council and the Club depends on the arrangement/conditions between the parties. As the Club is making a payment to Council, the question is whether Council is making a taxable supply to the Club in return for the payment. For there to be a taxable supply (by Council) there needs to be sufficient nexus between any supply made and the consideration or payment.

On the facts provided, it seems unlikely that the contribution from the Club would amount to consideration for a supply, and hence there would be no taxable supply made by Council. This would arise as Council is doing works to improve its own land. Assuming that Council already allows the Club to use the nets, and this will continue after the improvements are completed, the contribution paid by the Club does not appear to entitle the Club to any special or new rights in relation to the use of the facilities.

Therefore, the outcome would generally be that the $40,000 does not include any GST.

However, the position would be different if there is a contract in place between Council and the Club, which states that the Club has requested the works and Council has agreed to undertake/procure the works provided the Club makes the agreed contribution. The difference is subtle, but where the works are being done pursuant to a request from the Club, and are provided on condition that the Club make the contribution, it appears to establish the necessary connection between the supply (the works) and the consideration (the contribution from the Club). In these circumstances Council would be making a taxable supply to the Club (the entry into the legally binding obligation to undertake the works) and the contributions would attract GST.

By way of summary:

1. Assuming the arrangement does not have sufficient nexus to a supply by Council, Council is not making a taxable supply. Council would invoice $40,000 to the Club, and Council would not be subject to GST. The net result for Council would be neutral (assuming a net cost of $40,000 after claiming any GST credits, and a contribution of $40,000).
2. Assuming the arrangement does have sufficient nexus to a supply by Council, and Council is making a taxable supply, then Council would invoice $40,000 to the Club (which would be GST-inclusive) and Council will have a GST liability of $3,636. The result is that Council would be out of pocket by $3,636. If Council is making a taxable supply and does not want to be out of pocket, Council would need to invoice the Club $44,000.

Note:

As with most tax matters, the implications will depend on the precise facts and circumstances of each situation which may or may not be reflected in writing whether as an agreement or general understanding between the parties. We recommend that entities always clarify the background facts and review any written documentation to assist in determining the tax implications.

Payroll Q&A – Payments to an employer in relation to director fees – subject to PAYGW?

Question:

A 3rd party entity seeks to appoint a person as a director and secures approval for the person to act as a director from the person's employer – a director's fee is required to be paid to the person's employer – is the PAYGW required?

Answer:

It is common practice for an entity to make an employee available to act as a director for a 3rd party entity with any director's fee payable required to be paid to the entity that employs the person who will act as a director.

To deal with the PAYGW treatment of this scenario, the ATO has issued a PAYGW variation (which it updates annually) that provides no PAYGW is required (and no payment summary required to be issued) provided the agreed director's fee is required to be paid to the entity that employs the person who acts as a director.

See a link to the ATO variation at PAYG Withholding Variation: Company Directors and Office Holders.

Explanatory material for the variation can be viewed at:

http://law.ato.gov.au/atolaw/view.htm?locid=%27EPY/ESVARIA40%27&PiT=99991231235958

The explanatory material provides the following useful example:

> '10. For example, a medical research entity contracts a hospital for a specialised medical practitioner to join its board to manage a medical research project. The hospital provides a specialised medical practitioner as its representative to join the board. The medical research entity makes payments to the specialised medical practitioner who is required, under his contract with the hospital, to pass those payments on to the hospital. Although the payments are for the services of the specialised medical practitioner, the medical research entity is not required to:
>
> - withhold from these payments, and
> - issue a payment summary to the specialised medical practitioner.'

Payroll Q&A – Is a payment in lieu of notice required to be included as ordinary times earnings for SGC purposes.

Question:

Is a payment in lieu of notice required to be included as ordinary times earnings for SGC purposes.

Answer:

Yes, it is accepted practice that payment in lieu of notice in a termination scenario is ordinary times earnings and liable to SGC.

A useful ATO summary that outlines the ATO view on whether common payment types are ordinary times earnings can be viewed at:

http://calculators.ato.gov.au/scripts/net/SGCalculatorWeb/help/Amount.aspx?ms=Businesses

Salary Packaging Q&A – Employee contributions towards a car fringe benefit

Question:

An employee has recently entered into a salary sacrifice arrangement whereby it has been agreed that novated lease payments will be made by the employer and all other car expenses will be paid by the employee from after-tax dollars.

It is our understanding that the payment of car expenses by the employee in this manner will constitute an employee contribution towards the benefit and will reduce the taxable value accordingly. Are E-tag and car parking costs included as part of the employee car expenses total?

Answer:

E-tag and car parking costs are not included as part of the employee car expenses total.

A car expense for the purposes of the car fringe benefit rules is defined to mean an expense incurred on:

- registration or insurance for the car
- repairs to or maintenance of the car, and
- fuel for the car.

Bridge and road tolls and car parking fees do not fall within the above definition and so do not contribute towards a reduction in the taxable value of the benefit by way of employee contribution.

However, the ATO does accept that car washing expenses are expenses to do with maintenance of the car and, as such, these costs can be included as employee contributions.

FBT Q&A – Does the hiring of a marquee constitute an entertainment facility leasing expense?

Question:

We are a PBI employer and for our annual end of year function we hired a marquee and had it set up in the nearby botanical gardens with a pop up bar facility and catering.

The provision of the food and drink we are comfortable is meal entertainment. Is the hiring of the marquee considered an entertainment facility leasing expense?

Answer:

Yes.

Under the definition of 'entertainment facility leasing expenses', expenses incurred by a person must be the hire or lease of a corporate box, boat, plane or other premises or facilities for the purpose of the provision of entertainment.

The ATO accept that a marquee is a facility for the purposes of the above definition. Their detailed reasoning can be found in Interpretative Decision ID 2009/141.