With the passage of 1 July, we wish you all a happy new (financial) year!

The Federal Election has left tax reform and business in limbo, as we all await the final outcome.

The major present preoccupation of tax reform centres on the treatment of individual superannuation. This is a matter dear to us all as individuals, but less significant to our organisational readership. However, we add a note of caution for individuals (and an associated 'heads up' to organisations, as they interact with staff) to be mindful of the mooted changes for this new financial year to amounts that can be salary sacrificed without exceeding the permitted concessional ceilings – let's hope for clarity sooner rather than later.

This month, our newsletter has a marked skew (not intentional) to matters pertaining to a diversity of eligibility issues, including discussion of a particular ACNC governance standard, fuel tax, access to franking credit refunds, and the mutuality principle. On FBT, we look at the circumstances in which cars can become 'workhorse' vehicles. Amongst the Q&As you will also find an 'extended' discussion of the application of GST to grants.

As an incidence of the turn of the financial year, it is also timely to remind those readers who have not already renewed TaxEd membership that you will need to do so in order to continue to access your TaxEd benefits.

We look forward to ongoing receipt of your questions. We also value your suggestions for topics that you would like to see addressed in our newsletter and seminar offerings in 2016-17.

Regards

Andrew Orange

TaxEd Team Member

FBT – Modified cars and the 'workhorse' exemption

A car that is not a taxi, utility or panel van will qualify as a car eligible for exemption under s 8 of the FBT Act if it is not designed for the principal purpose of carrying passengers.

According to MT 2024, this criterion is to be determined by multiplying the designed seating capacity (including the driver) by 68 kg and, where the total passenger weight so determined exceeds the remaining 'load' capacity, the vehicle is to be treated as being designed for the principal purpose of carrying passengers. The total load capacity is the difference between gross vehicle mass less basic kerb weight.

TD 94/19 indicates additional considerations in determining the principal purpose for which a vehicle, other than a taxi, utility or panel van was designed. Apart from having regard to the load carrying capacity, regard should also be given to factors including (but not limited to) the following:

- the appearance and presentation of the vehicle;
- any relevant promotional literature;
- the emphasis evident in marketing;
- the vehicle's specifications; and
- passenger carrying capacity.

The ATOs view with regard to the modification of vehicles is set out in MT 2033 as follows:

> '7. ... a vehicle's design is generally established at the time of manufacture. In order to change that design it would be necessary that the modifications effect a permanent alteration to the vehicle.
>
> 8. A clear example of this would be the process involved in the production of hearses. Under this, a station wagon body is extended, the rear doors removed, flush panelling fitted and the compartment behind the driver's seat suitably modified.
>
> 9. Whether or not modifications to a car satisfy the test detailed in paragraph 7 needs to be determined on the facts of the particular case. However, as a general rule, the requirement that modifications effect a permanent change to the car would be satisfied where they are not capable of being readily reversed such that the car could, if required, be used alternatively as a passenger or non-passenger car on a regular basis. The fact that re-conversion may be made difficult by the bulk of any equipment or goods regularly stored in the rear section is not relevant for this purpose; rather, satisfaction of the requirement is to be found in the nature of the modifications themselves.
>
> 10. Simply removing the rear seat or bolting it down would not be sufficient for this purpose. However, if, as has been put to this Office, that were to be done in conjunction with the fixing of a rigid floor panel, the reinforcement of internal panels, the fixing of a protective screen behind the driver's seat and the fixing of shelving, etc., to a service vehicle, it would be accepted that the modifications were such as to bring the vehicle within the ambit of sub-section 8(2). Of course, the modifications would need to extend throughout the entire rear area, including that previously devoted to the rear seat. Simply fixing shelving etc., to the area behind the rear seat location would not bring the vehicle within the ambit of sub-section 8(2).'

In cases where, for example, a station wagon or 4WD vehicle is permanently modified by folding and bolting down the rear seats and then affixing a flat floor over the top that cannot be readily reversed, it appears reasonable to argue that the vehicle is no longer designed for the principal purpose of carrying passengers. In such instances, the 'workhorse' exemption is capable of applying, provided private travel is minor, infrequent and irregular.

Note, however, that the minor, infrequent and irregular requirement must be met at all times during the relevant FBT year. As a result, the exemption will not be available for FBT year in which the modification occurs where the car is already held by the employer.

Salary Packaging – Super Guarantee shortfall

Just about every payroll officer in the country should already know that employer superannuation contributions must be paid quarterly so that the employer has no exposure to the Superannuation Guarantee Charge. Failure to make the contributions by the due date opens up an administrative burden of late payments to be calculated and made, calculations of interest payable to cover the detriment suffered by the employees by the late payment, penalties and preparation of multiple forms for lodgement with the ATO. The cost of all of this compliance can easily outweigh the detriment suffered by the employee.

Employer super contributions apply up to a ceiling amount of salary per quarter. This ceiling is called the maximum contribution base. For the 2015-16 income year it is $50,810 per quarter (equating to an annual salary of $203,240). Any employee with a salary higher than this is only entitled to 9.5% super on their salary up to this amount.

What you may not know is that on 1 July each year the maximum contribution base for super is indexed. So from 1 July 2016 the maximum contribution base is $51,620 (annual equivalent: $206,480). If 9.5% of super is not charged on the higher amount for relevant employees then a SGC shortfall arises, causing all the headaches noted above.

The difference in actual super contributions paid for an employee on this is very small though – there is an additional $810 of salary per quarter which super needs to be paid on, and so at 9.5% this is a mere $76.95 of contributions missed.

The lesson to learn here is that if you have any employees with salaries/packages over $200,000 then you may want to double check the employer super paid for them from 1 July 2016.

Eligibility – Are your 'responsible persons' truly responsible? – ACNC Governance Standard 4

An entity registered with the Australian Charities and Not-for-Profit Commission (ACNC) is required to be controlled by persons (its responsible persons) who meet certain suitability standards. This article considers the ACNCs view of the minimum steps an organisation should take in order to establish that its initial, and subsequently appointed, responsible persons meet the requisite standards.

Who is a responsible person?

The term responsible person refers to the persons who are responsible for the governing of the charity. The ACNC views these persons as comprising the following:

- Incorporated Association – members of the committee of management of the association.
- Company incorporated under *Corporations Act 2001* (Cth), for instance a company limited by guarantee – the company directors.
- Indigenous corporation established under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) – the directors of the corporation.
- Trust – any trustees who are individuals and the directors of any corporate trustee.
- Co-operative – directors of the co-operative.
- Organisations incorporated by legislation/charter – need to consider the incorporating legislation/chare, but its responsible persons might be described as trustees, directors, council members, etc.
- Unincorporated Association - as the precise nature of the association will dictate who are its responsible persons, the ACNC has provided a lengthy discussion of its view.

Note that an organisation's responsible persons will include, but are not limited to, office bearers such as the president, vice-president, treasurer, etc.

In relation to persons who are involved in day to day organisational management, such as CEOs etc., the ACNC observes:

> 'While the roles of CEO, company secretary and public officer are important for running your charity, the person in these roles can only be a responsible person if they are a member of your charity's governing body, such as its board or management committee.
>
> Just because a chief executive officer (CEO), a chief financial officer (CFO) or other officer attends board meetings to report to the board, this does not make them a responsible person.'

Similarly, persons who are invited to attend board meetings on an *ad hoc* basis/address the board (but do not have the rights of other board members, such as the right to propose or vote on formal motions) are unlikely to be viewed as a responsible person. Conversely, a person who does not have an official title (e.g. the founder of a charity) and who may attend and vote at board meetings and/or guide the direction of the charity may amount to being a responsible person in relation to the organisation.

Further information: Responsible persons - board or committee members. (The Act creating the ACNC (the Act) refers to a responsible entity (definition: s 205-30), but in conformity with conventional practice, this article adopts the ACNC terminology of responsible person.)

What are the organisation's fundamental governance functions in respect of appointment of responsible persons?

The organisation must:

(i) Ensure that its responsible persons are suitable – comply with Governance Standard 4; and

(ii) Ensure that its responsible persons are aware of, and comply with, their duties – Governance Standard 5.

Governance Standard 4 is considered below. Governance Standard 5 will be considered in a future article.

What minimum steps does an organisation have to take to ensure that its responsible persons are suitable to be responsible persons?

(i) Steps – the formal framework

Division 45 of the Act empowers the ACNC to establish minimum governance standards. The standards are set out in the regulations and an organisation's initial (and ongoing) registration with the ACNC is predicated on compliance with the governance standards. (e.g. see s 25-5(3)(b) and s 35-10 of the Act.)

Governance Standard 4 is set out in Regulation 45.20. In essence, an organisation must take reasonable steps to ensure a responsible person is neither:

(a) disqualified from managing a corporation (within the meaning of the *Corporations Act 2001*); nor

(b) disqualified by the ACNC Commissioner (Commissioner), at any time during the preceding 12 months, from being a responsible entity of a registered organisation.

The organisation has ongoing obligations to like effect. It must be, and remain, satisfied that each of its responsible persons meet both the tests set out in subparagraphs (a) and (b). If the organisation is unable to be satisfied the tests are met, it must take reasonable steps to remove the non-complying responsible person.

Points to note:

- The test set out in subparagraph (a) applies to any responsible person. It is not limited to directors of an organisation which is a company, as the Commissioner notes in the practical guidance mentioned below.
- The test set out in subparagraph (b) flows from the ability of the Commissioner to disqualify a person from being a responsible person if the person has previously been suspended or removed under Division 100 of the Act as a responsible entity, the Commissioner has given the person notice of the disqualification, and the Commissioner 'reasonably believes that disqualification is justified having regard to the objects of the Act'.
- The Commissioner may permit a person (who has failed either test) to be a responsible person for a particular registered organisation, where the Commissioner believes this is reasonable in the circumstances.
- Where the Commissioner has disqualified a person from being a responsible person, the Act provides for an objection to the Commissioner's decision.

- Other legislation (e.g. the legislation governing the incorporation of the organisation) may impose further constraints on who may participate in the control of a particular type of organisation.
- In relation to the test in subparagraph (a), the ASIC website has a searchable register of disqualified persons – it would be prudent to search under previous as well as current names.
- Search of the ASIC register is not definitive. Disqualification from managing a corporation can arise due to certain events (e.g. certain criminal history, bankruptcy status, etc.) that may not be recorded in the register and further action outlined in the practical steps below should be taken.
- In relation to the test in subparagraph (b), the ACNC envisages listing the relevant persons on a register maintained by the ACNC. (At the time of writing, the ACNC website states 'The ACNC has not yet disqualified any responsible persons'.)

(ii) Steps - the practical framework

The Commissioner has supplemented the foregoing regulatory requirements, by issuing practical guidance on these matters. The following practice points should be noted:

(a) Search the ASIC Disqualified Persons Register in relation to existing and potential responsible persons. (While the ACNC registration application form does not require this to be done in relation to initial responsible persons, you can expect that the ACNC will do so, especially if the form shows that it has not been done.)

(b) Search the ACNC Register of Disqualified Persons. (As noted above, at the time of writing, the ACNC website indicates that there are not any disqualifications under this head.)

(c) Require each existing or potential responsible person to sign a declaration confirming that they are not disqualified and that they understand what it means to be disqualified. The ACNC has published a pro-forma declaration (with capacity to download the template as a Word Document) on its website.

(d) As a starting point in relation to point (c), you might refer the person to the ACNC discussion of Disqualification from being a responsible person. The discussion takes the person through three questions to help determine whether a person is disqualified. The discussion also directs disqualified persons to the ACNC when seeking its dispensation to become a responsible person in exercise of the ACNC's statutory discretion.

(e) If your organisation suspects that a responsible person is disqualified, it must take further steps to be satisfied that the person is not disqualified. The ACNC guidance discusses removing unsuitable responsible persons, noting that reasonable action to do so is required. It also states that if the processes to do so are unsuccessful or do not exist, the ACNC should be contacted and/or consideration given to contacting another regulator such as the one administering bodies under which your organisation is incorporated. If there is a good reason for a disqualified person to be a responsible person, you can also seek dispensation through exercise of the ACNC's legislative discretion.

In conclusion, we observe that you may like to consider developing a formal policy to support compliance with the suggested process raised in the points above. This may merely involve minor (if any) adjustments to existing policies that currently ensure compliance with legislation under which your organisation is established (or with which it must otherwise comply). In some instances, it may involve a more extensive process.

You may also like to consider reinforcing that policy with appropriate constitutional authority to facilitate exclusion of persons who are not eligible to be responsible persons.

It is appreciated that compliance can create sensitive issues. A published policy that alerts prospective appointees to the requirements (and their underlying legislative basis) before seeking/being offered appointment may avoid embarrassment and promote a harmonious organisation. It also alerts prospective appointees to the ability to contact the ACNC in relation to the exercise/prospective exercise of its dispensatory discretion ahead of appointment.

Eligibility – Fuel Tax Credits post script – incidental travel on public roads

In our previous article 'Incidental Travel on Public Roads' (published in March 2016 newsletter), we discussed the release of Practical Compliance Guideline 2016/4, where the ATO considers guidelines for what is fair and reasonable apportionment of taxable fuel by certain types of vehicles between travel that is on public roads and on non-public roads.

The type of vehicles are:

- Grader;
- Backhoe loader;
- Front-end loader;
- Wheeled excavator;
- Forklift;
- Wheeled bulldozer;
- Fertiliser spreader;
- Combiner Harvester; and
- Tractor.

PCG 2016/4 accepts that travel on public roads in the above vehicles is no more than incidental to their off-road purpose. Accordingly, no apportionment is required for travel on public roads.

PCG 2016/4 is stated to apply to tax periods ending on or after 31 March 2016.

PCG 2016/4 includes the following useful example:

> Example 2 - travel by a tractor
>
> 10. XYZ Council uses a tractor that is less than 4.5 tonnes that has mower and slasher attachments to maintain the grass on the parks, recreational ovals and school grounds in the council area. The tractor is housed at the council's vehicle depot.
>
> 11. The tractor travels from the depot to the various parks, ovals and school grounds for the purpose of maintaining the grass. The distance travelled varies depending on the location of the park, oval or school and whether the vehicle is travelling directly from the depot to each location or between these locations.
>
> 12. The tractor is not a vehicle for transporting goods or passengers; its main use is to pull and operate the mowing and slashing equipment.
>
> 13. For practical compliance purposes, it is accepted that all of the vehicle's travel is on non-public road areas. This is irrespective of whether the travel is from the depot to each location or between the locations.

In our recent Fuel Tax Credit seminars (which are available to members as recordings – if you missed them click here) one of the common questions was "...what was the ATO position in relation to this issue prior to the release of PCG 2016/4?"

Unfortunately the position pre-PCG 2016/4 was less favourable and apportionment of fuel use was required in certain circumstances that are now excluded from the need for apportionment by PCG 2016/4.

The ATO's previous position is succinctly set out in the following extract from FTR2008/1:

Travel 'incidental to' a vehicle's main use

61. For the purposes of subsection 43-10(4), the expression 'incidental to' means:

- not essential, not necessary or not integral to; and/or
- minor or subordinate to.

Road transport

62. Travel on a public road by a vehicle whose main use involves the use of a public road for the transportation of passengers or goods is not travel incidental to the vehicle's main use. Travel by such a vehicle on a public road is always integral to the main use of the vehicle. Subsection 43-10(4) has no application to travel by a vehicle engaged in the transportation of passengers or goods by public road.

63. Travel on a public road by a special purpose vehicle that is designed for road travel and ordinarily travels on a public road[10] is not travel incidental to the vehicle's main use if the travel is integral to that main use, for example, travel to and from a work site for any vehicle will not be incidental.

Vehicles for off-road use

64. Travel by a vehicle that is designed primarily for off-road use [11] and which is used mainly in off-road activities is incidental where it occurs in the course of the vehicle's off-road use and:

- is insubstantial in extent; or
- is so interspersed with the vehicle's off-road use (its main use) so as to be part of that off-road use.

65. The determination of whether travel is incidental to a vehicle's main use turns on the particular facts of each case and requires a process of evaluation, after weighing all the relevant factors.

66. Where a vehicle is at the work site and commences its off-road activity, for example grading or spraying water, travel on a public road during the course of this activity is incidental to its main use where it is insubstantial in extent or is so interspersed with its main off-road use so as to be part of that off-road use.

Example 15: travel on a public road that is incidental to the vehicle's main use - harvester

67. Roo Minate Enterprises Ltd (Roo Minate) carries on a primary production business on an agricultural property. Parts of the property are separated by a public road. Roo Minate uses a harvester it owns to harvest crops on its farm. In the course of harvesting, the harvester travels 2 kilometres on the public road to get from one part of the property to another.

68. The harvester's main use is to harvest crops. The harvester only travels on the road to go from one part of the farm to another during the course of harvesting. The travel on the public roads is insubstantial in extent, and occurs in the course of the harvester's off-road use. The travel on the public road is incidental to the harvester's main use.

Example 16: travel on a public road that is incidental to the vehicle's main use - water cart

69. In the course of carrying on its enterprise, Waterwize Enterprises (Waterwize) uses a water cart on a construction site that straddles a public road. To move between parts of the construction site, the water cart has to travel along or across the public road. The distance travelled along the public road is no more than 500 metres.

70. The water cart travels along or across the public road on several occasions during the day. The water cart's main use is off road to transport and spray water within the construction site for dust suppression.

71. The water cart's travel on the public road occurs in the course of its off-road use. The travel on the public road is incidental to the water cart's main use as it is so interspersed with its off-road use so as to be part of that vehicle's off-road use (main use).

Example 17: travel on a public road that is not incidental to the vehicle's main use - water cart

72. Following on from Example 16, the water cart is garaged overnight at Waterwize's depot. At the beginning of each day the water cart travels from the depot to the construction site and returns to the depot at the end of the day.

73. This travel is not in the course of the water cart's off-road use and is not incidental to the cart's main use.

Example 18: travel on a public road that is not incidental to a vehicle's main use - concrete truck

74. Joshua's Enterprises Ltd (Joshua) transports concrete in its plastic state to construction sites. Joshua uses a concrete truck to maintain the concrete in its plastic state by agitation while the concrete is transported from a concrete plant to building construction sites.

75. The main use of the concrete truck involves using public roads to transport concrete in its plastic state. The travel that the truck undertakes in transporting the concrete is not incidental to the vehicle's main use. This travel is integral to the main use of the vehicle.

Example 19: travel on a public road that is not incidental to the vehicle's main use - harvester

76. Reapers Grim Co (Reapers) carries on a contract harvesting enterprise. Reapers uses its harvester to provide harvesting services to a number of farms located across a district. The harvester is not floated and needs to travel on a public road to relocate from one job to another.

77. The harvester's main use is to harvest crops. However, the harvester uses the public road to travel from one property to another. The travel on the public roads does not occur in the course of the harvester's off-road use. The travel on the public road is not incidental to the harvester's main use.

We specifically direct your attention to the contrast in Examples 16 and 17. Similarly, the contrast in Examples 15 and 19 is instructive in demonstrating the notion of the circumstances in which the ATO previously viewed travel on public roads as in incidental to the main use of the vehicle.

Eligibility – ATO updates Mutuality Guidelines

For some not-for-profit entities, their objects and activities are such that 'blanket' income tax exemption is not available on the basis they do not align with specific or general categories of exemption available under the income tax legislation.

The Mutuality Principle may be available to such entities when determining whether there is any income tax liability on 'profits' derived from the entities' dealings.

Types of entities that may benefit from the Mutuality Principle include social clubs, business and professional associations (refer to our previous article Exploring the requirements for income tax exemption and concessional FBT status for community service organisations from May 2016 newsletter as to why these types of entities may not get income tax exemption) and sports clubs. For example, sports clubs commonly do not attract income tax exemption on the basis entertainment/gaming/food & beverage activities outweigh any sporting purpose.

The operation of the Mutuality Principle is well detailed in the ATO's recently released 'Mutuality and Taxable Income' guide. The new guide is effective from 1 July 2015 and replaces the previous guide of the same name issued in June 2010.

The Guide includes the following description of the Mutuality Principle:

> 'The mutuality principle is a legal principle established by case law. It is based on the proposition that an organisation cannot derive income from itself.
>
> The principle provides that where a number of persons contribute to a common fund created and controlled by them for a common purpose, any surplus arising from the use of that fund for the common purpose is not income.
>
> The principle does not extend to include income that is derived from sources outside that group.
>
> **Organisations that can access mutuality**
>
> The characteristics of organisations that can access mutuality typically include:
>
> - The organisation is carried on for the benefit of its members collectively, not individually.
> - The members of the organisation share a common purpose in which they all participate or are entitled to do so.
> - The main purpose for which the organisation was established, and is operated, is the common purpose of the members.
> - There is a common fund that gives effect to the common purpose and all the members contribute to it.
> - All the contributions to the common fund are applied for the collective benefit of all the members, in line with the common purpose.
> - Different classes of memberships may exist with varying subscription rates, rights and entitlements to facilities.
> - The members have ownership and control of the common fund.
> - The contributors to the common fund must be entitled to participate in any surplus of the common fund.*
>
> *If an organisation's constituent document prevents it from making any distribution to its members, and this is the only thing that prevents an amount of its income from being a mutual receipt, the organisation is not prevented from accessing mutuality for income tax purposes.'

The tax impact of the Mutuality Principle on an entity is generally understood as:

- receipts from 'mutual dealings' with members are not assessable income, and

- expenses to get mutual receipts are not deductible

The Guide provides useful commentary on:

- the tax lodgment rules and tax rates for not-for-profit entities that are not income tax exempt;
- the circumstances in which a dealing between the entity and a member is a mutual dealing, as not all dealings between a person who is a member and the entity will be a mutual dealing;
- the circumstances in which a person is a 'member' of the entity – which is very relevant to the question of whether dealings with persons described as 'temporary members', 'reciprocal members', 'social members' etc. are in fact members and therefore the manner in which revenue and expenses related to dealings with those persons should be treated; and
- apportionment issues where revenue/expenses are applicable to both dealings with members and non-members.

We will be trawling through the full detail of the new Guide looking for any major changes in ATO thinking that impact the above key Mutuality issues. We will outline our findings in a coming TaxEd article.

Eligibility – ATO releases application form for refund of franking credits relating to the 2015-16 income year

As we mentioned in our article 'Certain Not-for-Profit Entities Entitled to Cash Refunds of Franking Credits' (published in December 2015 newsletter), near the end of each financial year the ATO writes to organisations that applied for and received a refund of franking credits in the prior income year. It provides them with a 'refund of franking credits application package'.

The paper version of the form included in the package needs to be completed (it cannot be done electronically) and returned to the ATO, in order to obtain a refund.

Organisations eligible for a refund should soon receive their form, if they have not already. Those organisations that have not received their form can contact the ATO on 1300 130 248 to order one.

This number can also be used by organisations who are seeking to claim a refund for the first time, as they will not automatically receive a 'refund of franking credits application package'.

The ATO has recently updated its website discussion of franking credit refunds and you may like to review the current material - see 'Completing your application for refund of franking credits 2015-16'.

GST Q&A – Should grants of financial assistance be GST-inclusive or GST-exclusive?

Background:

Council have Community Development Fund Grants that are issued annually to local community groups.

Agreements are signed that state that the funds granted must be spent in a specified way. If they are not spent within a specified timeframe as per the funding agreement then the funds must be returned to Council. For example, the funds may be required by a community group to be spent on a specific piece of equipment. The applications by the community groups include quotes for the equipment being requested which include GST.

The local community groups may or may not be registered for GST.

We have reviewed GSTR 2012/2 but are still not entirely clear on its application.

Questions:

1. Should GST be included on the grant being provided by Council?

2. If the community group is registered for GST, and the equipment equals $4,400 including GST, is there a specific requirement for the grant to be based on the GST inclusive or exclusive amount? If we agreed to fund the full amount, should the grant be for $4,400 (the GST-inclusive amount) or $4,000 (the GST-exclusive amount)?

3. Would this be any different whether the local community group is not registered for GST?

Answer 1:

The answer to this question will depend on whether the payment is treated as consideration for a supply. Where this is the case, in this response we have assumed the other conditions are met and the supply will be a taxable supply.

GSTR 2012/2 sets out (from paragraph 15) the fundamental concepts on which financial assistance payments are based, including that:

- there must be a sufficient nexus between the financial assistance payment made by the payer and a supply; and
- all the facts and circumstances need to be considered, including written agreements and any other terms and conditions.

Therefore, the facts and circumstances of each separate payment arrangement need to be considered.

If the payment is made in return for a specific obligation, then it appears the payment will be treated as consideration for a supply.

You state that funds must be spent in a specified way, and if not spent within a specified timeframe the funds must be returned. We refer to examples 10 and 11 in GSTR 2012/2. Based on these examples, if Council and the payee (the Group) enter into an agreement whereby the Group enters into an obligation only to spend the funds in a certain way, this would appear to indicate sufficient nexus between the payment and a supply (the obligation).

Where this sufficient nexus exists the payment is consideration for a taxable supply.

Where there is insufficient nexus, the payment is not consideration and no taxable supply would arise.

The answer to the other two questions will depend on whether the grant is made for a taxable supply, and whether the Group is GST-registered (or not).

Answers 2 and 3:

Assuming the grant IS payment for a taxable supply

Assuming the provision of the grant is in return for a taxable supply from the Group, and Council is agreeing to fund the total cost of the equipment, then Council should pay the GST-inclusive amount.

For example:

(a) The GST-registered Group makes a taxable supply to Council for $4,400. The Group has a GST liability leaving it with net funds of $4,000.The Group buys equipment for $4,400 (including GST) and claims a GST credit of $400. The net cost to the Group is $4,000. Council would provide $4,400 (including GST) to the Group and request a tax invoice. Council would claim a GST credit of $400. Net funds provided by Council equals $4,000.

(b) Where the Group is not GST-registered it will not make a taxable supply to Council. The Group buys equipment for $4,400 (including GST) and cannot claim a GST credit (as the Group is not GST-registered). Net cost to the Group is $4,400. Council would provide $4,400 (and would not be able to claim a GST credit, as the Group has not made a taxable supply to Council). Net cost to Council is $4,400.

Assuming the grant is NOT a payment for a taxable supply

If the provision of the grant is not in return for a taxable supply, then:

(a) Council would only pay the GST-exclusive amount to a GST-registered Group (as the Group's total cost would be net of GST credits it can claim). That is, the Group would buy the equipment for $4,400 (including GST) and claim a GST credit of $400. Net cost to the Group is $4,000. Council would pay the Group $4,000.

(b) Council would pay the GST-inclusive amount to a non-GST-registered Group (as the Group's total cost would be GST-inclusive). That is, the Group would buy the equipment for $4,400 (including GST) and would not be entitled to claim any GST credit. Net cost to the Group is $4,400. Council would pay the Group $4,400.

FBT Q&A – Commercial car parking station

Question:

We provide employees with on-site car parking. The daily amount charged by nearby kerbside meter parking exceeds the car parking threshold. There are no other commercial car parks within a one kilometre radius. Does a car parking fringe benefit arise?

Answer:

For a car parking fringe benefit to arise there must be a commercial car parking station within a one kilometre radius of the premises on which the car is parked and the lowest fee charged for all day parking by the operator of the car parking station is in excess of the car parking threshold on the first day of the FBT year.

A commercial parking station, in relation to a particular day, is defined in subsection 136(1) of the FBT Act as:

> *'... a permanent commercial car parking facility where any or all of the car parking spaces are available in the ordinary course of business to members of the public for all-day parking on that day on payment of a fee, but does not include a parking facility on a public street, road, lane, thoroughfare or footpath paid for by inserting money in a meter or by obtaining a voucher.'*

It is clear based on the above definition that kerbside street meter parking does not constitute a commercial car parking station. As such, a car parking fringe benefit does not arise.

FBT Q&A – Travel diary requirements

Question:

Must a travel diary be completed every time an employee travels overnight for work purposes and what detail must a travel diary contain?

Answer:

Travel away from home for six or more consecutive nights, requires that a diary or similar document be maintained to record the particulars of each business activity before the travel ends, or as soon as possible afterwards. The particulars you must record are:

- the nature of the activity
- the day and approximate time the business activity began
- how long the business activity lasted
- the name of the place where you engaged in the business activity.

A travel diary is not required where the travel is:

1. within Australia and was exclusively undertaken in the course of the employee deriving his or her salary or wages; or

2. outside Australia and is an "international aircrew expense payment benefit".

Miscellaneous Taxation Ruling MT 2038 has a good outline of travel diary requirements: http://law.ato.gov.au/atolaw/view.htm?locid='MTR/MT2038/NAT/ATO