We are excited to announce that we have a free training session for all TaxEd members, in conjunction with the ATO, to offer you a better understanding of Single Touch Payroll and how it will affect you. This will be held in February 2017 – you can register for this session below.

This month be sure to take a look at our article "GST – Countertrade Transactions" – addressing the ATO's newly released Practical Compliance Guideline PCG 2016/18.

We are also preparing training for the 2017 FBT season, you can attend one of our public sessions in your state's capital city (details will be confirmed soon), or if you are interested in one of our technical panellists coming to you, this can also be arranged, give us a call or send us an email to discuss your requirements.

If we don't speak to you before the holiday period, we wish you a safe and happy festive season. Please note our office will be closed from 5.00pm Thursday 22 December and will re-open at 9.00am Monday 9 January.

Warm regards

The TaxEd team

GST – Consultants/Contractors and Reimbursements

It is reasonably common for consultants and contractors providing services to seek reimbursement for costs - such as travel expenses - in addition to the charge for services. However, the GST treatment of such reimbursements depends on the arrangements entered into between the contractor and the Customer, and such arrangements may be shown in different ways on the tax invoice.

This is an interesting issue and the GST implications depend on both commercial issues and GST technical interpretation.

As with most GST matters it is important to understand (and/or clarify) the facts and circumstances of each case which generally means understanding the commercial terms of the transaction. We have set out in this article some examples of the typical different transactions that arise and the GST implications of such arrangements.

What have the parties agreed?

With consultants/contractors, the GST treatment will depend on what has been agreed between them (the Contractor) and their Customer. The net effect may be the same but the underlying basis may differ. This is best dealt with via illustrative examples.

Base Example Facts

Assume a Contractor is engaged to perform two days services on site for a Customer. Broadly the arrangement could be that the Contractor is entitled to charge $1,100 per day including GST, plus travel and accommodation costs will be covered. The daily fee is relatively uncontroversial, but it is the travel and accommodation components that may give rise to different GST treatments. In this analysis, let's assume the travel costs comprise an airfare at $440 inclusive of GST and accommodation at $660 inclusive of GST.

By way of example, the following scenarios could arise:

1. the Contractor provides a fixed fee quote of $3,300 inclusive of GST;
2. the Contractor provides a fee quote as follows:

   'For consulting services, two days at $1,100 per day = $2,200 (including GST), plus reimbursement of travel and accommodation costs as incurred. Costs estimated as airfare $440 (incl. GST) and accommodation $660 (incl. GST).'

3. the Contractor provides a fee quote as follows:

   'For consulting services, two days on-site at $1,100 per day = $2,200 (including GST). The daily rate does not include travel costs which are to be paid over and above the daily rate. Such costs are to be as agreed between the parties. The Contractor acknowledges that where it incurs such costs it is doing so as agent for the Customer and will provide the Customer with copies of the tax invoices by way of substantiation.'

Under the first and second scenarios the Contractor appears to be acting in its own capacity when providing the services including the travel and accommodation. That is, the Contractor is acting as the principal in the transaction. In these circumstances, typically the consultant is also able to choose his/her own airline and accommodation venue.

Under the third scenario, the Contractor would be acting it is own capacity (principal) when providing the services, but would be acting as agent for the Customer with regard to the costs.

Principal vs Agent

The ATO has set out its view of principals and agents in its public ruling GSTR 2000/37.

Broadly, if a principal makes and supply through an agent the GST liability rests with the principal and not the agent.

Similarly, if an agent makes an acquisition on behalf of a principal, the input tax credit (ITC) entitlement arises to the principal and not the agent. With an acquisition made by an agent, while the tax invoice may be made out in the agents name this still meets the tax invoice requirements, but the ITC is to be claimed by the principal and not the agent.

In addition to setting out the GST implications on transactions involving agents, the ruling also makes the following specific comments (in paragraph 27) regarding agents and reimbursements of expenses:

> '27. An agent may incur an expense (for example, motor vehicle expenses) in connection with the carrying on of your enterprise. If you reimburse the agent for that expense, you may be entitled to claim an input tax credit for the reimbursement under Division 111. Section 111-5 allows a principal to claim an input tax credit on a reimbursement made to the agent for an acquisition (being a taxable supply of the supplier) made by the agent while the agent was acting on the principal's behalf. This entitlement exists even though the requirements of section 11-5 (which is about what is a creditable acquisition) are not met.'

Illustrative Examples

Below are some illustrative examples representing typical transactions entered into commercially highlighting the different treatments that may arise for cost reimbursements.

Scenario 1

Under this scenario the Contractor is acting in its own capacity and not as agent. Therefore the travel and accommodation costs are incurred by the Contractor and, provided the acquisition has been made for a creditable purpose and the Contractor holds a valid tax invoice, the Contractor would be entitled to claim ITCs for those costs. Assuming the costs are as referred to above, the Contractor would be entitled to claim $100 as an ITC ($40 for the airfare and $60 for the accommodation). The cost to the Contractor net of ITCs would be $1,000.

The Contractor is also invoicing the Customer in its own capacity. Practically, we expect the Contractor would issue an invoice along the following lines:

Tax Invoice	Net	GST	Total
For two days consulting services on-site. Fee as agreed.	$3,000	$300	$3,300
Total Payable			**$3,300**

Accordingly, the Contractor would have a GST liability of $300 (being 1/11th of the $3,300). The net position for the Contractor would be as follows:

Invoice (including GST)	$3,300
Less GST liability	-$300
	$3,000
Less Costs including GST	-$1,100
Plus ITCs	$100
Consulting fees (net of GST/ITCs)	$2,000

Under this scenario if, for example, the Contractor was only required to pay $330 for the airfare this would not change the amount invoiced to the Customer (as the arrangement if for a fixed agreed fee). However, this would decrease the costs of the Contractor and increase his profit, as per below:

Invoice (including GST)	$3,300
Less GST liability	-$300

	$3,000
Less Costs including GST	-$990
Plus ITCs	$90
Consulting fees (net of GST/ITCs)	$2,100

Scenario 2

Under this scenario the Contractor is also acting in its own capacity and not as agent (like in Scenario 1). Therefore the travel and accommodation costs are incurred by the Contractor and, provided the acquisition has been made for a creditable purpose and the Contractor holds a valid tax invoice, the Contractor would be entitled to claim ITCs for those costs. Assuming the costs are as referred to above, the Contractor would be entitled to claim $100 as an ITC ($40 for the airfare and $60 for the accommodation). The cost to the Contractor net of ITCs would be $1,000.

The Contractor is also invoicing the Customer in its own capacity. Accordingly, the Contractor would have a GST liability of $300 (being 1/11th of the $3,300). Practically, we expect the Contractor would issue an invoice along the following lines:

Tax Invoice	Net	GST	Total
For two days consulting services on-site.	$2,000	$200	$2,200
Plus Reimbursement of travel expenses as incurred:			
- airfare	$400	$40	$440
- accommodation	$600	$60	$660
Total	$3,000	$300	$3,300
Total Payable			**$3,300**

Note, as the Contractor would be entitled to an ITC for the costs incurred, when invoicing the Customer the Contractor will be liable for GST and so needs to add GST to the cost reimbursements (as shown above). Accordingly, the Contractor would have a total GST liability of $300 (being 1/11th of the total amount ($3,300) invoiced to the Customer). The net position for the Contractor would be as follows:

Invoice (including GST)	$3,300
Less GST liability	-$300
	$3,000
Less Costs including GST	-$1,100
Plus ITCs	$100
Consulting fees (net of GST/ITCs)	$2,000

Under this scenario if, for example, the Contractor was only required to pay $330 for the airfare this would change the amount invoiced to the Customer as the arrangement is for reimbursement of costs 'as incurred'. The invoice would be as follows:

Tax Invoice	Net	GST	Total
For two days consulting services on-site.	$2,000	$200	$2,200
Plus Reimbursement of travel expenses as incurred:			
- airfare	$300	$30	$330
- accommodation	$600	$60	$660
Total	$2,900	$290	$3,190
Total Payable			**$3,190**

However, the Contractor's net position under this scenario does not change:

Invoice (including GST)	$3,190
Less GST liability	-$290
	$2,900
Less Costs including GST	-$990
Plus ITCs	$90
Consulting fees (net of GST/ITCs)	$2,000

Scenario 3

Under this scenario the Contractor is also acting in its own capacity for the supply of services but is acting as agent for the travel expenses. Therefore, while the travel and accommodation costs may initially be paid for by the Contractor they are done so on behalf of the Customer. Provided these acquisitions are made for a creditable purpose and a valid tax invoice has been issued, the Customer would be entitled to claim ITCs for those costs. (Note: the Contractor is not entitled to claim any ITCs for these costs.) Assuming the costs are as referred to above, and noting that the Contractor is invoicing the Customer in its own capacity only for the services, we expect the Contractor invoice and net position would be as follows:

Tax Invoice	Net	GST	Total
For two days consulting services on-site.	$2,000	$200	$2,200
Total			**$2,200**
Plus Reimbursement of travel expenses incurred as agent: - airfare (including GST) - accommodation (including GST)			 $440 $660
Total			$1,100
Total Payable			**$3,300**

Accordingly, the Contractor would have a GST liability of $200 (being 1/11th of the $2,200). The net position for the Contractor would be as follows:

Invoice (including GST)	$2,200
Less GST liability	-$200
Consulting fees (net of GST/ITCs)	$2,000
Less Costs including GST (as agent)	-$1,100
Plus reimbursement of costs	$1,100
Net position	$2,000

Under this scenario if, for example, the Contractor was only required to pay $330 for the airfare this would change the amount invoiced to the Customer. The invoice would be as follows:

Tax Invoice	Net	GST	Total
For two days consulting services on-site.	$2,000	$200	$2,200
Total			**$2,200**
Plus Reimbursement of travel expenses incurred as agent: - airfare (including GST) - accommodation (including GST)			 $330 $660
Total			$990
Total Payable			**$3,190**

However, unlike Scenario 1, the Contractor's net position does not change:

Invoice (including GST)	$2,200
Less GST liability	-$200
Consulting fees (net of GST/ITCs)	$2,000
Less Costs including GST (as agent)	-$990
Plus reimbursement of costs	$990
Net position	$2,000

GST on GST?

Finally, below is an example of a situation that may arise where Contractors may seek reimbursement of expenses on a plus GST basis.

Scenario 4

This scenario is the same as Scenario 2 except that the Contractor seeks to recover the expenses on a plus GST basis. That is, while the Contractor incurs the GST inclusive airfare of $440 (and the GST inclusive accommodation of $660) the Contractor seeks to recover from the Customer $440 plus 10% GST (and $660 plus 10% GST). By way of example, the Contractor invoices as follows:

Tax Invoice	Net	GST	Total
For two days consulting services on-site.	$2,000	$200	$2,200
Total			**$2,200**
Plus Reimbursement of travel expenses incurred as agent:			
- airfare (including GST)	$440	$44	$484
- accommodation (including GST)	$660	$66	$726
Total			$1,210
Total Payable			**$3,410**

The result is effectively GST charged on GST. If this was the arrangement the Contractor is effectively marking up the travel expenses by 10%. The net result would be as follows for the Contractor:

Invoice (including GST)	$3,410
Less GST liability	-$310
	$3,300
Less Costs including GST	-$1,100
Plus ITCs	$100
Consulting fees (net of GST/ITCs)	$2,300

This would be incorrect as the Contractor would be entitled to a GST credit for the costs of the airfare and accommodation.

Conclusion

The above highlights the need to understand the underlying facts and terms of each transaction, as these often shape and determine the GST implications. This is particularly the case where reimbursements are involved.

Also, it is not always obvious where an agency relationship exists. Again, however, understanding the nature of such relationships allows the GST implications to be determined.

FBT – Entertainment Provided by Staff Social Clubs

The following example is from ATO Interpretative Decision ID 2007/28 which the ATO published following the decision in the *Indooroopilly* case as an outcome of undertakings given at the National Tax Liaison Group FBT Subcommittee meeting in November 2005.

Facts

An employer makes an annual contribution to the employee staff social club. The employee members also make a contribution and the social club generates further amounts through fundraising event. The social club operates on the basis of a committee of officers being drawn from the employees.

The committee is a body of persons and therefore falls within para. (d) of the definition of *person* in s. 136 of the *FBTA Act*.

The committee operates in a fiduciary capacity in terms of the funds that are kept in a bank account and for which it appoints the signatories thereto.

The social club is a trustee under the definition of trustee at para. 136(1)(f)(ii) of the *FBTA Act*.

The payment of money to the social club is the provision of property.

FBT implications

The term *fringe benefit* contained in s. 136(1) of the *FBTA Act* requires, among other things, that in order for a benefit to be a fringe benefit the benefit must be:

- provided to the employee or an associate of the employee; and
- be provided in respect of the employment of the employee – that is, '… the identity of each employee who will take a share of the benefit is known with sufficient particularity, at the time the benefit is provided to enable it to be said that the benefit is provided in respect of the employment of each of those employees'. (Full Federal Court decision in *FCT v Indooroopilly Children Services (Qld) Pty Ltd* [2007] FCAFC 16).

On the above facts, at the time that the employer provides the benefit to the social club, the identity of employees is not known with 'sufficient particularity', despite the fact that the social club has been established solely for the benefit of employees of the employer. It cannot be ascertained at that point in time that there has been a benefit provided in respect of any particular individual employee.

Accordingly, a property fringe benefit as defined in s. 136(1) of the *FBT Act* has not been provided by the employer.

Social functions provided by the social club

The ATO has not reached any other considered views or opinions about the application of the *FBTA Act* to other aspects that may flow on after the up-front contribution has been made by an employer to a staff social club, as far as we are aware.

Whether or not the 'arranger' provisions contained in the *FBTA Act* could apply can only be determined in particular circumstances and accordingly the ATO was not able to express a view in that regard. The ATO acknowledged that there may be circumstances where the employer may have some involvement and arrangements with a social club where FBT may arise at another point in time other than the up-front contribution. However, the ATO stated that, in the situation of benefits flowing to employees that may be considered in particular circumstances as being 'in respect of employment' etc., the minor benefit exemption in s. 58P would likely apply in any case where the benefit was less than $300.

Of course, the $300 minor benefit exemption is rarely available for tax-exempt entities in relation to the provision of entertainment and so the arranger provisions should be considered.

It would be reasonable to assume that, in the absence of direct employer involvement, where a staff social club organises a function outside of work hours and off-site from the employer's premises, it is unlikely the arranger provisions would apply.

If the employer's involvement is more than casual, it may be best to consider applying for a private binding ruling from the ATO in order to establish with more certainty the employer's FBT outcome.

Eligibility - November 2016 Developments at a Glance

Looking back over November developments and website updates, the following caught the attention of the TaxEd team:

- **AUSkey –** now compatible with Google Chrome browser.
- **Charities dealing with fundraising agencies** - the ACNC has issued a guide to assist.
- **Charities working overseas** - The ACNC, the ATO and AUSTRAC are undertaking an anonymous online survey as part of its risk assessment in relation to charities and NFPs that work or send funds overseas.
- **Tax treatment of certain commutations of payments to injured workers** - ATO's conclusion on commutation of all future weekly payments which would otherwise be received by an injured worker (especially relevant to application to Return to Work Act 2014 (SA) - changes to TD 93/3 and TD 2016/18.
- **Use of non-compulsory uniforms** - Consultation Paper in relation to existing tax concessions under discussion.
- **Where employees are temporarily sent overseas or are temporarily working in Australia –** guide dealing with Australian and overseas obligations to contribute to employee's superannuation.

GST – When a Standard Form Prescribes How to Signify GST is Added

A recent Victorian Supreme Court decision (*A&A Property Developers Pty Ltd v MCCA Asset Management Ltd*) illustrates the need for care when using standard form documents that have a specific mechanism providing for the manner (e.g. by grossing up amounts specified in the contract) in which GST relates to the consideration specified in the contract.

The Issue

A&A Property Developers Pty Ltd, the vendor of the relevant property (Vendor) sought a declaration that the total price payable by MCCA Asset Management Ltd (the Purchaser) under a contract for the sale of land was 'plus GST' and not 'inclusive of GST'. The issue was whether the terms of the contract required that an amount of GST should be added to the contract price payable by the purchaser.

The Facts

The Vendor and the Purchaser entered into a contract for the sale of land — using the standard form of land contract published by the Law Institute of Victoria and the Real Estate Institute of Victoria.

The particulars of sale in the standard contract state that:

> 'The price includes GST (if any) unless the words 'plus GST' appear in this box'.

Clause 13 of the General Conditions relevantly stated that:

> 'The purchaser does not have to pay the vendor any GST payable by the vendor in respect of a taxable supply made under this contract in addition to the price unless the particulars of sale specify that the price is "plus GST" '.

In the contract between the Vendor and Purchaser:

- The price was stated as $2,900,000 with a deposit of 10 per cent; and
- the letters 'GST' (and not the words 'plus GST') were included in the relevant box in the particulars of sale.

The Vendor argued that the presence of the letters 'GST' into the box meant that the contract price was 'plus GST'.

The Decision

The Supreme Court of Victoria agreed with the Purchaser's construction of the contract — namely that it was not required to pay GST unless the exact words 'plus GST' were included in the particulars of sale. Accordingly, the Court found that the Vendor was not entitled to a declaration that GST should be added to the contract price.

Reasons

The words of commercial contracts are to be interpreted in accordance with their commercial purposes. The contract provided a clear mechanism for the parties to give effect to an agreement that the purchaser must pay GST on the purchase price, but this mechanism was not used.

The inclusion of the letters 'GST' in the box did not shift the burden of the payment of GST to the purchaser.

In construing a contract, a Court can correct obvious errors in the contract's language and grammar, but a Court should not add words into a written instrument unless it is clear that words have been omitted and what those omitted words were.

As there was:

- no absurd result or inconsistency in the construction of the contract in favour of the Purchaser; and
- no ambiguity in the contract justifying reference to surrounding circumstances,

this was not a situation in which the Court should make any correction.

GST – Countertrade Transactions

Consider the broad GST implications of a transaction where a Council wishes to supply land to a developer in return for the developer agreeing to provide certain development services to the Council. Assume for now the land supply by the Council would be taxable from a GST perspective.

Under basic GST rules, GST is applicable to a taxable supply whether the consideration is monetary or non-monetary (or a combination of both). The price of a taxable supply where consideration is non-monetary is the GST inclusive market value of the consideration. Further, where consideration is non-monetary each party to the transaction makes both a supply AND an acquisition.

So in the scenario provided, both the Council and the developer make a supply and an acquisition. The Council makes a supply of land, the developer a supply of development services. The consideration for the Council supply of land is the development services and the consideration for the supply of the development services is the land. The price of each supply is the GST inclusive market value of the consideration received for the supply. The ATO's general view expressed in GSTR 2001/6 is that things exchanged by parties acting at arm's length are taken to have the same market value.

Where both parties are GST registered, the supply is fully taxable (e.g. not GST-free and the margin scheme is not applied) and the acquisition is made wholly for a creditable purpose, then the need to comply with the GST technical requirements is a common source of frustration for taxpayers. In addition to difficulties in recording the transaction in accounting systems, the GST payable by either party is ordinarily offset (in the same tax period) by the corresponding input tax credit (ITC) available, meaning ultimately there is a neutral GST outcome despite all the compliance headache.

Key compliance difficulties that generally arise in this type of transaction include:

- determining the market value of the taxable supply, given the GST law states it is the GST inclusive market value of the consideration that establishes the price of the taxable supply;
- getting agreement between the parties as to the GST inclusive market value of the consideration;
- establishing the tax period in which each party must attribute any GST liability/ITC;
- potentially dealing with supplies that have a different GST treatment, for example a GST-free supply of unimproved land by a Council in exchange for taxable services provider by a developer; and
- ensuring that Tax Invoices are exchanged.

The difficulties caused by the need to give effect to strict GST compliance for these type of transactions has seen the ATO issue Practical Compliance Guideline PCG 2016/18: GST and countertrade transactions. PCG 2016/18 is intended to relieve taxpayers from strict GST compliance for certain transactions where consideration is provided in a non-monetary form.

PCG 2016/18 provides relief for transactions (noting one or both parties to the transaction may be eligible to apply the concession) that meet of all of the following conditions:

- you are GST registered;
- you make a supply for arms- length non-monetary consideration;
- the other party is GST-registered;
- both supplies are wholly taxable and full GST applies (i.e. 1/11thof the GST-inclusive market value of the taxable supply);
- your acquisition is wholly creditable;

- the net effect of the countertrade transaction would be GST neutral to you in the same tax period because either the parties agree the GST-inclusive market value of the respective non-monetary consideration is equal or you use the GST-inclusive market value of what you supply to determine your GST payable and input tax credit;
- your records show when the transaction was entered into and occurred, what was supplied and acquired, the identity and ABN of the other party, and (if applicable) the GST- inclusive market value agreed between the parties; and
- there is no evidence of fraud or evasion.

However the relief provided by PCG 2016/18 can only be applied where the number (not dollar value) of countertrade transactions account for no more than approximately 10% of the entity's total number of supplies over a year (being the previous financial year, the projected financial year or a fair and reasonable estimated based on available data). Transactions in a barter scheme or trade exchange are also excluded from the scope of PCG 2016/18.

Transactions that are not likely to be within the scope of PCG 2016/18 include:

- where some part of the consideration is monetary;
- where the margin scheme would be applied (as the supply is neither fully taxable to the supplier nor fully creditable to the other party);
- where the supply and acquisition may be attributable to different tax periods; and
- where the supply (or non-monetary consideration) is GST-free (such as unimproved land supplied by a Council).

It should be noted that one party to the transaction may be able to apply the PCG 2016/18 concession but the other party cannot. For example, see Example 2 in the PCG where a fully taxable supply by one party is not a fully creditable acquisition to the other and hence the concession is only available to one of the parties.

The ATO states that where a transaction is within the terms of PCG 2016/18 it will not "apply resources to verify your compliance with your GST reporting obligations". It is not entirely clear whether this has the result that:

(a) the relevant taxpayer does not need to report GST and claim the ITC respectively in relation to the taxpayer's supply and acquisition - c.f. Example 1; or

(b) the relevant taxpayer is able to report GST and claim an ITC, in each case using the market value of the supply made by the taxpayer or (where the parties have agreed upon the market value common to their respective supplies) the agreed market value common to their respective supplies - c.f. Example 1a.

We are presently seeking clarification from the ATO and will provide an update in the December webinar.

However, you are required, pursuant to the terms of PCG 2016/18, to retain records that explain countertrade transactions. Accordingly, on view (a) above, taxpayers may wish to continue to apply normal GST rules (i.e. ignore the relief provided by PCG 2016/18). PCG 2016/18 also confirms taxpayers must still deal with other non-GST reporting tax obligations that arise from countertrade obligations, again (assuming view (a) applies) meaning normal GST compliance may be warranted to ensure transactions are reflected in accounting systems.

We are still mulling over exactly when and where PCG 2016/18 will be beneficial and whether there are any tricks or traps to be aware of, so stay tuned.

Reverting back to our original scenario and assuming view (a) applies, it is possible that both the Council and developer will no longer be required to account for GST or claim ITCs (which would remove the need for the issuance of Tax Invoices) where this type of countertrade transaction occurs.

Finally, PCG 2016/18 states the Commissioner will adopt the compliance approach from the date of effect, which is 18 November 2016. This suggests that if the terms of PCG 2016/18 are satisfied it does not matter when the transaction occurred (i.e. pre or post 18 November 2016). This would seemingly provide relief where strict GST compliance has not previously occurred for a countertrade transaction, provided the terms of PCG 2016/18 are met. Again, back to our original scenario, if the Council failed to declare countertrade transactions on previous Business Activity Statements and assuming view (a) applies, provided the terms of PCG 2016/18 are met it seems no retrospective corrective action may now be required.

Payroll Q&A - Genuine redundancy and re-employment

Question:

If a former employee (along with other employees) was made redundant in July 2016 due to an organisational restructure, are they able to return to work for the same employer in the same tax year either as an employee or contractor?

Answer:

A payment will qualify for concessional tax treatment as a genuine redundancy payment if it is made in consequence of an employee's dismissal from employment because of genuine redundancy and the conditions below are satisfied:

- the employee is dismissed before the earlier of his/her 65th birthday, or the employee's normal date of termination if the employment would have been terminated on attaining a particular age or the completion of a period of service
- if the dismissal was not at arm's length — the payment must not be greater than the amount that could reasonably be expected to be made if the dismissal were at arm's length
- at the dismissal time, there was no arrangement between the employee and the employer, or between the employer and another person, to subsequently employ the employee.

As can be seen, there is no time limit specified as to when a former employee that has been made redundant can be re-employed.

The only condition is that, at the dismissal time, there was no arrangement in place to subsequently employ them as per the third dot point above.

FBT Q&A - Home to work travel post the John Holland case

Question:

In light of the John Holland case, where an employee lives interstate, or several hundred kilometres from their usual place of work, if the employer pays for airfares to transport the employee to the location of their usual place of work (and back again) will these airfare costs be considered otherwise deductible?

Answer:

As a general rule, home to work travel costs are not deductible except in certain limited circumstances.

The John Holland case involved the operation of the otherwise deductible rule where the employer organised and paid for its employees to be flown from Perth airport to Geraldton and back again to work on a project on a rostered basis (i.e. the employees worked on a FIFO basis).

The Full Court found that the employees' arrival at Perth airport from their homes was not travel in the employees' derivation of income, and any expenditure incurred by the employees from their homes to Perth airport would not have been deductible.

However, the employees were relevantly at work from arrival at Perth airport and were deriving income from that point. Accordingly the employees would have been entitled to a deduction for the cost of air travel from Perth airport to Geraldton and return.

In the current case, deductibility will be very much determined by the employment contractual conditions - specifically, whether the employee has commenced work from the point of leaving home/airport/train station, whichever is applicable.

GST Q&A - Exempt vs Out of Scope

Question:

Can you please provide clarification as to the difference between what is considered out of scope and what is considered GST exempt?

Answer:

Generally the reference to something being out of scope from a GST perspective means that one of the key conditions from the definition of taxable supply is missing. By way of example, to be a taxable supply the following conditions need to be met:

(c) the supply is made for consideration;

(d) the supply is made in the course or furtherance of carrying on an enterprise;

(e) the supply is connected with the indirect tax zone (i.e. Australia); and

(f) the entity making the supply is registered or required to be registered.

We also note the proviso that a supply is not a taxable supply to the extent it is GST-free or input taxed.

A supply is considered out of scope where one or more of these conditions are not met. So, for example, if the supplier is not registered nor required to be registered (so that condition (d) is not met) then the supply would be considered out of scope. Similarly, if there is insufficient nexus between a supply and consideration (so that condition (a) is not met (e.g. a gift where there is a supply and no consideration) this supply will also be considered out of scope.

The term GST exempt tends to be commonly used to describe something that is not subject to GST - whether because the supply is GST-free, input taxed or out of scope. Again by way of example, if something is covered by Division 81 as not being consideration it is often referred to as GST exempt (even though this would mean it is out of scope). The previous Determination that listed the Division 81 fees, charges, etc. was also referred to as 'Exempt Taxes, Fees and Charges'. Technically, however, it appears the only reference in the GST law to exemption is in a heading, 'Chapter 3 - The exemptions', which includes the rules for GST-free, input taxed and non-taxable importations.

Other than terminology, whether something is out of scope or exempt, it is not subject to GST.