Tax Update Newsletter

August 2015

We are pleased to provide you with our August newsletter.

There are notes on:

- FBT changes in relation to portable electronic devices;
- proposals to provide relief from some instances of non-compliance with the superannuation contributions regime; and
- salary packaging of employee relocations expenses.

We also draw your attention to a couple of class rulings. These respectively deal with:

- GST and waste management services provided by local councils in NSW; and
- the income tax treatment of medical practitioners engaging in private practice within a particular State's Hospital System.

Class Rulings are limited to their specific circumstances. Even if they not directly applicable, we think that it is always useful to know "how the other person has been treated"!
Fuel tax credits is not a topic encompassed by any existing TaxEd module. The newsletter refers to a recent development and we look forward to any comments on whether you would like us to add fuel tax issues to our modules or training. Please send any feedback you may have to: admin@taxed.com.au

As a final comment, we are also very happy to introduce our labour-saving "Print All" button – this enables you to access and print all newsletter items as a single document.

Kind Regards

Andrew Orange

TaxEd Technical Team

Work related items exemption extended for small business

The FBT exemption that applies to employers that provide employees with work-related portable electronic devices is extended for small business that provide employees with more than one work-related portable electronic device, even where the devices have substantially identical functions. The amendments apply for the 2017 and later FBT years.

Currently, the exemption in section 58X of the *FBTA Act*, which allows an FBT exemption for certain work-related items including a portable electronic device, is limited to:

- items primarily for use in an employee's employment; and
- one item per FBT year for items that have a substantially identical function, unless the item is a replacement item.

The proposed amendments remove, for small businesses, the substantially identical functions limitation on the FBT exemption for work-related portable electronic devices which means that small business employers that provide multiple electronic devices to an employee in an FBT year can claim an FBT exemption for all of those devices, even where the devices have substantially identical functions.

The substantially identical functions test noted above will, however, continue to apply in relation to other eligible work related items in section 58X, such as computer software, an item of protective clothing, a briefcase and a tool of trade.

To qualify for the extended exemption, the employer must be a "small business entity" as defined in section 328-110 of the *ITAA 1997.* Broadly, a "small business entity" is an entity that:

- carries on a business in the income year; and
- satisfies the $2 million aggregated turnover test for the income year.

The proposed amendments apply to an employer that is a small business entity for the purposes of the relevant FBT year in which the portable device is provided. Since the FBT year starts on 1 April and ends on 31 March and an income year is generally 1 July to 30 June, the amendments will apply if the employer was a small business entity for either or both of:

- the income year starting most recently after the start of the FBT year; or
- the income year ending most recently after the start of the FBT year.

As income tax exempt organisations, the main question that may arise is - "Are we a small business entity"? That is, "Are we 'in business' "?

For example:

- *Is a charity that receives only donations and applies those donations in charitable works, a "business"?*
- *Is a charity's employee who solely engages in delivery of charitable activities able to access the concession where the charity (through other employees) undertakes commercial activities (with a turnover < $2m)?*

The definition of "business" includes any profession, trade, employment, vocation or calling, but does not include occupation as an employee. The preferred view is that undertaking a business that provides charitable activities should be considered a "business".

Given the position in not entirely clear and employees may wish to avail themselves of the amendments that have been made, it would be prudent to consider seeking formal clarification of the position from the Australian Tax Office.

GST treatment of waste management services supplied by NSW councils

The ATO issued a Class Ruling (CR 2015/67) on 26 August 2015 dealing with the GST treatment of waste management services **("WMS")** supplied by NSW councils. This Ruling addresses the GST treatment of the supply of WMS by councils on or after 1 July 2015, and replaces CR 2013/19.

Class Rulings are generally issued to a defined class of entities in relation to a precise scheme.

CR 2015/67 applies to the following defined class and scheme.

Defined Class

This Ruling applies to all councils that are members of the Local Government Association of New South Wales (NSW) and the Shires Association of NSW, and are collectively referred to in the Ruling as 'Council'.

Scheme

The Scheme is set out in detail in the Ruling but essentially covers situations where:

- Council is registered for goods and services tax **("GST")**;
- Council is empowered by the legislation specified in the Ruling to carry out appropriate activities such as provide goods, services and facilities to meet the needs of local communities and of the wider public;
- Council levies charges for WMS or makes charges or recovers a fee for any service it provides;
- the charges may relate to domestic WMS or non-domestic WMS, or other services related to waste; and
- once a ratepayer has requested a WMS and Council has agreed to charge for this service, the ratepayer is generally liable to pay the charge.

Ruling

Pursuant to Division 81 of the GST Act and relevant GST Regulations, certain fees and charges are exempt from GST, including fees and charges for:

(i) supplies of kerbside waste collection, or supply, exchange or removal of bins or crates used in connected with kerbside waste collection; and

(ii) supplies of a regulatory nature made by an Australian government agency.

The Ruling provides a list of examples of supplies that are considered kerbside collection of waste and exempt from GST, as well as services that do not qualify as exempt. For a complete list for both categories, you should refer to the Ruling. However, we have included a summary below:

Examples of **exempt** services include:

- where a base fee for kerbside waste service availability is charged;
- additional 'pick ups' of kerbside waste;
- kerbside waste collection provided to properties outside the normal service area;
- changing a smaller kerbside bin to a larger one or *vice versa*; and

- the occasional kerbside 'Council clean up' for larger items, such as, whitegoods, furniture and mattresses that are not normally taken with the regular weekly or fortnightly WMS; and
- where the respective fee or charge is for an application or renewal for listing on Council's approved list of private waste removal companies in relation to construction and demolition waste.

Examples of services that are taxable supplies, and are **not exempt** include:

- services in relation to waste disposal sites, garbage tips and refuse transfer stations, including:
  - general, recycling and green waste
  - rural waste facility access cards, and
  - issuing of new or replacement keys to waste disposal sites.

New Fuel Tax Credit Rates

Fuel tax credit rates are indexed bi-annually (generally 1 February and 1 August), in line with CPI.

The rates applicable to fuel used in heavy vehicles that travel on public roads may also be affected following the annual review of road user charges.

Note: The credit rate for fuel used by the vehicle for travel will be reduced by the road user charge. However, fuel used to power auxillary equipment (e.g. see ATO's Guide for businesses that use fuel) on the vehicle will not be reduced by the road user charge.

The Australian Taxation Office (ATO) has published the rates for fuel respectively acquired from 1 July 2015 and from 1 August 2015 - see Current Rates. The ATO recommends that claimants check the rate online on each occasion that a claim is made.

Note: The time at which the relevant rate is determined will vary, as appears in the ATO'sGuide for businesses that use fuel. For example:

- Fuel used by a heavy vehicle travelling on public roads (i.e. for propelliing the vehicle, idling while stationary, operating lights and other associated functions connected with travelling) - the rate in effect at *the beginning of the tax period* covered by the claimant's BAS.
- Fuel used to power auxillary equipment (e.g. garbage bin lifters and compacting mechanisms of a garbage truck, the mixing barrel of a concrete truck, *etc*.) of a heavy vehicle travelling on public roads - the rate in effect on *the day on which the fuel was acquired*.
- Fuel used in a business activity on private roads, off public roads (e.g. agriculture, forestry, mining, marine and rail transport, electricity generation by commercial generator plant, stationary generator, portable generator, constuction, quarrying, *etc.*) - the rate *in effect when the fuel was acquired*.
- Fuel used in "non-fuel uses" (e.g. fuel used for cleaning machinery parts or drums, diesel sprayed directly onto a road as a sealant, *etc*.) - the rate *in effect when the fuel was acquired.*

You may find the following further ATO resources useful:

- For guidance on elibility to access fuel tax credits - see: further information
- ATO Fuel tax credit eligibiltiy tool
- Fuel tax credit calculator -an app which includes the calculator is also available
- Fuel Tax Credits - non-business - deals with operation of emergency vehicles or vessels by certain non-profit organisations and generation of domestic electricity

Proposed changes to Superannuation Guarantee

The Commonwealth Department of Treasury has released an exposure draft of legislation that is intended to alleviate three harsh consequences for employers who fail to comply with superannuation guarantee obligations. The legislation was foreshadowed in a ministerial announcement in January 2015 and Treasury has invited comment on the draft legislation by 18 September 2015.

In essence, the legislation is designed to:

1. Remove a technicality that, in some circumstances, requires an employer to overcompensate an employee where the employer has failed to pay the requisite superannuation guarantee contribution to the employee's superannuation fund. (The legislation also amends the definition of the concept: "ordinary time earnings" that is used to determine the amount of superannuation contributions.)
2. More closely align the period in which interest is payable for late payment of a superannuation guarantee contribution in respect of an employee to the actual period during which the non-payment causes loss to the employee.
3. Remove the specific penalty under the *Superannuation Guarantee Administration Act* **("SGAA")** imposed on an employer for failing to notify the ATO (or provide information sought by the ATO) in relation to the employer's failure to pay the superannuation contribution required in respect of an employee under the SGAA. The penalty is replaced with certain administrative penalties set out in Schedule 1 of the *Taxation Administration Act*.

A detailed description of the changes is set out in the draft Explanatory Memorandum (EM: Simplification of Superannuation Guarantee for Employers) for the legislation.

An overview of the legislative changes is provided below.

The draft legislation provides for amendment of the SGAA. It is proposed the legislation will operate from 1 July 2016.

Under the current law, employers are obliged to make superannuation guarantee contributions **(a "SG Contribution")** each quarter in respect of certain (there are a few exceptions) of their employees.

Where an employer fails (in relation to a particular employee) to make the requisite contribution for a particular quarter, within 28 days from the end of the quarter, then:

(a) the employer will have a superannuation guarantee shortfall in relation to the employee **(an "individual SG Shortfall")**; and

(b) the employer will be liable to pay an amount (the superannuation guarantee charge **- "SG Charge")** comprising:

(i) the total all the individual SG Shortfalls for the quarter;

(ii) interest (currently 10%) in relation to the SG Shortfalls **(the "nominal interest component")**;

(iii) an administrative charge **(the "administration component")**.

Note to Reader:

*While the SG Charge is payable to the Australian Taxation Office **("ATO")**, the ATO pays the individual SG Shortfall relating to a particular employee and associated interest included in the SG Charge to employee's superannuation fund or otherwise (as provided in the SGAA) for the benefit of the employee. The ATO's payment to the employee's superannuation fund etc. is intended to compensate the relevant employee for the non-payment of the SG Contribution relating to that employee.*

Furthermore, the employer who has a shortfall for a quarter must inform the ATO of the shortfall by lodging a superannuation guarantee statement **("SG Statement")**, within the time prescribed by the SGAA. If the employer fails to provide the SG Statement (or information relevant to the ATO assessing the employer's liablity for the SG Charge), the employer can be subjected to a penalty of up to 200% of the SG Charge.

The above system has three harsh results for employers:

1. The SG Shortfall is calculated by reference to the employee's "salary and wages" for the quarter, whereas the SG Contribution for the employee is calculated by reference to a different concept, namely, "ordinary time earnings". In certain circumstances, this can result in the employer paying (through the SG Charge) more than the unpaid part of the SG Contribution and the employee being "overcompensated".
2. The interest included in the SG Charge is calculated on the total of the SG Shortfalls for the whole of the period from the beginning of the quarter to the date on which the SG Charge is payable under the SGAA **("the interest period")**. The SG Charge is usually payable when the employer lodges the SG Statement or the ATO makes a default assessment of the SG Charge. In the meantime, the employer may have wholly/partially remedied the default by paying an amount to the employee's superannuation fund. While this payment can be offset against the SG Charge (in reduction of the the individual SG Shortfall and the part of the nominal interest component applicable to the employee), the nominal interest component is calculated for the whole of the interest period.
3. As noted above, currently, an employer who fails to provide the SG Statement (or information sought by the ATO in relation to assessing the SG Charge) is liable to a penalty of 200% of the the SG Charge.

Remedy of Harsh Result 1:

The draft legislation remedies the mismatch of using "salary and wages" to calculate the SG Shortfall and "ordinary time earnings" to calculate the SG Contribution by using "ordinary time earnings" to calculate both the SG Shorfall and the SG Contribution.

The legislation also amends the concept of "ordinary time earnings" to incorporate reference to "salary and wages", while retaining the fundamental character of the current definition of "ordinary time earnings". It appears that this has been done in order to enable the present exclusions (e.g. s 27 SGAA) from "salary and wages" to continue to apply in calculating (s 19 SGAA) the individual SG Shortfall.

Remedy of Harsh Result 2:

The draft legislation aligns the interest period more closely with the period in which the non-payment of an individual SG Shortfall causes the employee to suffer loss. In particular, it provides that the nominal interest component is calculated:

- from the 29th day after the end of the quarter (rather than the current use of the beginning of the quarter); and
- to the earlier (in contrast to the current position, where only subpara (b) applies) of:
  - (a) earliest date on which the total of the employer's late payments to the employee's super contribution equal/exceed the individual SG Shortfall for the employee, and
  - (b) the day before the day on which the SG Charge is payable.

It will be noted that, under subparagraph (a), a payment in partial reduction of the employee's individual SG Shortfall does not stop interest accruing on part of the individual SG Shortfall - the whole of the shortfall has to be paid.

Note to Reader: From the day the SG Charge is payable, interest is calculated using the General Interest Charge.

Remedy of Harsh Result 3:

The draft legislation repeals the penalty of 200% of the SG Charge for failiing to provide a SG Statement or to provide the ATO with requested information in relation to assessment of the SG Charge. The legislation replaces this penalty with the following administrative penalties:

- where there is a failure to provide a statement to the ATO and the ATO makes a default assessment - a penalty under s 284-75(3) of Schedule 1 of *Taxation Administration Act* **("TAA")** (i.e. in essence: a base penalty which appears to be 75% of the SG Charge (exclusive any reduction due offset of late payments), but subject to increase for certain circumstances of aggrevation and subject to reduction in certain circumstances); and
- where there is a failure to give the Commissioner a statement in the approved form by the required day - a penalty under s 286-75(1) TAA (i.e. in essence: a base penalty (not exceeding 5 penalty units) of 1 penalty unit for each whole, or part period, of 28 days for which the document is outstanding, but query whether the circumstances for increase of the base penalty are able/intended to apply.)

CR 2015/57 - Private Practice Arrangement for Clinicians of Queensland Health

The Australian Taxation Office has issued a class ruling (CR 2015/57) dealing with the income tax treatment of clinicians **(a "Q Clinician"),** being permanent Senior Medical Officers and Visting Medical Officers, who engage in private practice during their hours of employment by Queensland Hospital and Health Service providers **("HHS")**.

Class Rulings can only be relied upon in the specific circumstances set out in the Ruling. While the Ruling is limited in its terms to the specified circumstances of Q Clinicians, the underyling principles may also be useful as an indicator of the ATO's likely expected attitude in a broader context.

From an **employer's perspective**, the Ruling is **relevant *by implication***. The Ruling, in its terms, is directed to determining the taxable income of a Q Clinician.

The Ruling identifies certain remuneration that is business revenue of the Q Clinicians. It is *effectively* recognising that such remuneration is not employment income (salary and wages) and the employer does not have to withhold PAYG amounts under Division 12 of Shedule 1 of the *Taxation Administration Act* **("TAA")** for remittance to the ATO. (On the contrary, the Q Clinician will pay tax directly to the ATO under the instalment PAYG regime of Division 45 of Schedule 1 of the TAA in relation to the business revenue.)

It is anticipated that employers will appreciate being provided with a broad introductory outline of the tax treatment of the Q Clinician, under the Ruling and as a prelude to closer analysis.

Outline of the Contextual Circumstances

In overview, the Ruling is directed to Q Clinicians in the following circumstances:

- It applies where Q Clinicians are employed by HHS providers under certain contracts of employment **("Employment Contracts")** identified in the Ruling.
- Under the Employment Contracts, Q Clinicians are granted a right to engage in one of two types of arrangements (**"Granted Private Practice arrangements")**:
    - An Assignment Arrangement; or
    - A Retention Arrangement.
- Granted Private Practice Arrangements enable Q Clinicians to provide professional services (during hours of employment) to private patients as set out in Sched. 3 of the Employment Contract.

- The nature of ***Assignment Arrangements***:
  - The HHS provider *requires* a Clinician to engage in private practice and to treat a private patient in response to clinical need, businesss requirements or patient choice during the Q Clinician's hours of employment.
  - The Q Clinician charges fees to private patients. However, under the Employment Contract the Q Clinician assigns to the HHS provider the full amount of any fees charged by the Q Clinician in treating a private patient **("the Assignment Private Practice Revenue")**.
  - Under the Employment Contract, the Q Clinician appoints the HHS provider to collect the assignment private practice revenue as agent for the Clinician (or the entity nominated by the Q Clinician) - such fees are collected in the principal's name.
  - The HHS provider does not charge the Clinician a service fee for use of HHS resources in providing the treatment.
  - Applying Key Performance Indicators set out in the Employment Contract, the Q Clinician may receive an additional allowance based on upon a proportion of base salary.

- The nature of ***Retention Arrangements***:
  - The HHS provider *requires* a Clinician to engage in private practice and to treat a private patient in response to clinical need, businesss requirements or patient choice during the Q Clinician's hours of employment.
  - The Q Clinician charges fees **("Retention Private Practice Revenue")** to private patients. However, under the Employment Contract, the Q Clinician appoints the HHS provider to collect the retention private practice revenue as agent for the Clinician (or the entity nominated by the Q Clinician) - such fees are collected in the principal's name.
  - The HHS provider and the Q Clinician agree that:
    (i) the retention private practice revenue (up to a specified cap) will be remitted to the Q Clinician or as the Q Clinician directs; and
    (ii) the balance of the retention private practice amount will be apportioned, with part remitted to/at the direction of the Q Clinician and part **("the service retention amount")** remitted to the HHS provider.
  - The Q Clinician pays a fee **("service fee")** to the HHS provider for use of the HHS provider's resources in connection with provision of the treatment. The Employment Contract provides for the HHS provider to deduct the service fee grossed up for GST from the retention private practice revenue.

Ruling Decision in General Terms

The Ruling concludes:

(1) A Q Clinician will need to treat the Assignment Private Practice Revenue (or as the case may be, the Retention Private Practice Revenue) as assessable income of the Q Clinician. (Note: The assessable income of the Clinician is not to include any GST otherwise included in these amounts.) *See paras 31 and 32 for more detail*.

(2) The amounts are to be included in the assessable income of *the Q Clinician* rather than being included in the assessable income of *certain entities nominated by the Q Clinician*. In other words, the Assignment Private Practice Revenue (or as the case may be, the Retention Private Practice Revenue) is the income of *the Q Clinician* and not the income of *those other entities*. *See paras 33 and 34 for more detail.*

(3) The Q Clinician will be entitled to the following income tax deductions:

- In the case of an Assignment Arrangement - the full amount of the Assignment Private Practice Revenue. *See para 35 for more detail.*
- In the case of a Retention Arrangement - the service retention amount and the service fee. *See paras 36 and 37 for more detail*.

(4) PAYG obligations - The Clinician's instalment income for PAYG withholding purposes (s 45-120(1) of Sched. 1 to the TAA) includes the Assignment Private Practice Revenue (or, as the case may be, the Retention Private Practice Revenue). *See para 37 for more detail.*

(5) Where the Q Clinician is a quarterly or monthly PAYG instalment system payer, he/she may chose to vary his/her instalment rate under s 45-205 of Sched. 1 of the TAA. *See paras 39 and 68 et seq for further Ruling comment*.

An Implication for Employers of Q Clinicians

From the perspective of employers of Q Clinicians, the key point would appear to be identification of payments that are not to be treated as salary and wages of the Q Clinicians.

Given that the Assignment Private Practice Revenue and Retention Private Practice Revenue are respectively included in the assessable income of the Q Clinicians as business income, it appears any payment of part of these moneys to the Q Clinicians would not be wages and salary.

On this basis, one might conclude that part payment of the Retention Private Practice Revenue to the Q Clinicians would not require the employer to withhold tax from the payment. (The Q Clinicians pay tax directly to the ATO on Retention Private Practice Revenue (after allowance for certain deductions) under s 45-120(1) of the TAA.)

It is understood that the HHS providers do not make any payment of the Assignment Private Practice Revenue to Q Clinicians. As noted above, these Q Clinicians are eligible to receive an additional allowance based on upon a proportion of base salary. In the result, the HHS providers would need to consider their obligations to withhold tax from such allowances.

Salary Packaging Relocation Costs

The *Fringe Benefits Tax Assessment Act* provides for substantial concessions where an employer pays for various costs associated with relocating an employee. These amounts can, therefore, be met directly by the employer or passed on to the employee as part of a salary sacrifice arrangement.

The significant benefits of a tax-exempt employer providing exempt relocation benefits are:

(1) GST input tax credits will be available where the employer is registered for GST; and

(2) FBT is not payable at all.

Contrast the result where the employee meets these costs out of their own income:

- no amount would be tax deductible to the employee as the costs would be private, domestic or capital in nature; and
- any allowance paid by the employer towards meeting the costs would be fully taxable in the hands of the employee .

Illustration

Yasmin has been asked to relocate in order to take up a new position with her current employer. She estimates that the costs associated with the relocation will be $10,000. Her employer has indicated that they are willing to either:

(a) pay a $10,000 allowance to Yasmin to cover these costs; or

(b) reimburse actual relocation expenses up to an amount of $10,000.

Yasmin in fact incurs $11,000 (GST inclusive) in relocation expenses.

The result if Yasmin takes the allowance

The full amount of $10,000 will be assessable income in Yasmin's hands. The employer will be required to withhold PAYG from the payment. The payment will be recorded on her annual payment summary form.

Yasmin will not be entitled to deductions for the costs associated with the relocation, as these will be fundamentally private, capital or domestic in nature.

Essentially, therefore, assuming Yasmin is a top marginal rate taxpayer, she will be left with only $5,100 to pay for her $11,000 of relocation expenses.

The result if Yasmin is reimbursed the expenses up to $10,000

If the expenses are reimbursed:

- The employer will be entitled to GST input tax credits. As such, the full amount of $11,000 could be reimbursed for Yasmin.
- The employer will be able to fully deduct the amount of the reimbursement.
- No tax will be required to be withheld from the amount.
- No FBT will be payable in relation to this amount.
- No amount will appear on Yasmin's annual payment summary form either as part of her salary or as a reportable fringe benefit amount.

As can be seen, the potential savings to employees can be substantial where relocation costs are paid by the employer.

The followign table provides a summayr of the more common relocation benefits/cocnesisosn avaialble under the FBT Act:

Exempt Fringe Benefits **RELOCATION EXEMPTIONS**		
Type of Benefit	**Reference**	**Status***
Removal and Storage of Household effects including: Transport, packing, unpacking and insurance in connection with the removal or storage of household effects (including pets).	58B	LAFH & UPOR
Costs incidental to the sale or acquisition of a dwelling. Connecting or re-connecting a telephone service to the dwelling and connecting or re-connecting gas or electricity to the dwelling.	58C	UPOR
Connection or reconnection of utilities.	58D	LAFH & UPOR
Short term loans repayable within 12 months to pay a security deposit (e.g. rental bond or service connection deposit) in connection with accommodation which is an exempt benefit under the living away from home accommodation rules.	17	LAFH
Leasing of household goods	58E	LAFH
Relocation transport covering transport, meals or accommodation for family members.	58F and 61B	LAFH & UPOR
Living away from home accommodation	21 and 47(5)	LAFH
Temporary accommodation relating to relocation.	61C	UPOR
Temporary accommodation meal fringe benefits.	61D	UPOR
Engaging a relocation consultant.	58AA	LAFH & UPOR

* Status refers to whether the employee is merely living away from home (LAFH) or has changed their usual place of residence (UPOR) in respect of the employment duties

ACNC issues a Report Card on 2014 Annual Information Statements

Not the "A" List - but "a list" to be avoided

The Australian Charities and Not-for-Profits Commission **("ACNC")** has issued a media release advising that the it has publicly identified (by red-mark denotation in the ACNC Charity Register), those charities which are more than six months late in submitting their 2014 Annual Information Statement. The ACNC states that "Once the charity submits its overdue 2014 Annual Information Statement, the red-mark will be removed". It notes that if a charity needs assistance in submitting its Annual Information Statement, it should contact the ACNC.

Errors in relation to 2014 Annual Information Statements that the ACNC has identified

The ACNC has identified errors in financial data included in the 2104 Annual Information Statements that have been submitted by some charities. It especially highlights mistakes in calculating totals and errors arising from rounding financial figures to the nearest thousand.

The ACNC has advised that it has engaged the Centre for Social Impact at the University of NSW to assist in correcting the errors. Charities with significant errors can expect to be contacted in the near future, with a view to reviewing and correcting the financial information which they supplied to the ACNC. Further information (including answers to common questions) is available on the ACNC website at:Financial reporting errors in 2014 Annual Information Statements

Looking to ahead to reporting in relation to 2015, the ACNC has published:Top ten tips for reporting financial information - ACNC

Q&A- FBT and employee Fee-Help reimbursement

Question:

Where an amplolyee undertakes a course of study and pays for the course via FEE-Help, to the extent the course of study is relevant to the employment duties, is a reimbursement of the employee's FEE-Help payments otherwise deductible?

Answer:

The otherwise deductible rule does not apply where an employer reimburses an employee's HECS-HELP, FEE-HELP or OS-HELP contributions as section 26-20 of the ITAA 1997 prevents the employee from claiming a deduction for those contributions.

However, section 26-20 of the ITAA 1997 does not prevent a deduction in respect of the actual course fee itself notwithstanding the student has 'paid' the fee via a FEE-Help loan.

If the agreement/policy between the employer and the employee is that the reimbursement is in respect of the initial course fee then the otherwise deductible rule is available.

The following two ATO Interpretative Decisions highlight this difference - ID 2005/27 & ID 2005/26:
http://law.ato.gov.au/atolaw/view.htm?docid=AID/AID200527/00001
http://law.ato.gov.au/atolaw/view.htm?docid=AID/AID200526/00001

Q&A- What are the implications of refunding excess employee contributions?

Question:

An employer has provided a staff member with a motor vehicle as part of a salary package arrangement. The staff member made after tax contributions to the employer towards the provision of the car benefit in order to reduce the FBT taxable value to nil.

Excess contributions were indeed made by the employee and the employee has requested that the excess contributions be refunded to them.

If the contributions are refunded, how are they treated? Are any amendments required to the relevant FBT return and payment summary for the FBT year to which the contributions relate?

Answer:

A refund of excess contributions to the employee will simply be treated as salary & wages in the year they are refunded. There should be no impact on the earlier FBT return or employee PAYG summary.

PAYGW will be required from the amount refunded.