We are excited to let you know that we have launched our new website! It still includes all of your Q&As, papers and training information but has a had a much needed face lift and offers an easier way to search. You will also now have the ability to include formatting and hyperlinks in your Q&As to aid in asking your question. Please take a look and offer us any feedback you may have.

This month we take a look at a range of car-related GST and FBT issues and delve into the detail regarding whether there is an FBT limit on the provision of alcoholic drinks for travelling employees.

Don't forget you can also join Michael Doran Live Online on Monday 10 April to get a more detailed look into the articles covered in this newsletter, as well as ask any questions you may have.

Warm regards,

The TaxEd team

GST – Interaction between GST and FBT

Income tax laws have been around for a long time, with the current income tax legislation essentially drawn from statutes first introduced in 1936 and 1997 (respectively the *Income Tax Assessment Act 1936* and *Income Tax Assessment Act 1997*).

Fringe benefits tax legislation was introduced in 1986 (*Fringe Benefits Tax Assessment Act 1986*) and the GST legislation dates from 1999 (*A New Tax System (Goods and Services Tax) Act 1999*).

When it comes to entertainment expenditure, particularly entertainment by way of food or drink, the income tax, FBT and GST laws interact with a semblance of consistency.

When reviewing entertainment expenditure an entity would typically consider the extent to which:

- a GST credit is available;
- the amount may be subject to FBT; and
- whether the amount is available as a deduction for income tax purposes (at least for entities that are subject to income tax).

In this regard, the provisions of the income tax, FBT and GST laws appear to interact consistently.

GST Perspective

Looking at entertainment expenditure from a GST perspective, the question is the extent to which an entity is entitled to claim a GST credit.

Division 69 of the GST law operates in conjunction with the relevant provisions in the income tax and FBT laws regarding entertainment. Based on these laws, to the extent the entertainment expenditure relates to a 'non-deductible expense' (as defined for GST purposes) then there is no entitlement to claim a GST credit.

An acquisition is a non-deductible expense if it is not deductible under Division 8 of the *ITAA 1997* because of one or more specific provisions. Examples of non-deductible expenses include:

- entertainment expenses to the extent they are non-deductible for income tax purposes as per Division 32 of the *ITAA 1997*; and
- the 50/50 or 12-week register methods of determining non-deductible meal entertainment expenses as per ss. 51AEA, 51AEB and/or 51AEC of the *ITAA 1936*.

With regard to Division 32 of the *ITAA 1997*, to the extent the expenditure is incurred in providing entertainment the amount is non-deductible. Therefore any entertainment expenditure, whether relating to employees or others such as customers and clients, would be non-deductible. However, there are a number of exceptions the main one being that the amount is not treated as non-deductible to the extent the expense is in respect of providing entertainment by way of providing a fringe benefit. As fringe benefits apply to employees (and associates of employees), to the extent the expense relates to providing entertainment to an employee and the amount is also a fringe benefit, the amount will be deductible for income tax.

With regard to the 50/50 or 12-week register methods for meal entertainment expenditure, an entity can make an FBT election to apply one of these methods. Where this is the case, the amount of meal entertainment expenditure that is subject to FBT is based on the method chosen. If the 50/50 method is chosen, then 50% of the meal entertainment expenditure is subject to FBT and accordingly this 50% will be income tax deductible. It then follows that there will be an entitlement to claim 50% of the GST credits.

Practically, for amounts incurred in providing entertainment to an employee:

- the amount is subject to FBT;
- the amount will be deductible for income tax purposes; and
- a GST credit entitlement arises (as the amount is not a 'non-deductible expense' as defined for GST purposes).

What about income tax exempt entities?

An exempt entity is essentially a reference to an entity whose income is exempt from income tax.

Subject to the additional comments below for certain charitable and government organisations, where entertainment expenditure is incurred by an exempt entity, these amounts would be non-deductible expenses because the entity is an exempt entity, and not specifically because of the operation of Division 32 of *ITAA 1997* or due to the relevant 50/50 or 12-week register elections.

Subsection 69-5(4) provides that:

> 'If the entity making the acquisition or importation is an exempt entity, the acquisition or importation is a non-deductible expense if it would have been a non-deductible expense under subsection (3) or (3A) had the entity not been an exempt entity.'

Therefore, to determine the extent to which an exempt entity is able to claim a GST credit, s. 69-5(4) requires the exempt entity to apply the rules as if that entity was not exempt.

Practically, the outcome for such exempt entities (other than certain charitable organisations referred to below) will be the same as for other (taxable) entities.

Special Rules for Certain Charitable Organisations

Where an entity is an exempt entity it is usually because of some specific provision. Therefore, entertainment acquisitions will generally be non-deductible because the entity is an exempt entity and not because of Division 32 of the *ITAA 1997*.

It is further noted that where a benefit provided to an employee is an exempt benefit it is not a fringe benefit.

Benefits provided to employees of certain charitable organisations, such as public benevolent institutions, public hospitals, public ambulance entities, etc. are exempt from FBT because of s. 57A of the *FBTAA*. Such exempt benefits are therefore not fringe benefits and would not fall within the exception referred to above.

Therefore where an exempt entity incurs entertainment expenditures which are exempt under s. 57A of the *FBTAA*, these will retain their character as a 'non-deductible expense' for GST purposes. Practically, for such amounts incurred in providing entertainment:

- the amount is an exempt benefit under FBT rules;
- the amount will be non-deductible for income tax purposes; and
- no GST credit entitlement arises.

Summary

Generally, the interaction of the GST, FBT and income tax laws result in the application of the rules as summarised below:

Entertainment expenditure incurred in relation to employees:

- subject to FBT;
- income tax deductible; and
- GST credit available.

Entertainment expenditure incurred in relation to non-employees (i.e. customers, clients, etc.):

- NOT subject to FBT;
- NO income tax deduction; and
- NO GST credit available.

Note: For a more detailed discussion on how GST applies to supplies of fringe benefits, refer to the ATO's public ruling, GSTR 2001/3.

FBT – Car Parking: is it really a commercial car parking station that is above the threshold?

We remind TaxEd member employers of two key conditions of the car parking fringe benefit rules that must be satisfied prior to there being any FBT liability.

These issues are particularly important for TaxEd employers providing parking outside major CBD areas where it can be expected the car parking FBT criteria are more likely to be met.

The two issues are set out below.

Issue 1

Where a commercial car parking station is located within the requisite 1km from the employer provided car parking - does the lowest fee charged in the ordinary course of business to members of the public for all day car parking by the commercial parking station exceed the car parking threshold?

To start with, the car parking threshold for 2016/17 is $8.48.

'All day parking' means parking of a single car for a continuous period of more than 6 hours on a day during a daylight period.

When assessing the threshold employers need to ascertain if the lowest fee (and not any fee) charged exceeds the threshold.

For example, a car parking station may charge $10 for all day parking (e.g. in before 10am – leave after 4pm); however it may have other periodical parking arrangements (monthly or annual parking fees) that, when converted to a daily basis, results in the daily fee being below the threshold.

As catered for in s. 39E of the *FBT Act*, the ATO in TR 96/26 (at paragraph 40) confirm (in the context of valuing car parking fringe benefits) that where periodical parking arrangements are available (i.e. monthly or yearly) it is possible to derive the daily rate by reference to the total fee charged for the period divided by the number of business days in the period. It should be noted that the number of business days in the period excludes Saturdays and Sundays and public holidays. Employers should also be sure, in a full year parking scenario, not to assume the denominator is 228 days. The 228 day rule is used when determining how many car park benefits are provided using the 'statutory formula method'.

Employers should therefore be certain that they are using the lowest daily rate charged by a commercial car parking station when considering whether the threshold is exceeded.

Issue 2

Is it a commercial parking station?

The FBT law prescribes that a commercial car parking station includes a permanent car parking facility where all or any of the car parking spaces are available in the ordinary course of business to members of the public for all day parking.

The ATO (at paragraph 81 of TR 96/26) confirm that certain arrangements do not constitute commercial car parking stations.

Of most relevance to employers outside of major CBD areas is the prospect that a car parking station, despite having a lowest all day parking fee above the threshold, is excluded based on paragraph 81.

Paragraph 81 states that a car parking facility that has a primary purpose other than providing all day parking may not be a commercial car parking facility.

The concession at paragraph 81 has been the subject of many favourable rulings by taxpayers where it is established the primary purpose of the car park is other than all day parking. For example car parking facilities that exist primarily to provide free or low cost short term parking, for example shopping centres, hospitals etc. may not be commercial car parking stations.

Paragraph 81 contains a range of other car parking scenarios that the ATO accepts are not commercial car parking stations. Tax Ed members that are within the car parking fringe benefits rules due to a non-standard car parking facility are encouraged to have a read of the ruling to see whether there is any relief available.

FBT – Can cars provided under novated lease financing be pooled cars for FBT reporting purposes?

Regulation 8 of the FBT Regulations prescribes benefits relating to pooled or shared cars as being excluded fringe benefits.

Fringe benefits which are excluded fringe benefits are not included in the employee's reportable fringe benefits amount. Where such a pooled or shared use exists during the year the benefit is an excluded fringe benefit in relation to each employee provided with the car benefit.

A common query that came up at the recent TaxEd FBT roadshows was whether an employee with a car provided by way of a novated lease arrangement could swap their car with another employee, at the employer's direction, so as the pooling requirements are met.

In the most recent FBT States and Territories Industry Partnership meeting held on 4 October 2016, the ATO indicated that in a situation where a vehicle is part of a novated lease, the terms of the lease would require the employer to provide the specific car to a specific employee for private use.

Where another employee is given personal use of the car e.g. through car swapping, the employer is nonetheless only providing the benefit to the employee who is party to the novated lease. The fringe benefit would only count against that employee and not any other employee. Accordingly the car is not considered a shared/pooled car.

This is an interesting interpretation as it goes to one of the core requirements of the FBT provisions, that being that a benefit must be provided in respect of the employment of the particular employee.

The ATO are obviously relying on the use by the second employee of the car as not being in respect of that particular employee's employment and so a car fringe benefit doesn't arise in regards to that usage.

Does this mean no car benefit arises on that day because the employee with the novated lease arrangement has not used the car for private purposes (nor is the car available for their private use as it is not garaged at their residence overnight nor do they have custody or control)?

So the car may not be a pooled car but does the employer now have a reduced fringe benefits tax exposure for the period of use by the second employee?

This might be a case of having to 'watch this space', as we are sure this issue will come to the public domain via a draft taxation ruling or determination - in which case the normal feedback process from interested parties applies.

FBT – FBT Rates commencing 1 April 2017

The Commissioner has published various FBT rates/amounts that will apply for the fringe benefit tax year commencing 1 April 2017. These are identified below:

1. Exemption Threshold – s. 135C

TD 2017/2 updates the exemption threshold for the new FBT year:

> 'The exemption threshold for the fringe benefits tax (FBT) year commencing 1 April 2017 is $8,393. This replaces the amount of $8,286 that applied in the previous year commencing 1 April 2016.'

2. FBT benchmark interest rate

TD 2017/3 updates the benchmark interest rate for the new FBT year:

> ' ... The benchmark interest rate for the fringe benefits tax (FBT) year commencing on 1 April 2017 is 5.25 per cent per annum. This rate replaces the rate of 5.65 per cent that had applied for the previous FBT year commencing on 1 April 2016.
>
> ... The rate of 5.25 per cent is used to calculate the taxable value of:
>
> - a fringe benefit provided by way of a loan, and
> - a car fringe benefit where an employer chooses to value the benefit using the operating cost method. ...'

3. Rates for private use of vehicle

TD 2017/4 sets out the rates to be applied where the cents per kilometre basis is used for the fringe benefits tax (FBT) year commencing on 1 April 2017.

4. Reasonable amounts for food and drink expenses by employees in receipt of living-away-from-home-allowances - FBT year commencing 1 April 2017

TD 2017/5 sets out 'amounts which the Commissioner considers reasonable under s. 31G FBTAA for food and drink expenses incurred by employees receiving a living-away-from-home-allowance (LAFHA) fringe benefit for the fringe benefits tax year ... commencing on 1 April 2017'.

It also notes:

> 'Where the total of food and drink expenses for an employee (including eligible family members) does not exceed the amount the Commissioner considers reasonable, those expenses do not have to be substantiated under section 31G of the FBTAA. Where an employee receives a LAFHA fringe benefit, for the employer to reduce the taxable value of the fringe benefit by the exempt food component, the expenses must be either:
>
> - equal to or less than the amount the Commissioner considers reasonable under paragraph 31G(1)(b), or
> - substantiated in accordance with the requirements in subsection 31G(2).'

5. Indexation Factors for purposes of valuing non-remote housing fringe benefits

TD 2017/6 sets out the indexation factors for the purpose of valuing non-remote housing for the FBT year commencing 1 April 2017.

GST – State and Territory GST Issues: the latest published minutes of the GST – States and Territories Industry Partnership

The most recent minutes of the States and Territories Industry Partnership were published in March 2017. They relate to the meeting held on 5 October 2016. (Readers seeking greater contextual clarity should refer to TaxEd's newsletter of September 2016, which discussed the minutes of the April 2016 meeting.)

The following points are noteworthy:

(a) ***Unimproved Land*** – Following on from a neutral evaluation of the application of s. 38-445 (GST-free supply of unimproved Commonwealth, State and Territory land), a second neutral evaluation on the application of item 4 of the table in s. 75-10(3) (deals with the margin scheme where there were no improvements on the land or premises as at 1 July 2000) in respect of dams, fences and roads is expected to be heard in early 2017.

(b) ***Class action by various local authorities*** – The ATO advised that it was not known whether the argument of the plaintiff local authorities 'takes into account' the provisions of state laws that exist for the payment of notional GST liabilities.

(c) ***Relief from Certain Administrative Penalties, GIC and SIC*** – The ATO is reviewing MT 2011/1 and PS LA 2011/26 in relation to application of s. 2B of the *TAA* which includes an exemption of the Crown from liability to a pecuniary penalty and prosecution for an office. *(Editorial Note: At the time of preparing this newsletter, it still appears that changes in connection with the review have not been made to either document, apart from a note that the documents are under review.)*

The meeting was advised that the ATO was engaging with States and Territories 'in respect of identifying those entities with Crown immunity'. The ATO outlined to the meeting entities with Crown immunity and provided additional post-meeting elaboration on queries raised on this point.

The ATO's comments included:

> 'State and Territory entities that do not have crown immunity (such as local Government entities) will continue to be liable for penalties and interest charges (subject to any other exemptions).'

(d) ***Development Leases: Where the land supplied by the government is not a taxable supply*** *(e.g. GST-free supply of the land under Div 38-N of GST Act etc.)* – The ATO commented on the application of GST under a development lease arrangement where the land supplied by the government to the developer pursuant to the arrangement is GST-free. The ATO noted that GSTR 2015/2 is directed to the circumstance of the land being a taxable supply.

Editorial Note:

GSTR 2015/2 *basically relates to an arrangement in which:*

- *A Government Agency agrees to transfer land (or grant a long term lease over land) to a developer, on the basis that the developer will carry out certain works on the land (i.e. undertake development services). In some cases, the developer is also required to make a monetary payment to the government.*
- *The Government Agency initially grants a short lease/licence to enable the developer to carry out those works.*
- *Upon completion of the works (and, if applicable, making the monetary payment), the land is transferred/long term lease is granted.*

- *The transfer of the land/long term lease is a taxable supply.*

The Ruling recognises that the supply of the land/lease is made for a GST inclusive market value equal to the sum of any monetary payment and the GST-inclusive market value of the development services.

The ATO informed the meeting:

> 'Notwithstanding that GSTR 2015/2 does not consider the application of Subdivision 38-N, Divisions 81 and 82 of the GST Act, the comments about the valuation of non-monetary consideration as explained at paragraphs 69, 82 and 83 of this ruling would apply equally in the context of development lease arrangements where the land is supplied GST-free. The rationale for this can be found at paragraph 68 of GSTR 2015/2 and paragraph 21 of GSTR 2001/6.
>
> ...
>
> Looking at a development lease situation where the consideration comprises both monetary and non-monetary components as discussed at paragraphs 80 to 83 of GSTR 2015/2, the consideration for a GST-free supply of land by the Government Agency would be:
>
> > Monetary Payment + GST inclusive market value of the development services (see paragraphs 83 and 87 of GSTR 2015/2).'

(e) ***Tax Invoices – Where Supplier's GST Registration is back-dated*** **-** The ATO was asked to provide advice in relation to the following circumstances:

- A supplier (S) had provided supplies to the recipient (R) for some time but S was not GST registered.
- S issued a tax invoice to R but the Australian Business Register (ABR) did not show S as GST registered.
- S informed R that it had issued a tax invoice because S was now required to be registered and had applied for GST registration.
- S subsequently issued another tax invoice for a further supply and a check of the ABR showed S was registered for GST, with the registration being back-dated to prior to the previous tax invoices.
- R took the view that because S was required to be registered for GST and had issued a tax invoice, R was entitled to an input tax credit (ITC), notwithstanding that S was not registered for GST at the time the first tax invoice had issued.

ATO's response:

- R was entitled to claim an ITC in the tax period in which a tax invoice was held.
- The onus was on R to ensure that the supply made by S to R was taxable (which inter alia required that S was either registered or required to be registered for GST).
- Where S was not shown on the ABR as registered for GST, the ATO said that it:

> ' ...would expect the recipient to take reasonable steps to satisfy themselves that the supplier is in fact required to be registered. For example, in the situation depicted above, it would be reasonable for the recipient to request a copy of the supplier's GST registration application.'

(f) ***Lump Sum payments – s. 56 of Return to Work act 2014 (SA)*** **–** The ATO discussed TD 2016/D1.

(g) ***Appropriations – onus of proving that a payment is an appropriation and, therefore, is not consideration for a supply*** **-** The ATO was asked to advise whether the government department (S) making a supply, or the government department (R) receiving and paying for the supply, bears the onus of proving that payment is covered by an appropriation.

Section 9-17(3) of the *GST Act* provides that a payment is not consideration for a supply where:

- a payment is made by a government related entity (such as R) to another government related entity (such as S) for making a supply;
- the payment by the payer (i.e. R) is covered by an Australian appropriation Law or is made under a specified intergovernmental health reform agreement; and
- the payment satisfies the non-commercial test.

In order for S to characterise the supply as not being subject to GST on the basis of s. 9-17(3), S should have sufficient evidence to support that characterisation. As R was asserting that the payment was covered by an appropriation, R would need to provide S with evidence to support the assertion. Until S is satisfied that the payment is covered by an appropriation, S should treat not treat s. 9-17(3) as satisfied.

(h) ***Third party reporting – Government grants and payments*** **–** The ATO informed the meeting:

> 'Government entities at the federal, state, territory and local levels will need to report annually the total payments they make to a business for services as from 1 July 2017. [The first report will be due on 28 August 2018 for the financial year ending 30 June 2017.]
>
> Additionally, Government entities at the federal, state and territory levels will need to report the total grants paid to entities with an ABN. Some government entities, such as hospitals, schools and libraries, are exempt through legislative instruments and are not required to report.
>
> The information reported to the ATO may be used for pre-filling purposes to make it easier for individual businesses to lodge tax returns. It will also be used in the ATO data matching program to identify businesses that have:
>
> - not lodged tax returns
> - omitted income from tax returns that have been lodged
> - not met their GST obligations.

The Taxable payments annual report will be due by 28 August each year. Government entities will need to update their systems to collect the required information from 1 July 2017. Reports will need to be submitted electronically in a format that meets ATO specifications. These specifications can be downloaded from the ATO at softwaredevelopers.ato.gov.au/tparGov.

ATO advised that each jurisdiction will need to determine which of their government entities will need to report and what payment transactions are required to be reported based on their consideration of the law, and the legislative instruments which exempt certain entities and payments, as well as information published on the ATO website at *https://www.ato.gov.au/business/reports-and-returns/taxable-payments-annual-report/government-entities/*

Editorial Note:

Third party reporting has been discussed in previous TaxEd Newsletters – for example see 'GST – Third Party Reporting Legislation introduced into Parliament' in the November 2016 newsletter.

(i) ***Reverse Charging – Division 84 of GST Act*** **-** Question raised for ATO advice:

Does a reverse charging arrangement due to changes under the *Tax and Superannuation Laws Amendment (2016 Measures No. 1) Act 2016* require the supplier and the recipient to have entered into an agreement?

ATO Response:

'No. In broad terms, Division 84 of the A New Tax System (Goods and Services Tax) Act 1999 (GST Act) applies to supplies of anything other than goods or real property that are not connected with the indirect tax zone (ITZ) and that are acquired:

- by a recipient that is required or required to be registered;
- solely or partly for the purpose of an enterprise carried on by the recipient in the ITZ; and
- not solely for a creditable purpose.

Where Division 84 applies to such a supply, the supply becomes a taxable supply and any GST on the supply is payable by the recipient.

Where a supply is disconnected because it is made to an entity that is an Australian-based business recipient of the supply (under the Tax and Superannuation Laws Amendment (2016 Measures No. 1) Act 2016), that entity is responsible for determining if they have a GST liability in relation to the supply under the reverse charge rules in Division 84. There is no requirement that the supplier and the recipient have to enter into an agreement.

Although a particular supply that is excluded from the connected with the ITZ rules as a result of these amendments may be subject to Division 84, it is not necessarily the case that Division 84 requires that the supply be reverse charged. If the acquisition is fully creditable in the recipient's hands, Division 84 does not apply. This reflects that there is no need to collect GST through a reverse charge where the GST revenue from the reverse charge is fully offset by an equivalent ITC claimed by the recipient.

It should be noted that Division 83 also contains reverse charge rules that may apply to a supply between a non-resident supplier and a recipient that is registered or required to be registered. These rules apply to taxable supplies if the supplier and recipient agree that the GST on the supply should be payable by the recipient.'

Editorial Note:

The nature and application of the reverse charging provisions were outlined in previous newsletters – for example, see the March 2016 TaxEd newsletter article – 'When digital products and services are purchased from overseas suppliers: changes to the GST regime'.

FBT – Recent Developments at a Glance: March 2017

Business Benchmarks – Are you maximising your potential to generate funds for NFP activities?

NFPs that engage in commercial activities in order to raise funds to support their NFP activities can check the performance of their business activities against benchmark data assembled by the ATO. This may be a useful guide in indicating whether your organisation is maximising its funding and as an aid to audit.

ATO tool to 'calculate and compare the data you entered using the benchmarks to quickly show how your business compares to your competitors'.

FBT – Are you considering having a tax agent deal with your FBT return for 2016-17?

If you are considering engaging a tax agent to lodge your organisation's 2017 FBT return, you will need to take timely action.

The ATO has advised Tax Agents that they need to ensure that any new FBT clients are added to the particular Tax Agent's ATO client list by 21 May 2017.

You should also be aware that the ATO has also advised Tax Agents:

> 'The due dates for lodgment of 2017 FBT returns for all tax agents are:
>
> - 25 June 2017 if the return is lodged electronically
> - 21 May 2017 if the return is lodged by paper.
>
> The due date for payment under the lodgment program remains as 28 May 2017.'

FBT – Lodging your FBT Return directly?

The ATO has noted:

- FBT returns must be lodged by 22 May 2017, unless it has accepted a request for late lodgement or lodgement is made via a registered tax agent.
- Payment of the total FBT amount has to be made by 22 May 2017.
- If your organisation's taxable amount for the year is nil, and it is registered for FBT, your organisation does not need to lodge an FBT return for the year. Your organisation should complete a Fringe benefits tax – notice of non-lodgment by the time your return is due.

Further information in relation to completing 2017 FBT returns is available.

GST – accounting for GST where total consideration unknown

Circumstances can arise where the total consideration for a taxable supply is unknown at the time at which a supplier has an obligation to account for GST, as this depends on a future event that is not entirely within the control of the supplier (or as the case may be the recipient) of a taxable supply.

This situation will only affect suppliers/recipients which account for GST on an accruals (non-cash basis). Suppliers accounting for GST on a cash basis will remit GST for a tax period only in relation to amounts received (and therefore known) in that tax period. Recipients accounting for GST on a cash basis will claim input tax credits for a tax period only in relation to amounts paid (and therefore known) in that tax period.

Suppliers accounting for GST on an accruals basis *prima facie* need to remit the total GST for a supply in a tax period in which the supplier receives any of the consideration or (if earlier) issues an invoice for any part of the supply – s. 29-5 *GST Act*.

The difficulty of accounting for the total GST when only part of the consideration can be identified, has been dealt with in *A New Tax System (Goods and Services Tax) (Particular Attribution Rules Where Total Consideration Not Known) Determination (No. 1) 2000* - F2006B11593) – the 'Old Determination'.

As the Old Determination expired on 31 March 2017, the Commissioner is in the process of registering a new determination - *Goods and Services Tax: (Particular Attribution Rules Where Total Consideration is Not Known) Determination 2017* (the 'New Determination').

In the New Determination, the general approach of the Old Determination is maintained. However, the change in the phrasing of the New Determination has prompted pause for thought and we intend to further consider its significance. We shall discuss the New Determination in detail in a subsequent newsletter.

Market value of long term accommodation - ATO review:

The ATO website notes that:

> 'Accommodation supplied by an endorsed charity or gift-deductible entity is GST-free if the consideration received for the accommodation is less than 75% of market value including GST.'

Since our last newsletter, the ATO has invited feedback on its proposal to retain long-term weekly accommodation benchmark market values for 2015, 2016 and 2017 at the levels previously published. Although the opportunity for feedback technically closed on 31 March 2017, we anticipate prompt feedback would still be considered.

Racing Clubs - Matters currently under ATO consideration:

- **Horse Racing Clubs** - Legislative Determination RCTI 2017/D10 *Draft Goods and Services Tax: Recipient Created Tax Invoice Determination (No. 15) 2017 for Horseracing Clubs* – comment sought by 4 April 2017
- **Greyhound Racing Clubs** - Legislative Determination RCTI 2017/D13 *Draft Goods and Services Tax: Recipient Created Tax Invoice Determination (No. xx) 2017 for Greyhound Racing Clubs* – comment sought by 4 April 2017

Tax treatment of certain incentive payments to employees

Employers considering providing financial incentives to employees to take up employment with new employers may find the discussion in CR 2017/20 informative.

It specifically deals with tax treatment of payments by the Department of Communities, Child Safety and Disability Services Queensland to employees in order to encourage employees to transition to NDIA employment following NDIA's assumption of certain responsibility from the Department.

FBT Q&A – Is there a FBT limit for alcoholic drinks when an employee is travelling on work?

Question

Employees are reimbursed for meals and 2 standard drinks as part of our general policy when dining while travelling on business trips involving an overnight stay.

However, sometimes they consume more than 2 standard drinks. If we reimburse them for the drinks over and above the 2 standard drinks allowed, how is this to be treated for FBT purposes?

Answer

Where an employee is travelling on a business trip, the consumption of food & drink - including alcohol - does not constitute meal entertainment based on the ATO's views in TR 97/17 - specifically refer to Examples 3.1 and 3.2 in the ruling.

So it seems there does not appear to be an upper limit insofar as how much alcohol can be consumed except the physical limit of the particular employee!

Where, however, the food and drink is consumed in association with other forms of entertainment - such as a floor show - the character of the food and drink will change to that of entertainment.

FBT Q&A – Purchase of exempt vehicle v ordinary sedan

Question

We are considering the purchase of a new vehicle, where it is intended that the driver of the vehicle will have access for full business use, and will also have private use, allowing them to drive the vehicle strictly to and from their home to work.

Assuming similar purchasing and operating costs, would it be an effective tax strategy to purchase a ute or dual cab vehicle with a carrying capacity of over 1 tonne for this person as opposed to a standard 4 door sedan car.

Does this benefit still apply even if the non-car vehicle is not being used by a person performing trades, or other activities that would fully utilise the vehicle's carrying capacity?

Answer

If a 1 tonne load or over carrying capacity vehicle is acquired then it will not be a car and the benefit of the s. 47(6) exemption will be available provided the only private use is home to work travel and other private travel that is minor, infrequent and irregular.

If the vehicle was designed to carry a load of less than 1 tonne then it is a car but if it is a:

(i) a taxi, panel van or utility truck, designed to carry a load of less than 1 tonne; or

(ii) any other road vehicle designed to carry a load of less than 1 tonne (other than a vehicle designed for the principal purpose of carrying passengers)

then it will also be an exempt benefit under s. 8(2) to the extent the private travel is so limited as above.

Although the exemptions suggest the vehicles are designed for 'workhorse' purposes, the FBT exemption provisions noted above do not distinguish the vehicles based on the employees occupation or trade so a white collar worker is equally entitled to the exemption as a blue collar worker.

If the employee is happy to drive such a vehicle then for FBT purposes it would make sense going down the 'workhorse' path.

FBT Q&A – Reimbursement of drivers licence fees

Question

Are there any fringe benefits implications for reimbursement of the cost of annual driver's licence renewal fees?

Does it depend on the type of driver's licence? For example, some employees are required to hold endorsed licences that allow them to drive heavy vehicles as part of their job role, in addition to their car licences.

There is a requirement in each employment contract to have current driver licence.

Answer

The reimbursement of the annual drivers licence renewal is an expense payment fringe benefit and FBT will be generally payable unless the otherwise deductible rule can apply. In other words, would the employee have been able to claim as a tax deduction the cost of the annual licence renewal?

The ATO view is while the holding of a driver's licence may be a condition of employment, it does not follow that the licence fees are deductible. They are private in nature and accordingly not deductible as the right to drive on the public roads does not cease to be a private right merely because the taxpayer is employed in some capacity which involves the use of the public road system.

However, if the employee requires an endorsed licence to undertake their job position, the cost of any endorsement over and above the general licence cost is deductible.

Refer to Taxation Determination TD 93/108 for further discussion on the deductibility of licence fees.

FBT Q&A – Are closing odometer records still required to be kept when valuing car fringe benefit taxable values?

Question

We provide car fringe benefits to our staff and we require them to keep a log book so as we can have the option of using this method to value the benefit and use it if it comes in under the statutory formula value.

Are we required to obtain closing odometer records as at the end of the FBT year?

Answer

If you are using the statutory formula method, there is no longer any practical need to keep odometer records as there is now a flat 20% statutory rate regardless of distance travelled.

If you are using the log book method, the relevant periods for which odometer records must be maintained are:

- in a log book year, at the start and end of the applicable log book period and at the start and the end of the holding period; and
- in a non-log book year, at the start and end of the holding period.

Thus, if the car is held for the whole fringe benefits tax year (either a log book year or a non-log book year), then odometer records must be taken at, or as soon as reasonably practicable after, 1 April and 31 March.

Refer sections 10A and 10B of the *FBT Act*.

GST Q&A – Funding to community organisations

Question

Council agreed to provide $1,500 worth of funding to a Neighbourhood House for the purchase of childcare tables. The agreement stated that the Neighbourhood House would purchase the tables and then Council would pay the $1,500 to the Neighbourhood House.

The Neighbourhood House has now provided Council with a copy of the receipt for a total of $1,980 (which includes GST of $180) and an invoice of $1,500 (excluding GST).

Is it correct to pay the Neighbourhood House the $1,500 without taking into account GST or should we allocate 1/11th of the payment to the GST payable account?

Answer

Paragraphs 15 and 15A of GSTR 2012/2 summarises the relevant test:

> '15. For a financial assistance payment to be consideration for a supply there must be a sufficient nexus between the financial assistance payment made by the payer and a supply made by the payee. A financial assistance payment is consideration for a supply if the payment is 'in connection with', 'in response to' or 'for the inducement of' a supply. The test is an objective one.
>
> 15A. Further, in identifying the character of the connection, the word 'for' ensures that not every connection between supply and consideration meets the requirements for a taxable supply. That is, merely having any form of connection of any character between a supply and payment of consideration is insufficient to constitute a taxable supply.'

Based on the information you have provided it appears your situation is similar to the comments and examples provided at paragraphs 55 to 62 of GSTR 2012/2. In particular, it appears that while Council has agreed to provide funds towards the acquisition of the tables there is insufficient nexus between the payment and any supply made to Council. The comments in examples 10 and 11 appear to apply in this case.

> 'Example 10 - no supply - mere expectation
>
> 58. A local tennis club is seeking funding to enable them to resurface their privately owned tennis courts. The local council provides financial assistance to the tennis club on the basis that the money is only used for the resurfacing of the tennis courts.
>
> 59. The local council has an expectation that the works will be carried out. However, as there is no binding obligation on the tennis club to actually carry out the resurfacing of the courts, and there are no other goods or services passing between the parties there is no supply to the local council.
>
> 60. There are no GST consequences arising from the arrangement for either party.
>
> Example 11 - no supply - mere expectation (where the thing is done)
>
> 61. Continuing with the last example.
>
> 62. Even if the payment is ultimately used to resurface the tennis courts, this does not change the fact that the tennis club has not made any supply to the local council. Transactions that are neither based in an agreement that binds the parties in some way nor involve the supply of goods, services or, some other thing to the payer, do not establish a supply. In this example, the mere doing of the thing that was expected does not amount to a supply to the local council because it does not involve some good, service or other supply being provided to the local council by the tennis club for which the payment is consideration. Rather, the payment has facilitated the acquisition of services by the tennis club in having its courts resurfaced. This is not a supply made to the local council.'

Accordingly, the payment by Council of the $1,500 would not be for a taxable supply to Council and therefore would not include any GST component.