What's on this month?

- A two-part discussion on the complex area of work-related travel, with a look at the Commissoner's recent draft ruling
- Single Touch Payroll is coming - an updated article focusing on the employee interface
- For our sports NFPs, there is a note on a new safe-harbour draft guideline

We've had some great member Q&As again this month, including:

- Some guidance navigating the ATO's flow chart of Division 81 of the GST Act
- GST registration of an employee social club
- Salary packaging income protection insurance
- Plus lots more!

Live Online Webinar - new format now including a Feature Topic!

In Monday's webinar, in addition to covering key items in the July Update, we also kick off the 1st of our "**Feature Topics**". This month we will look at the FBT treatment of tickets to an entertainment event provided free of charge to an employer by a supplier and given by the employer to the employees. We will explore how the "tax exempt body entertainment" fringe benefit rules apply in this scenario and specifically whether the minor benefit exemption is available.

Next month's feature topic will be a reminder of the key rules regarding GST and the margin scheme as it applies to property transactions.

So don't forget to join us Live Online Monday 7 August to get a more detailed look into the articles covered below in this Update, as well as ask any questions you may have.

Membership - have you renewed?

Don't forget that membership renewals are due, so if you haven't already renewed, simply visit our website and follow the prompts.

Happy reading
the TaxEd Team

FBT Article – Commissioners draft travel ruling: Part I

TR 2017/D6 - Deductibility of employees' travel expenses (Part I)

On 28 June 2017, the Commissioner issued TR 2017/D6 entitled *Income tax and fringe benefits tax: when are deductions allowed for employees' travel expenses?*.

The draft ruling sets out the Commissioner's preliminary views on the general principles for determining whether an employee can deduct travel expenses under s. 8-1 of the *ITAA 1997*. It discusses:

- the general principles of deductibility of travel expenses under s. 8-1;
- the application of the principles to the following four categories of transport expenses:
  - ordinary home to work travel;
  - special demands travel;
  - co-existing work locations travel; and
  - relocation travel;
- the application of the principles to the following two categories of accommodation, meal and incidental expenses:
  - work-related accommodation; and
  - relocation or 'living away from home' accommodation.

TR 2017/D6 is a consolidation of seven rulings and determinations which will be withdrawn once the draft ruling is finalised. The draft ruling, which contains 255 paragraphs, includes 18 examples and we strongly recommend members read the examples to determine whether any may apply in their circumstances.

It should be noted that the principles dealing with the deductibility of travel expenses under s. 8-1 apply equally to deductibility of car expenses under Division 28 of the *ITAA 1997*.

What is a travel expense?

For the purposes of the draft Ruling, a travel expense is an expense relating to:

1. transport (that is, travel by airline, train, car, bus or other vehicle); and
2. accommodation, meals and incidental expenses of an employee when they travel away from home for work.

An employee can deduct a travel expense under s. 8-1 to the extent that:

- they incur the expense in gaining or producing their assessable income; and
- the expense is not of a capital, private or domestic nature.

Transport expenses — i.e. travel by airline, car, bus etc.

A transport expense is deductible where the travel is undertaken in performing the employee's work activities. Travel may be said to be undertaken in performing an employee's work activities if:

1. the work activities require the employee to undertake the travel — travel to start work is preliminary to the work activity;
2. the employee is paid, directly or indirectly, to undertake the travel — the travel should be able to be characterised as an income-producing activity for which the employee is paid (a travel allowance does not reflect pay for the period spent travelling); and
3. the employee is subject to the direction and control of their employer for the period of the travel — 'direction and control' means the employee is subject to their employer's orders or

directions, whether or not those orders or directions are exercised during the period of the travel.

Travel arrangements that are contrived to make private travel appear to be work travel may be determined by regard to whether the work involves special demands and whether the employee has co-existing work locations.

Categories of travel expenses

The above-mentioned principles are applied to four categories of transport expenses and illustrated by way of examples. Refer to the table below:

(a) Category	(b) Commissioner' preliminary views
Ordinary home to work travel — i.e. travel between home and a regular work location **Not deductible**	This travel is required for an employee to commence work or to depart after work is completed and is usually evident without referring to specific terms of employment. The specific terms of employment may be relevant to determining deductibility of travel between home and a regular work location which is temporary or remote. See examples 1, 2 and 3 in the ruling.
Special demands travel — i.e. travel between home and a regular work location but part of the journey is an express or implied requirement or demand of the job **Deductible**	Part of the journey may be special demands travel. Special demands are specific physical or logistical requirements of the work activity, including: • the remoteness of the work location — see example 4; • a requirement to move continuously between changing work locations — see example 5; • a requirement to work away from home for an extended period — see examples 14 to 16; and • other special circumstances of the work activity.
Co-existing work locations travel — i.e. travel which can be attributed to the employee having to work in more than one location **Deductible**	The travel is directly between work locations or between home and an alternative work location; and it is reasonable to conclude that the travel is undertaken in performing the employee's work activities because of the requirement to work in more than one location. Such travel includes: (i) travel that takes up a large part of the day; (ii) short-term travel to a temporary alternative work location — see examples 7 and 8; (iii) longer-term travel to a temporary alternative work location — see example 9; (iv) ongoing travel to an alternative work location — see examples 10 to 13; (v) travel required under other circumstances involving terms of employment or special demands — see examples 14 to 16.

(a) Category	(b) Commissioner' preliminary views
Relocation travel — i.e. travel undertaken in relocating for work **Not deductible**	Relocation travel is preliminary to work and the cost of such travel is not incurred in performing an employee's work activities. It also has a private or domestic nature, often reflecting the employee's choice about where to live. This can be concluded without referring to specific terms of employment. See example 17.

Accommodation, meal and incidental expenses

Employee expenditure for accommodation, meal and incidentals e.g. the ordinary costs of maintaining a home and consuming food and drink to go about their daily activities, such as to attend work is:

- preliminary to the work, and is not incurred in the course of performing those activities; and,
- generally, of a private or domestic nature.

Likewise, expenditure incurred in relocating to a place of work or in living away from home is preliminary to the work and is not deductible.

Accommodation, meal and incidental expenses that are incurred by an employee in performing an employee's work activities, and are therefore deductible, only where:

(a) the employee's work activities require them to undertake the travel;

(b) the work requires the employee to sleep away from home overnight;

(c) the employee has a permanent home elsewhere; and

(d) the employee does not incur the expenses in the course of relocating or living away from home.

Categories of accommodation, meal and incidental expenses

The draft Ruling contain examples to show how the above principles apply to two categories of accommodation, meal and incidental expenses. These categories are as follows:

Work-related accommodation **Deductible**	Accommodation, meals and incidental expenses which satisfy these conditions: • the employee's work activities require them to undertake the travel; • the work requires the employee to sleep away from home overnight; • the employee has a permanent home elsewhere; and • the employee does not incur the expenses in the course of relocating or LAFH.
Relocation or 'living away from home' (LAFH) accommodation **Not deductible**	Relocation travel is preliminary to work and not incurred in performing an employee's work. It also has a private or domestic nature in that it often reflects and employee's choice about where to live. The fact that an employer has required the employee to relocate or live away from home does not alter the private nature of the expenditure. The fact that an employer has required the employee to relocate or live away from home does not alter the private nature of the expenditure.

Important — Apportionment of expenses

Expenses must be apportioned to the extent that they are of a private nature or are not incurred in producing assessable income. This includes where the employee or members of their family stay in the accommodation for recreational or other private purposes — except where the private use is merely incidental.

Discussion continues in Part II

This concludes Part 1 of this month's article on TR 2017/D6. Having provided an overview of the Commissioner's views on the principles applying to deductibility of travel, the discussion continues in Part II (included in this month's newsletter) with consideration of some commonly encountered factual situations where these principles are applied.

FBT Article – Commissioners draft travel ruling - Part II

TR 2017/D6 - Deductibility of employees' travel expenses (Part II)

In this second part of our discussion of TR 2017/D6, we summarise the numerous examples contained within the draft ruling.

The proposed binding section of the draft Ruling contains 18 detailed examples illustrating the principles discussed above.

Example 16 which considers the followings types of travel is reproduced in full below:

- special demands travel (deductible);
- co-existing work locations travel (deductible); and
- living away from home accommodation (non-deductible).

Example — Working at a different location for an extended period (4 months)

Yumi works as a senior executive for an employer based in Brisbane and is paid a salary that recognises all aspects of her position, including the requirement for her to travel to fulfil her duties.

Yumi's employer requires her to travel to Townsville to set-up a new office for the employer. Yumi will be in Townsville for four months after which she will return to her usual employment in the Brisbane office. During this period, Yumi will have occasional, one or two-day business trips to Brisbane and Sydney.

The following arrangements have been agreed to between Yumi and her employer for the period that Yumi is in Townsville:

- Yumi's employer will fund her airfare to Townsville at the start of the four-month work assignment and her return flight;
- Yumi will live in a two-bedroom apartment in Townsville which has been leased by her employer. The apartment has a fully equipped kitchen, laundry, and other amenities associated with a home;
- Yumi's family will remain in the family home in Brisbane during the period Yumi works in Townsville; and
- Yumi's employer agrees that, because of the specific demands of her work in Townsville, including the length of her stay there and her remoteness from Brisbane and her family, airline travel between Townsville and Brisbane each week will be arranged and paid for by the employer. Under the arrangements, Yumi will be subject to the direction of the employer during the period when she undertakes this travel.

The cost of Yumi's flights between Townsville and Brisbane are otherwise deductible to her employer under the *FBTAA*. The travel is attributable to Yumi having co-existing work locations and her employer has determined that the special demands associated with her working away from home for an extended period reasonably require that the travel is part of her work.

Yumi will be living away from home for the four-month period of the work assignment because, even though she is required to stay in Townsville, she:

- will be staying away from her permanent home at one work location for an extended period;
- will be staying in home-like accommodation when she is in Townsville; and
- will not be travelling regularly for work.

Therefore, the meal and incidental expenses Yumi will incur in Townsville will not be deductible.

Any allowance Yumi receives from her employer to cover the costs of her meal and incidental expenses while she is in Townsville will be a living-away-from-home allowance which is exempt income.

Alternatively, assume that Yumi's employer decided that her weekly flights between Townsville and Brisbane during the period Yumi works away from home will not be part of her work and will be undertaken in Yumi's own time. In this case, the cost of these trips travelling between Townsville and Brisbane each week would not be deductible (or otherwise deductible to the employer), since the travel would not be undertaken in the performance of Yumi's work activities. However, the cost of flights between Brisbane and Townsville at the start and end of the work assignment are attributable to co-existing work locations and would remain otherwise deductible to the employer under the *FBTAA*.

Example 16 in the draft Ruling

Summary of main features of the other examples

The main features of the other 17 examples in the draft Ruling are summarised below.

Example in draft ruling	Explanation
1. Travel between home and a regular work location Employee lives 30 kms from her office and travels to work by train	***Ordinary home to work travel (non-deductible)*** Considers whether the transport expenses incurred by an employee who is on-call to manage work problems out of hours, is required to work extended hours and sometimes deals with work matters while travelling on the train to work are deductible. The travel is not deductible because it is not undertaken by the employee in performing her work.
2. Travel between home and an alternative but regular work location Employee accountant who lives 15 minutes from his regular office receives an allowance to cover costs of travelling — under a temporary arrangement — to another city office requiring one hour's travel from home.	***Ordinary home to work travel (non-deductible)*** The employee is required to attend the city office for the same time that he would usually attend his regular place of work. He is paid a travel allowance of $300 per week for the three months period. He is not required to stay overnight. The travel between home and the temporary work location is non-deductible travel between home and work. The allowance to compensate for the extra travel does not make the travel deductible.
3. Travel between home and remote location — fly-in fly-out (FIFO) employee Employee living in the city and working at a mine site on a FIFO basis for 12 months, with a roster of 20 days on, 7 days off. Rostered period starts when employee arrives at worksite. Shared accommodation is provided by employer near the mine site and only available to the employee during the roster period.	***Ordinary home to work travel (non-deductible)*** Travel from home to the airport is at employee's cost — non-deductible private travel. Employer pays for flight to project site and for bus to accommodation near mine site — travel is to and from work and is not undertaken in performing his duties — non-deductible, therefore not otherwise deductible to the employer. ***Work-related accommodation (deductible)*** Accommodation, meal and incidental expenses are otherwise deductible to his employer under the *FBTAA.*

Example in draft ruling	Explanation
4. FIFO employee — travel in the performance of work activities from point of hire Employee living in regional town and working at a mine site on a FIFO basis for 12 months, with a roster of 20 days on, 7 days off. Rostered period starts when employee arrives at city airport. It ends when employee is returned to the city airport. Shared accommodation is provided by employer near the mine site and only available to the employee during the roster period.	***Special demands travel (deductible)*** Travel from home to the airport is at employee's cost — non-deductible private travel. Employer pays for flight to project site and for bus to accommodation near mine site. Employee is paid for the time he travels between the airport and the mine site i.e. travel is to and from work and is undertaken in performing his duties — deductible, therefore otherwise deductible to the employer. ***Work-related accommodation (deductible)*** As in example 3 and for the same reasons, accommodation, meal and incidental expenses are 'otherwise deductible' to his employer under the *FBTAA.*
5. Working at new locations every few weeks and staying away from home Employee in road construction is mainly based and required on site anywhere in the State. He is paid a daily travel allowance where site is more than 100 kms from his home and can choose whether or not to return home each day.	***Special demands travel (deductible)*** The employee's cost of travel between project locations and his home during the week and on weekends is not deductible. It is not undertaken in performing his duties, and occurs by choice for personal reasons. ***Work-related accommodation (deductible)*** Accommodation, meals and incidentals for the periods he spends away from home on projects are deductible because the travel is required by his work and he is not living away from home.
6. Day trip to alternative work location Employee living in regional city flies — at employer's expense — to capital city each fortnight to attend a work meeting, returning home on the same day.	***Co-existing work locations travel (deductible)*** Employee's travel costs are otherwise deductible under the *FBTAA.* His travel is attributable to his having co-existing work locations and is part of his work activities.

Example in draft ruling	Explanation
7. Short-term travel to a temporary alternative work location — private component —apportionment Health professional living in regional city travels interstate to a five-day work-related training course. She is accompanied by her spouse and they stay on an extra two days. She is paid her usual salary while on the course. Choice of accommodation was not influenced by accompanying spouse.	***Co-existing work locations travel (deductible)*** The cost of the interstate travel to the training course is attributable to the employee having co-existing work locations and is therefore deductible. No apportionment is required. Spouse's travel is not deductible. ***Work-related accommodation (partially deductible)*** Full cost of the accommodation and incidental costs for the first five days of employee's stay are deductible: • she was required to work away from home and stay away overnight because of travel undertaken in the course of performing her work activities; and • choice of room and the cost of the room were not affected by her spouse accompanying her. The cost of the accommodation for the two days after the course is a private expense.
8. Short-term travel to a temporary alternative work location (4 days) — private component — apportionment Government employee travels interstate to a four-day training course from Tuesday to Friday. Employer pays for airfares and provides an allowance to cover accommodation and meals. Employee permitted to stay on until Sunday after the course.	***Co-existing work locations travel (deductible)*** The cost of the employee's travel is otherwise deductible under the *FBTAA*. It is attributable to the employee having co-existing work locations and is part of his work activities. The private arrangement is incidental to the work travel and was able to be accommodated as part of that travel at no additional cost to the employer, ***Work-related accommodation (partially deductible)*** Employee's accommodation, meals and incidental costs are deductible for the period he was working — i.e. on the training course. He declares his travel allowance as income in his tax return and claims a deduction for these expenses. Costs of accommodation, meals and incidental expenses from Friday night until Sunday are non-deductible private expenses.
9. Longer-term travel to temporary work location — training course (6 weeks) Graduates sent by employer on a six-week training course away from their home cities. Employer pays for travel, accommodation and meals.	***Co-existing work locations travel (deductible)*** The cost of the graduates' travel is otherwise deductible to their employer under the *FBTAA*. It is attributable to the graduates having co-existing work locations and is part of their work activities. ***Work-related accommodation (deductible)*** Accommodation and meal expenses for the period of the training course are otherwise deductible because the travel is required by the graduates' work and they are not living away from home

Example in draft ruling	Explanation
10. Ongoing travel to an alternative work location (car) Employee lives near and works in employer's country office but is required to attend the city office — 200 km away — two days per week on Thursday and Friday. He stays in a hotel on Thursday to save having to travel 200 km each way.	***Co-existing work locations travel (deductible)*** Employee's travel is deductible because it is attributable to his having co-existing work locations and is part of his work activities. His salary package recognises that he must travel regularly between the two offices. ***Work-related accommodation (deductible)*** Employee's accommodation, meal and incidental costs are deductible — he is required to work away from home and stay away overnight because of travel undertaken in the course of performing his work activities.
11. Ongoing travel to an alternative work location — lease of property by employer for use at alternative work location Employee works 23 days in one capital city and 2-3 days interstate where her employer leases an apartment that she can use while she is there. She also travels to other capital cities on an ad hoc basis. Employer pays the airfares.	***Co-existing work locations travel (deductible)*** Employee's travel is deductible because it is attributable to her having co-existing work locations and is part of her work activities. Her salary package recognises that she must travel regularly between the offices around the country. ***Work-related accommodation (deductible)*** Accommodation costs are 'otherwise deductible' to her employer under the FBTA Act, as the employee is required to work away from home and stay away overnight in performing her work activities and she is not living away from home. The employee can deduct her meal and incidental costs.
12. Ongoing travel to an alternative work location — additional property — employee rents accommodation from spouse Project manager living in a capital city required to work in a regional town on four-week roster — three weeks on the project and one week in the city. He receives a travel allowance. Employee's spouse purchases a townhouse in the regional town and he pays rent of $280 per week when he stays in the townhouse.	***Co-existing work locations travel (deductible)*** Travel is deductible — it is attributable to the employee having co-existing work locations and is part of his work activities. ***Work-related accommodation (deductible)*** The rent the employee pays to his wife is deductible as a travel expense because it is not disproportionate to the cost of suitable commercial accommodation — based on ATO's reasonable travel expense rates — for the periods he is required to stay in the town for work. Meals and incidental costs are also deductible to the employee as he is required to work away from home and stay away overnight because of travel undertaken in the course of performing his work activities, and he is not living away from home.

Example in draft ruling	Explanation
13. Ongoing travel to alternative work location — additional property that needs to be apportioned Employee must travel between several locations in performing her duties but up to 20 weeks in a capital city for which she receives a travelling allowance. She purchases an apartment in the capital city and uses it only when she is in the city for work purposes. She rents out the apartment on a commercial basis in the weeks she is not there.	***Co-existing work locations travel (deductible)*** Travel is deductible — it is attributable to the employee having co-existing work locations and is part of his work activities. ***Work-related accommodation (deductible)*** Meals and incidental costs are deductible, as she is required to work away from home and stay away overnight in the course of performing her work activities. Employee's costs of financing, holding and maintaining the apartment are deductible if they are not disproportionate to the cost of suitable commercial accommodation for the periods she is working there. If the costs are disproportionate, then the disproportion may be explained by factors unrelated to her employment — e.g. property investment. In this case, apportionment would be necessary to limit her deduction to the costs of suitable commercial accommodation for the period of her work. The costs for the period when the apartment is rented out are also deductible.
14. Short-term travel to a temporary, alternative work location (3 weeks) Employee living in capital city is required to travel to a regional city to train new staff there for a three-week period. She travels to the regional office on Mondays for a 10.30 am start but is paid from her usual start time of 9am, stays in motel until the Thursday and returns home on Friday after the session. She is paid an allowance to cover the cost of the travel — this is assessable income.	***Special demands travel (deductible)*** Cost of travel between city and regional offices is deductible as travel between co-existing work locations and the employer has determined that the travel is part of the employee's work. ***Co-existing work locations travel (deductible)*** Cost of travel to and from the city and regional offices is deductible as travel between co-existing work locations and the employer has determined that the travel is part of the employee's work. ***Work-related accommodation (deductible)*** Accommodation expenses are deductible because the employee is: • required to stay away overnight because of travel undertaken in the course of performing her work activities; and • not living away from home.

Example in draft ruling	Explanation
15. Working temporarily at a different location for an extended period (2 months) IT consultant working for a consultancy firm is required to work required to work interstate on a two-month assignment. Employer pays for the interstate travel at the start and end of the assignment and on a weekly basis to home at the end of the two months. Employee receives daily travel allowance to cover costs during the week — he rents an apartment in the project location.	***Special demands travel (deductible)*** Costs of interstate flights are otherwise deductible to his employer under the *FBTAA* — extended period away from home reasonably requires that travel is part of his work. ***Co-existing work locations travel (deductible)*** Costs of interstate flights are otherwise deductible to his employer under the *FBTAA* as travel between co-existing worksites. ***Work-related accommodation (deductible)*** Accommodation, meals and incidentals for the periods while working interstate are deductible because the employee is: • required to work away from home and stay overnight because of travel undertaken in the course of performing his work activities; and • not living away from home — employee declares his travel allowance as income in his tax return and claims a deduction for these expenses
17. Secondment to Australia for between 90 and 120 day project work — accommodation, meal and incidental expenses Australian resident company employer — part of a global consulting business — engages overseas based employees on secondment for pre-determined time of between 90 and 120 days. Australian company pays the employees' overseas employer for salaries etc. as well as meeting costs e.g. visas, travel fares to and from Australia and accommodation.	***Relocation travel (non-deductible)*** Employer's costs of flying the employees between their place of origin and Australia are relocation expenses and would not be otherwise deductible to the employer under the *FBTAA*. ***Living away from home accommodation (non-deductible)*** The FBT concessions potentially apply to the provision of LAFH allowances, or the provision of accommodation or reimbursement of accommodation expenses, where employees are LAFH. No concession on the provision of accommodation because the employees are not maintaining a normal residence in Australia.

Example in draft ruling	Explanation
18. Rudimentary accommodation — LAFH accommodation Train driver is temporarily based at different locations in the State for periods of up to three months. He receives a daily allowance to cover accommodation and meal costs. He rents a caravan for the period of his stay in each location.	***Living away from home accommodation (non-deductible)*** The employee is LAFH for each of his three-month work placements. Therefore, his accommodation and meal expenses while he is at the work location are not deductible. The allowance that the employee receives from his employer to cover the costs of his accommodation and meals while in the work placements a LAFH allowance which is exempt income — he does not have to include it in is return as income and he cannot claim a deduction for his accommodation and meal expenses when on his work placements.

Important — Apportionment of expenses

Expenses must be apportioned to the extent that they are of a private nature or are not incurred in producing assessable income. This includes where the employee or members of their family stay in the accommodation for recreational or other private purposes — except where the private use is merely incidental.

Concluding comments

The draft ruling is extremely long and contains new approaches towards the analysis of the deductibility of travel expenses.

Members should not hesitate to the call the contact officer named at the end of the ruling to clarify any issues with, or sections within the ruling.

Payroll – Single Touch Payroll: July 2017 Update

Single Touch Payroll (STP) will apply to organisations with 20 or more employees (Substantial Employers), from 1 July 2018. Employers with 19 or fewer employees will have the option of adopting STP.

However, STP-ready employers will be able to choose to adopt STP reporting earlier than 1 July 2018.

Mandatory STP Reporting

You will need to determine whether your organisation is a Substantial Employer on 1 April 2018. If so, it will need to undertake STP reporting to the ATO from 1 July 2018.

If your organisation is not a Substantial Employer on 1 April 2018, it will need to test its status on 1 April in ensuing years to determine whether the threshold is met and it needs to undertake STP reporting from the immediately following 1 July. Once your organisation becomes a Substantial Employer, it will remain one notwithstanding it ceases to meet the 20 employee threshold.

The 20 employee threshold is based on employee head count and not on full time equivalent employees. Guidance is available on who is (and who is not) included in the head count - see 'Definition of employee' under the 'Single Touch Payroll timeline' heading.

Updated Information on STP

The ATO has recently published a time line that sets out, in more detail, the steps that the ATO proposes to take over the next 12 months in the lead up to STP application. In particular, employers who have 20 or more employees in September 2017 can expect advance contact from the ATO at that time. It has also published an employer checklist to help in their preparation.

Note the ATO's comment:

> 'The obligation to report superannuation payment information to the ATO is currently being reconsidered. We will provide more information about this when it becomes available.'

Substantial Employers will need payroll software that has the ability to undertake STP reporting or will need to use a payroll service provider with this capability. The ATO observes that it expects the staggered release of updated payroll software with STP capability to commence in October 2017.

Employers should liaise with their software providers in a timely way, so that they in a position to comply with the 1 July 2018 deadline. However, note that:

> 'You will be able to see which payroll solutions are Single Touch Payroll-enabled on the product catalogue available on the Australian Business Software Industry Association (ABSIA) website. Over time, this catalogue will be updated with payroll solutions that are Single Touch Payroll-enabled.'

Update - Employees and STP

Whilst development of the employer-STP interface is progressing, developments are also occurring in relation to the proposed employee online experience with STP. The current focus of attention is the online approach to new employee TFN declarations and superannuation choice options, while recognising the need for ongoing ability to update employee information (e.g. change super funds during the course of employment).

This has implications for employers.

The online interface could occur through the employee completing a TFN declaration and choice of super fund election via *MyGov* or via (one would expect for larger employers) the employer's software:

> 'The Government announced in December 2015 that Single Touch Payroll would include an option for individuals commencing employment to complete their Tax File Number (TFN) declaration and superannuation standard choice forms using ATO Online or through their employer's business management software.'

Employee inter-face through MyGov

A recent ATO consultation paper identified informational needs which an employer is likely to have to meet in order to equip an employee with the ability to complete the TFN/super fund election online through *MyGov*.

It especially noted the limitations on pre-populating the *MyGov i*nterface with default super fund information and the associated need for employers to provide new employees with a 'Welcome Pack' (see the consultation paper at p. 5: employer's ABN, default super fund details etc.) that enables the employee to complete the documentation in *MyGov*. The ATO consultation paper notes (p. 6) that *MyGov* is expected to accommodate choice of a self-managed superannuation fund from some (as yet to be determined) time in 2018/19.

Relevant data supplied through the *MyGov* interface is transmitted to the employer's business management system (BMS) - see generally the informative diagram in Attachment A to the consultation paper. The paper suggests that the Welcome Pack could be provided to the employee by email.

In relation to TaxEd's enquiry regarding standards for employer proprietary BMS software, the ATO advised:

> 'There are BMS requirements for employers who wish to utilise the employee commencement service through myGov, which involves periodic polling for on-boarding messages through SBR. This is a mandatory requirement as the Commissioner is obligated to provide the employer with TFN declarations completed through myGov. We are currently working on a registration and EOI process for employers who wish to be part of our September 2017 release and more information on requirements will be provided in our upcoming communications.'

Employee interface through Employer's BMS

Employer software through which the new employee is provided with the requisite information and through which the employee provides the BMS of the employer with the TFN and super fund choice data for upload to the ATO may be time-saving option for large organisations or those with high staff turnover. This is also illustrated in the diagram in Attachment A to the consultation paper.

The paper was directed to the form of the *MyGov* interface, although noting that the research and proposed action will be relevant to employer software. Organisations contemplating developing employer-specific software will be especially interested in the draft online form set out in Attachment B to the consultation paper, the draft design principles identified in the paper and the discussion relating to their application. Such organisations should monitor the outcome of the consultation process.

While one would anticipate that generic BMS software providers will develop an STP employee interface, employers using such software may like to confirm this (and the timetable for delivery) as part of their preparation to move to STP.

Any questions relating to the STP/consultation paper can be sent to the ATO's STP Mailbox.

Conclusion

Preparing for STP is not only limited to ensuring your organisation will be able to provide the requisite STP data to the ATO through access to appropriate software. It will entail ensuring there is a system/procedure (whether online/electronic or paper based) to enable the employee to provide his/her personal information.

Postscript - relationship between STP and *MyGov* interface

As a postscript, we understand that even if an employer does not participate in STP, the employer will be able to participate in the *MyGov* process. In order for such employers to offer their employees the option of communicating TFN declarations and superannuation fund choice through *MyGov*, the employer will need a BMS system that allows the timely periodic acceptance of *MyGov* data, as broadly described in the ATO's response reproduced under subheading 'Employee inter-face through MyGov' above. Similarly, participation in STP is not a pre-requisite to conducting a BMS for upload of TFN and super fund data to the ATO.

Equally importantly, STP employers are not obliged to have software capacity to receive data from *MyGov*. However, one might anticipate that STP enabled software will include this capability. Nevertheless, timely consultation with software suppliers on this further capability of their product seems prudent as part of any planning process.

Salary Packaging – Safe Harbour for Sportsperson's Image Payments

Last year, we drew attention to the Brisbane Bears Case. This decision dealt with payroll tax in the context of payments made by a sporting club to sportspersons for use of their images *etc.*

Payroll tax is a state/territory tax. However, as the earlier article noted, payments for use of player images also implicitly raise Federal tax questions.

The ATO has issued a draft PGC 2017/D11 (the Guideline) which deals with the income tax treatment of unapportioned payments for a sportsperson's marketing services and use of the person's image. For readers who are unfamiliar with Practical Compliance Guidelines, their nature, role, and limitations are set out in PGC 2016/1, with the ATO website providing more general information.

The Guideline defines an amount which the ATO will not challenge as being consideration paid to an entity which is associated with a sportsperson for the use/exploitation of the person's image/fame. Accordingly, where a payment is contractually documented as such consideration, the ATO would not treat the payment as income of the sportsperson to the extent of that amount.

When the Guideline Applies

The Guideline addresses the situation in which:

- a professional sportsperson has assigned to an associated party (the third party), such as the sportsperson's family trust, 'a non-exclusive licence to use and exploit the sportsperson's "public fame" or "image" ';
- the third party is an Australian resident for income tax purposes;
- the third party 'is contractually entitled to receive income from the use and exploitation of the sportsperson's "public fame" or "fame" '; and
- the payment received by the third party is 'not referable to the use or exploitation of rights which are recognised and specifically protected under Australian law, such as copyright, trademarks or registered design rights'.

Basically, the third party is contracting with another person (the Purchaser) to allow the Purchaser to make use of the sportsperson's image/fame in consideration of a payment made to the third party. The sportsperson may also be a party to the contract:

(a) The sportsperson may be a party because the contract is also an employment contract - e.g. sportsperson employed to play sport and/or to provide marketing services (such as attending 'Member Days', junior coaching, sport promotion in schools etc.) to a sporting body.

(b) The sportsperson may be a party that is agreeing to provide personal services to the Purchaser - e.g. undertake activities of endorsing the Purchaser's product, deliver motivational speeches *etc*.

Remuneration paid to the sportsperson as reward for the person's personal efforts and skill, whether as an employee (sub-para (a) above) or as a business person (sub-para (b) above) will be income of the sportsperson. However, the payment to the third party will *prima facie* be income of the third party.

The Guideline is directed to dealings between a Purchaser that is a sporting body, the sportsperson and the third party. In particular, it is directed to playing contracts, collective bargaining agreements or an agreement to provide (the sporting body) with services additional to playing activities, where the third party is contractually entitled to payments made for the use/exploitation of the professional sportsperson's public fame or image. It seems implicit that the Guideline is not directed to Purchasers described in sub-para (b) above, but it is hoped this will be clarified in the final version of the Guideline.

Difficulties arise where lump sum payments are made for use of the image/fame, on the one hand, and the employment/personal services, on the other hand. Income splitting between the sportsperson and the third party in order to minimise tax can be a force in drawing the line between the wages/salary component and image/fame fee. It follows that the ATO is interested in where the line is drawn.

What the Guideline Says

The ATO will accept that up to 10% of payments received under a playing contract, collective bargain agreement or an additional services agreement can be treated as referrable to use/exploitation of sportsperson's public fame or image. Accordingly, to this extent, the ATO will not challenge that contractual payments made to a third party are income of the third party and not income of the sportsperson.

The Guideline gives the following illustration:

> *7. 'Player A' is new to elite level sport. They were selected as an early draft pick and have played less than 10 career games at the elite level. The income paid to them under their playing contract, and in accordance with their sport's collective bargaining agreement, is necessarily reflective of 'Player A' being new to the game. Payments totalling $110,000 are made.*
>
> *8. 'Player A' has also granted a licence for the use and exploitation of their 'public fame' or 'image' to an associated resident third-party and it is contractually entitled to receive the income from the use and exploitation of 'Player A's; 'public fame' or 'image'. Player A has not entered into an additional services agreement.*
>
> *9. Whilst 'Player A' is in the early stages of their career, their public fame' or 'image' will have been exploited as a result of their being an early stage draft pick. Consequently some portion of their remuneration is referrable to use or exploitation of their 'public fame' or 'image' despite them being new to elite level sport.*
>
> *10. Under the Safe Harbour, up to 10% ($11,000) of the total contracted payment could be included in the associated resident third-party's income tax return. 'Player A' would return the balance of the payment in their personal income tax return.*

It may be that a sportsperson can commercially justify a proportion greater than 10% is referrable to person's fame/image. The Safe Harbour of 10% does not preclude the person from establishing a higher image/fame fee should apply having regard to the commercial market value of the player's fame/image and limits placed on the amounts sporting clubs can pay their players - see para 14 and the comment at para 4 of the Guideline.

The Guideline illustrates this:

> *15. 'Player C' is an elite level sportsperson of repute solely within Australia. They have played a significant number of Australian domestic games in their chosen sport. 'Player C' has entered into a playing contract, granted a licence for the use or exploitation of their 'public fame' or 'image' to an associated Australian resident third-party as well as being a party to a 'tailored' additional services agreement and independent service agreements to which their associated resident third-party is also a party.*
>
> *16. Given the significant recognition of their sporting prowess, 'public fame' and 'image' 'Player C's' additional services agreement and independent service agreements provide for separate payments, at genuine commercial market rates, to the Player for both their personal services and to their associated resident third-party for the use and exploitation of their 'public fame' or 'image'. No apportionment of payments is required. 'Player C' returns the payments received for their personal services in their individual tax return. Their associated resident third-party returns the payments received by it for the use of the licence for exploitation of Player C's 'public fame' or 'image' in its tax return.*

Where the Guideline Does Not Apply

Some agreements may only provide for use of a sportsperson's image, without requiring additional personal services. The 10% Safe Harbour for which the Guideline provides will not apply to these agreements - see para 17 of the Guideline.

GST Implications for the third party

Where the third party supplies a right to the sporting body to use/exploit the fame or image of the sportsperson, the third party will need to account for GST if the third party is registered (or required to be registered) for GST.

If GST is payable by the third party and (as outlined below) the sporting body would be entitled to an input tax credit (ITC), one might expect that the contractual arrangement between the sporting body and the third party would provide for grossing up the payment by the amount of GST.

Implications for Sporting Bodies

It should be noted that the Guideline is primarily directed to the tax treatment of the recipients of the payment (the sportsperson and the sportsperson's associated entity) rather than to the taxation obligations of the paying club, such as PAYGW and super guarantee obligations. This bias is evident from the examples, although the text is capable of suggesting a safe harbour is being provided in relation to the apportionment of the payment (i.e. applies to the paying club and recipient) and not merely to the recipient of the payment.

GST Implications for the sporting body

It is anticipated that the sporting body which is engaged in professional sport would be acquiring that right for the purpose of carrying on its enterprise. Accordingly, where the body is registered (or required to be registered) for GST, it would be able to claim an ITC for the grossed-up amount.

PAYGW Implications etc.

Logically, one might expect that the willingness of the ATO to recognise apportionment of payments into amounts for service (wages) and amounts for use of images should apply to determine PAYG withholding and superannuation guarantee payments as well determining the income derived by a sportsperson as an employee.

The Guideline notes (see para 33):

> 'PAYG Withholding in respect of the personal services element (which typically will be salary or wages) will be calculated on the net amount after taking into account the GST inclusive amount taken to be charged for the supply of the right to use player's "public fame" and "image".'

Practical Observation

While the 10% safe harbour provides guidance to the sportsperson, it does not alleviate the need for the sporting body and the sportsperson to agree on the amount of the payment to be ascribed to the provision of services and the amount to be ascribed as consideration for the use/exploitation of the sportsperson's fame and image. The sporting body will need to remit PAYGW and account for superannuation guarantee contributions on the former and, depending on the GST registration status of the third party, may be entitled to claim an ITC in relation to the latter.

The Guideline will be relevant to the sportsperson's decision-making on the division of any payment between these two heads of charge. However, an interesting question for the sporting body arises where the agreed apportionment is made outside the 10% safe harbour and is not commercially justified, with the result the sportsperson has additional employment income on which the sporting body has not remitted PAGW or superannuation guarantee contributions. Discussion of this circumstance is beyond the scope of this article.

FBT Q&A – Otherwise deductible for student amenities fee

Question

Where a course of study has the relevant nexus to an employee's income producing activities it will be considered otherwise deductible for FBT purpose. Does the student amenities fee also receive this treatment?

In particular, we will pay for an employee's cost of subjects that are studied at university. In terms of the student amenities fee, can the otherwise deductible rule be applied to this, even if a subject is failed by the employee?

Answer

The term 'expenses of self-education' is defined in ss. 82A(2) of *ITAA 1936* as an expense necessarily incurred by a taxpayer in connection with a 'prescribed course of education'.

A 'prescribed course of education' is defined in ss. 82A(2) to include a course of education given by a university and undertaken for the purpose of gaining qualifications for use in the carrying on of a profession or in the course of any employment.

The amounts excluded from deductibility by the provisions of s. 26-20 of *ITAA 1997* are also specifically excluded from the definition of 'expenses of self-education' by ss. 82A(2)(ba) and 82A(2)(bb) of the ITAA 1936 respectively. Accordingly, neither a student contribution charge, nor any payment made to the Commonwealth to reduce a HECS-HELP debt incurred in relation to a student contribution charge can be taken into consideration when determining the quantum of a taxpayer's 'expenses of self-education'.

The university course presumably qualifies as a prescribed course of education and it is considered the student amenities fees would be 'necessarily incurred' in connection with the course. Consequently, those fees qualify as 'expenses of self-education', as defined in s. 82A of *ITAA 1936* and further, are not an item excluded from deductibility by s. 26-20 of *ITAA 1997*.

As such, to the extent the course would be considered otherwise deductible, the student amenities fee will also have that same character as it is incurred in relation to that course.

Whether the student passes or fails does not alter the otherwise deductible status.

FBT Q&A – Provision of vehicle to two staff members

Question

We provided a small car for two employees during the FBT year as follows:

- Employee 1 - From 1/4/16 to 20/11/16, the car is exclusively allocated to the employee for operational use during the day and driven home at night.
- Employee 2 - From 21/11/16 to 31/3/17, the car is allocated to the general car pool for operational use during the day and Employee 2 drives the vehicle home at night.

Will this qualify as a pooled or shared car for the purposes of the reporting exclusion?

Answer

Based on the facts you have presented, the car will be a pooled car and therefore it will not be required to be reported on either employee's payment summary.

There has been private use of the vehicle by two employees during the FBT year at the employer's direction and therefore the conditions for the reporting exclusion are satisfied.

FBT Q&A – Staff vouchers in excess of $300

Question

We give Gift/Voucher cards to staff members where all of the following circumstances apply:

- We give a Gift/Voucher card to a staff member for reward/recognition.
- These cards are given on an infrequent and irregular base.
- The value of a card is equal to or greater than the threshold value ($300).

Is the gift card Fringe Benefit taxable?

Answer

Where the value is $300 or more then the minor benefit exemption cannot be accessed. In order for the minor benefit exemption to be accessed the notional taxable value of the benefit must be less than $300.

GST Q&A – Are fees to assess engineering plans exempt under Division 81?

Question

Council charges for the assessment of engineering plans as part of planning permits. This fee is a Council set fee for assessing plans when the planning permit does not require a subdivision, assessment has to be carried out by Council and not a third party.

We are assessing the fee using the flowchart for Div 81 of the *GST Act* and are not sure whether ss. 81-10(1) applies due to the 'not' in (1).

If we say that s. 81-10(1) applies, the fee will result in being exempt as reg. 81-10.01 does not apply. However, if we answer 'yes' then the fee will be taxable as reg. 81-15.01 will not apply.

Any comment on how to proceed in relation to s. 81-10(1) would be greatly appreciated.

Answer

In terms of the flowchart, you appear to have got to this point:

- Is the item a tax? No
- Is the item a fee or charge? Yes
- Does ss. 81-10(1) apply?

Subsection 81-10(1) states that 'a payment ... is not the provision of consideration to the extent the payment is an Australian fee or charge that is of a kind covered by subsection (4) or (5)'.

Subsection 81-10(4) covers a fee or charge:

> '... if the fee or charge
>
> (a) relates to; or
> (b) relates to an application for;
> (c) the provision, retention, or amendment, under an Australian law, of a permission, exemption, authority or licence (however described)'.

Subsection 81-10(5) covers fees for doing things relating to information (e.g. recording, copying, modifying, accessing, receiving, processing and searching for information). This does not appear to apply to your facts.

Therefore, if the fee being charged is covered by s. 81-10(4) or (5) then s. 81-10(1) applies, and the fee is NOT consideration. The flowchart would continue as follows:

- Does ss. 81-10(1) apply? Yes
- Does reg. 81-10.01 apply? No (assuming reg. 81-10.01(1)(h) does not apply on the basis that you have advised that this service must be carried out by Council)
- Result: Exempt s. 81-10(1)

However, if the fee is not covered by s. 81-10(4) or (5), then s. 81-10(1) will not apply. This requires some further analysis before being able to conclude the GST treatment. As you have advised that this inspection service must be carried out by Council, we have assumed that the supply would be regulatory in nature, and that the supply cannot be provided by an entity other than Council. Accordingly, the flowchart would continue as follows:

- Does ss. 81-10(1) apply? No
- Does reg. 81-15.01 apply? Yes (assuming reg. 81-15.01(1)(f) applies)
- Result: Exempt reg. 81-15.01

The above process also appears to be consistent with the ATO view of 'engineering inspection fees' as expressed in a class ruling, CR 2013/32 (the Ruling). We note that while the Ruling only applies to relevant NSW Councils, the analysis is nonetheless beneficial.

In this regard, we particularly refer to Note 1 in paragraph 37 of Appendix 1 to the Ruling. This sets out the analysis where the supply is covered by s. 81-10(4) and is one that can be made in a competitive market by an entity that is not an Australian government agency. In this circumstance, it appears that the provisions of both reg. 81-10.01(1)(h) and reg. 81-15.01(1)(f) would apply, and if this is the case, the fee would be taxable via the tie breaker in reg. 81-15.02(2).

GST Q&A - GST on Grants received from other Government Bodies

Question

Can you please clarify if we should be remitting GST on Grants received from other Government Bodies? Alternatively, should they be treated individually based on the purpose of the Grant?

Answer

Each grant would need to be treated separately. However, we observe that payments between two government entities may either be:

- grants; or
- payments for a supply.

In this regard we note:

1. for grants, the issue is whether Council is making a supply that has sufficient nexus to the payment being received from the other Government Department; and
2. for payments for a supply between government related entities, the issue is whether the conditions in s. 9-17(3) of the *GST Act* are met.

If there is insufficient nexus between the payment and any supply made, then the transaction is not a taxable supply. See GSTR 2012/2 on grants of financial assistance.

If there is sufficient nexus between the payment and any supply made, then the transaction would ordinarily be a taxable supply. However, it will not be a taxable supply where the conditions of s. 9-17(3) are met. These conditions essentially provide that if the payment is:

- made by a government related entity (e.g. a Department) to another government related (e.g. a Council) entity for making a supply;
- the payment is paid under a government appropriation (or pursuant to specified intergovernmental health reform arrangements); and
- the payment satisfies a non-commercial test (essentially that the amount paid is no more than the cost to make the underlying supplies),

then the payment is not treated as consideration for a supply.

GST Q&A – GST and Employee Social Clubs

Question

An employee staff social club is funded primarily by fortnightly after-tax deductions from employees' pay. Other sources of funding include an employer contribution and various fundraising events. Annual turnover is approaching $150,000.

What GST issues arise regarding the need to register for GST? How is the employer contribution treated? Would the club be entitled to GST input tax credits on expenses, including the provision of events which includes food and drink?

Answer

As a starting point it is critical to confirm the club is an independent entity from the employer (most likely as either an unincorporated or incorporated association). This issue will have a bearing on both GST and FBT issues arising from the conduct of the social club.

ATO ID 2007/208 confirms where the club is independent of the employer (i.e. has a separate legal structure/independence of decision making) any employer contributions (and the general operation of the club) should not create any FBT exposure for the employer. However, note the rationale of the ATO ID:

> "… at the time the benefit is provided by the employer 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.'

A key consideration for the club where turnover approaches the not-for-profit mandatory GST registration threshold of $150,000 is to assess whether all types of turnover are included when determining whether the threshold is met.

The concept of 'current GST turnover' provides that an entity needs to consider the value of all supplies that you have made in the preceding 12 month period excluding certain supplies and, so far as is relevant to this issue, supplies that are not for consideration.

A contribution by the employer to the social club would be expected to take the form of a donation/gift.

On this basis, the employer contribution would not be consideration and the amount should not be included when assessing the $150,000 threshold.

Accordingly, care should be exercised when determining whether the mandatory GST registration threshold has been met. Of course, it is possible to voluntarily register for GST where the mandatory threshold has not been met – however this introduces the prospect of needing to remit GST on supplies made (including employee membership contributions), the administrative compliance of lodging business activity statements, and raises issues such as the one below.

A general restriction exists under the GST law for claiming GST credits where the acquisition relates to provision of entertainment (subject to various exceptions contained in s. 32-40 of the *ITAA 1997*. This restriction could prevent a GST registered social club claiming credits on acquisitions that relate to entertainment (i.e. food and drink costs, venue hire etc.) unless the ATO takes the view an exception in s. 32-40 applies.

Item 3.1 of s. 32-40 provides an exception where you are providing entertainment for payment in the ordinary course of a business that you carry on. We take the view the exception should apply, although whether a social club is accepted as business is certainly questionable (despite it being accepted as in

'…the form of a business' for GST purposes pursuant to a specific provision to that effect). An initial discussion with the ATO suggested they have not formed a view on this issue previously, so if registration is to be pursued this issue should certainly be investigated in advance.

As an aside, we are not aware of any GST registered social clubs.

Payroll Q&A – What is the rate of withholding where a supplier fails to provide an ABN?

Question

Effective 1 July 2017 what is the rate of withholding where a supplier fails to provide an ABN?

Answer

Effective 1 July 2017, the rate of withholding where a supplier fails to provide an ABN reverts back to 47% (from 49%). The usual rules regarding the withholding and reporting obligations continue to apply, however.

Salary Packaging Q&A – salary packaging income protection insurance

Question

An employer is considering allowing employees to salary package income protection insurance – what tax issues arise?

Answer

We assume the proposed salary packaging arrangements will be implemented in a way that would be recognised by the ATO as effective. In this regard see the general ATO Requirements for an effective salary sacrifice arrangement. The key requirements being the salary to be sacrificed should be prospective salary (i.e. not as yet earned) and there be agreement between the employer and employee (preferably in writing) as to the arrangement.

The employer would also be expected to have a salary packaging policy in place that deals with matters such as which employees may salary package, any monetary limits and what items may be packaged. The policy should also confirm matters such as how any FBT arising from packaging is to be dealt with, what occurs when an employee ceases employment, the impact of salary packaging on other matters such as employer superannuation contributions and leave payments *etc*. (i.e. on which basis are they computed , gross package or net of packaging).

Returning to the treatment of salary packaged income protection insurance, income protection insurance premiums are generally tax deductible to employees.

On this basis an amount salary packaged in respect of income protection insurance premiums could be expected to be 'otherwise deductible' and therefore no FBT liability will arise for the employer.

You would need to obtain 'otherwise deductible' declarations from the employees for this type of packaged item.

Click here to view some information on the ATO website regarding this issue.

Please note that it is important to ensure that the premiums only relate to 'deductible' income protection insurance and do not relate to other matters - the ATO website information explains this issue.

It is also important to keep in mind that once the employee has salary packaged the income protection premiums the employee cannot claim a tax deduction on their individual tax return for the amount packaged.