Welcome to the October edition of the TaxEd newsletter.

Being the Halloween season it seems only fitting that TaxEd's **GST Rules for Not-for-Profits** webinar is right around the corner; to *'treat'* our members to the *'tricks'* of applying GST to transactions typically undertaken by NFPs. Even if you may find GST daunting, TaxEd Director and GST expert, Simon Calabria, will give you the confidence you need through a sound overview and practical examples.

This webinar holds particular relevance as we enter the holiday season and organisations begin undertaking end-of-year fundraising events and activities, and making gifts and donations.

On a similar note, as we enter the final months of 2017, will you or any of your staff be attending end-of-year dinners or award nights? If so, does this result in the provision of meal entertainment? Read on to find out.

Something else which will be of particular interest is our article on the recent Federal Court decision regarding Uber and what constitutes a 'taxi' for FBT purposes. Not only relevant to getting to those end-of-year functions, but also moving forward into 2018.

We hope you enjoy our October newsletter!

Spookiest regards

The Team at
Tax-"*Axe*"-Ed

FBT Article – Definition of 'taxi' for FBT purposes

The Uber decision

In the UBER case, the Court had to consider whether ride-sourcing drivers were providing taxi travel for GST purposes. Taxi travel for GST purposes means travel that involves transporting fare-paying passengers by taxi or limousine.

The word taxi is not defined for GST purposes and was essentially considered to mean a vehicle available for hire by the public which transported a passenger at his/her direction for the payment of a fare that would often, but not always, be calculated by reference to a taximeter.

This conclusion was wide enough to capture ride-sourcing services as provided by Uber drivers.

Taxi for FBT purposes

Under section 58Z of the *FBTAA*, employers are specifically exempted from having to pay fringe benefits tax in respect of travel undertaken by their employees in a taxi to or from work or due to illness of the employee.

The word taxi is a defined term for FBT purposes and means a motor vehicle that is licensed to operate as a taxi. The ATO has interpreted the definition of 'taxi' for FBT purposes to cover only vehicles licensed by the relevant state or territory to operate as a taxi.

Following the Uber decision the ATO is reviewing its interpretation and has issued a technical discussion paper on the definition of 'taxi' under the *FBTAA* - *Technical Discussion Paper TDP 2017/2*.

The discussion paper specifies the following questions for consultation:

1. Should a 'motor vehicle that is licensed to operate as a taxi' be interpreted to mean a motor vehicle that is statutorily permitted to transport a passenger at his/her direction for the payment of a fare that will often, but not always, be calculated by reference to a taximeter?
2. Should the definition of the word taxi in section 136(1) of the *FBTAA* be interpreted to include not just vehicles licensed to provide taxi services, including rank and hail services, but ride-sourcing vehicles and other vehicles for hire?
3. If the proposed definition is adopted, the result will be an expansion of the exemption. Are there consequences of taking this approach that we should be aware of?
4. Have you identified any issues with the proposed interpretation of 'taxi' in its application to other provisions within the *FBTAA*?

From an FBT perspective if the results of the consultation process are that the definition of 'taxi' for FBT purposes be interpreted more widely so as to include ride-sourcing services then this is a good thing for employers as it will widen access to the FBT exemption.

As more information comes to hand in relation to the above consultation questions we will make sure to advise our members accordingly.

GST Article – GST Concessions for Fundraising Events

Certain GST concessions are available for entities - namely, an endorsed charity, a gift-deductible entity, or a government school - for supplies made in connection with a fund-raising event. If the entity chooses, all supplies for that fund-raising event will be treated as input taxed supplies. The result of such a choice is that there is no GST payable on the supplies, however there will also be no entitlement to GST credits for acquisitions made that relate to that event. [Refer to s. 40-160(1) of the *GST Act*.]

A fund-raising event for GST purposes includes:

- a fete, ball, gala show, dinner, performance or similar event;
- an event comprising sales of goods if (i) each sale is for less than $20, and (ii) selling such goods is not a normal part of the seller's business; or
- an event the Commissioner decides, on an application in writing from the supplier, to be a fund-raising event.

Councils have an ABN and are registered for GST. However, it is also not uncommon for Council's to also have a fund which has deductible gift recipient (DGR) status under items 1 and 4 of Section 30-15 of the *ITAA 1997*.

While the fund has DGR status, the entity itself (i.e. Council) does not have general DGR status.

Under GST law an entity is a 'gift deductible entity' if gifts or contributions made to it can be deductible under Division 30 of the *ITAA 1997*.

This raises the question of whether Council is able to make a choice to treat fund-raising events as being input taxed.

The short answer to this is: Yes, provided that the purpose of the supply being made is for a purpose of the DGR fund operated by Council.

The purpose referred to above is defined in the GST law as a 'gift-deductible purpose'. That is, if an entity (e.g. Council) legally owns a fund for the operation of which the entity is entitled to be endorsed under s. 30-125(2) of the *ITAA 1997* as a DGR fund, then the gift-deductible purpose of an entity means a purpose that is the principal purpose of that fund.

Therefore, while Council itself is not an entity which has DGR status, where Council operates a fund that has DGR status and conducts a fund-raising event the purpose of which falls within a principal purpose of the fund, then Council would be eligible to choose to treat that event as input taxed. If this is the case, it should be noted that the entity needs to retain records that sufficiently record the choice to treat the event as an input taxed fund-raising event. If no such election is made, the GST treatment will follow the normal GST rules.

Note: TaxEd is conducting an online training event dealing with GST Rules for Not-for-Profits, which will address GST issues arising for NFP, and will include matters such as that addressed in this article. For more information or to register, click here.

Payroll article - Value of fringe benefits for NSW PRT purposes

Revenue NSW has updated its ruling on the value of fringe benefits to be declared for the purposes of the payroll tax.

Revenue Ruling PTA 003 v3 addresses the following points:

- calculating the value of fringe benefits for payroll tax purposes;
- clarifying the treatment of fringe benefits with a nil taxable value and exempt benefits where such benefits also fall within another part of the definition of wages ;
- explaining the requirements of the alternative method of declaring fringe benefits;
- explaining the method of calculating the NSW component of fringe benefits when they are not readily identifiable; and
- the adoption of ATO fringe benefits tax rulings.

FBT Q&A – employee attending gala awards dinner

Question

We are sending an employee on overnight travel to attend a business awards gala dinner. There is no conference or any other activity other than the gala dinner which we have been nominated for an award.

Is this meal entertainment for FBT purposes, and if so, are all travel and accommodation costs associated with the gala dinner included in the FBT taxable value?

Answer

A reference to the provision of meal entertainment in the *FBTAA* is a reference to the provision of:

(a) entertainment by way of food or drink; or

(b) accommodation or travel in connection with, or for the purpose of facilitating, entertainment to which paragraph (a) applies; or

(c) the payment or reimbursement of expenses incurred in providing something covered by paragraph (a) or (b).

The sole purpose of the travel appears to be the attendance at the awards gala dinner and so it is difficult to see how the expenditure incurred does not relate to the provision of meal entertainment.

FBT Q&A – reimbursement of up-front student contribution course fees

Question

I have a question about whether course fee payment made upfront by an employee under HECS -HELP and subsequently reimbursed by us is subject to FBT.

I have found the following reference on the ATO website.

> "Higher Education Loan Program (HELP) charges are not otherwise deductible for the employee, and the full value is subject to FBT if paid by you. All HELP debt repayments and HECS-HELP student contributions in the form of upfront payments for Commonwealth supported higher education are not otherwise deductible for the employee. This means that the full value is subject to FBT if paid by you."

Should this be interpreted as:

1. If employee has taken a loan under HECS -HELP from the Australian Government for course fees, the loan repayment is non-deductible in the employee's individual tax return and employer will need to pay FBT under a study reimbursement arrangement, and
2. If employee has paid the course fee upfront, hence receiving a discount on the course fee and not incurring a debt with the Government, the course payment is still non deductible for the employee and the Department will need to pay FBT under a study reimbursement arrangement.

Answer

The HELP scheme provides assistance for students to pay their student contributions (HECS-HELP), tuition fees (FEE-HELP and VET FEE-HELP), overseas study expenses (OS-HELP) and student service and amenities fees (SA-HELP).

It seems that students enrolled in a Commonwealth supported place are eligible to access HECS-Help whereas Fee-Help is aimed at full fee-paying places. A Commonwealth supported place is a subsidised place at public universities and a few higher education providers. The Government subsidises a Commonwealth supported place by paying part of the fees directly to the provider and the Commonwealth supported student pays the reminder of the fees through a 'student contribution'.

The effect of s. 26-20 *ITAA 1997* is that the following payments are not deductible:

- a student contribution amount within the meaning of the *Higher Education Support Act 2003* paid to a higher education provider (within the meaning of that *Act*)
- a payment made to reduce a debt to the Commonwealth under Chapter 4 of that *Act* (i.e. a HELP Debt)
- a payment made to reduce a debt to the Commonwealth under *Trade Support Loans Act 2014* Chapter 3
- a payment made to reduce a debt to the Commonwealth, or to a participating corporation, under *Social Security Act 1991* Chapter 2B or *Student Assistance Act 1973* Part 4A.

Repayments of HELP loans are not deductible whether they be for:

- HECS-HELP
- FEE-HELP
- VET FEE-HELP
- OS-HELP
- SA-HELP

In regards to course fees, deductibility (and thus otherwise deductible access) will come down to whether the course is a Commonwealth supported place (CSP). A CSP is a subsidised higher education enrolment. CSPs are available at all public universities (and at a handful of private higher education providers in national priority areas like nursing and education).

Even though the Australia Government subsidises CSPs, students still have to make a payment towards their education and this is known as the 'student contribution' amount. Students enrolled in a CSP will either pay their student contributions upfront, or if eligible, can access the HECS-HELP scheme to pay their student contributions. A student contribution paid to the higher education provider is not deductible.

If the course is not a CSP then no student contribution amounts are made. These are generally full fee paying courses. These course fees are not affected by s. 26-20 and are deductible where the relevant income earning nexus exists.

In conclusion, the key is to establish whether the particular course being undertaken is Commonwealth subsidised. If so, the fee amount paid by the student to the institution is a non-deductible student contribution. It would therefore appear your interpretation is correct.

GST Q&A – Disbursements

Question

Council has received a tax invoice from a planner for fees for representing Council at VCAT.

Disbursements have been added to this invoice i.e. car parking and photocopying, but the supplier has not included GST on this charge. Should they be including the GST when the services they are claiming reimbursement for would have incurred GST in the first instance? (They have not provided receipts or tax invoices for these disbursements, and would appear to have just 'arrived at' a 'rounded' figure that they deem reasonable.)

I have read the GST ruling (GSTR 2000/37) paragraphs regarding Agency Relationships and Disbursements but this would appear to be related to solicitor fees rather than other companies acting on Council's behalf.

Please advise whether GST should or should not be included and/or provide a link or relevant ruling that would be applicable to the above scenario.

Thanks!

Answer

GSTR 2000/37 is the appropriate ruling, and it's application would extend to situations involving suppliers other than solicitors - for example, contractors, consultants, etc. (note that paragraph 48 of GSTR 2000/37 is referring to the solicitor situation by way of example).

Therefore, the GST treatment will depend on the nature of the arrangement in place with the consultant. Paragraph 53 indicates that costs incurred such as photocopying are 'examples of costs that a solicitor may incur in carrying on the business of providing a legal service to the client. GST is payable on any subsequent payment by the client to the solicitor for the supply of the legal service for ... photocopying expenses'. While not referred to specifically in the ruling (and in the absence of a specific arrangement between Council and the consultant), we would also expect this to extend to the car parking costs.

By way of further illustration I have included a link to a Webb Martin Consulting article on this topic that may also be of assistance.

GST Q&A – Silent Auctions

Question

Is there GST on monies raised from a silent auction? The auction items have been donated and the monies raised are for charity.

Answer

It will depend on how the arrangement is structured. If under the arrangement it is clear that Council is receiving the items and auctioning them on behalf of a charity, then Council could argue that it is acting as agent for the charity. In such cases any auction proceeds received would be collected by Council on behalf of the charity. In such cases, Council would not be making any taxable supplies and would not need to account for GST. The charity would then need to determine whether it needs to account for GST, but the comments below would be equally relevant to the charity.

If Council is receiving the goods to be auctioned in its own capacity, and when Council auctions the goods it is entitled to the full proceeds from the auction after which Council makes a decision on how much to donate to each charity, then the supplies made via auction by Council would be subject to GST.

However, if Council is endorsed as a charity (or operates a fund which is endorsed as a charity) and the auction is conducted for the benefit/purposes of this fund/charity, then the supplies could be:

1. if they meet the conditions of s. 38-250 (nominal consideration) – GST-free;
2. if they meet the conditions of s. 38-255 (second-hand goods) – GST-free; or
3. Council may be able to elect that the event is covered under s. 40-160 – in which case the supplies would be input taxed (no GST on sale, but no GST credits for costs).

Note, to meet the conditions under s. 38-250:

(a) where the goods being auctioned are donated, the auction proceeds would need to be less than 75% of the GST-inclusive market value if accommodation, or less than 50% of the GST-inclusive market value if not accommodation;

(b) where the goods are acquired, the auction proceeds would need to be less than 75% of the GST-inclusive cost.