

## GST NEWSLETTER

JANUARY 2002

### **FRINGE BENEFITS ALLOWANCES AND GST CREDITS:**

GST Credits can be claimed in for eligible Fringe Benefits expenses. Where the Tax Invoice is in the name of the employee, it is essential for a written assignment of each Tax Invoice to be provided to the employer whereby the GST credits are transferred from employee to employer.

The Australian Taxation Office (ATO) have now advised that where the employer is paying Fringe Benefits by way of the employee's Credit Card (Visa, MasterCard etc.) there are additional issues to be allowed for regarding the availability of GST Credits. In summary the position is:

1. If the arrangement is to pay **either** a set monthly sum, **or** the balance of the credit card, **then** ATO deems this to be an input taxed supply, and GST credits are **not** available.
2. Where the arrangement is for the employer to recoup specific items, (all of which have input tax credits available), and where the Tax Invoice is provided with credits transferred to the employer, then the GST credits can be claimed by the employer.
3. To ensure access to the GST credits, it is important to ensure there is a written agreement between the Entity and their personnel identifying the type of expenses that can be paid, and the manner of payment to obtain the GST credits. This is in addition to the requirements at # 2 above.
4. The ATO view is based on their interpretation of the law. It may well be possible to dispute their interpretation, but in practical terms that is not advisable due to the possible cost. It is therefore recommended that you review your agreements over Fringe Benefits.

### **AUDIT OBSERVATIONS:**

Over recent months we have completed a significant number of audits of religious and charitable organisations. As a part of the audit, the GST/BAS/FBT areas have been examined. ***In every audit undertaken, comments have been needed. This is notwithstanding a good level of understanding on GST matters, and a conscientious approach to the matter.*** The issue is therefore, not lack of knowledge or carelessness, it is identifying the degree of complexity involved in this area. Some common issues are set out below:

- Some arrangements with staff under Fringe Benefits Allowances include arrangements where staff makes a partial contribution to the expense. Examples are motor vehicle, telephone and electricity costs. The employing entity is not entitled to claim the full GST credit in such circumstances. This is because there has been a supply to the staff member of the part that has been recouped. Ideally you should be issuing a Tax Invoice to the staff member with GST charged on the component that is recouped. However, an acceptable alternative is to make sure that GST credits are not claimed on the part where the employee has contributed.
- **Salary Sacrifice Arrangements:**  
The ATO have issued Taxation Ruling TR2001/10 relating to Salary Sacrifice arrangements. The Ruling relates to the interpretation of tax and superannuation laws for Salary Sacrifice arrangements. This Ruling replaces the previous draft Taxation Ruling TR2001/D5 and TR1999/D7. One issue arising from the Ruling is that the ATO is stating that an effective Salary Sacrifice arrangement exists in respect of future earnings. If it relates to past earnings (back-dating and restructuring) then it is ineffective.

The ATO also state that an employee's entitlement to salary can be reduced below the minimum entitlement under Industrial Law. However, as employees may retain their minimum entitlements to salary under Industrial Law, notwithstanding the terms of an effective Salary Sacrifice Agreement, there remains a concern here. Where the cash

component of a remuneration package is less than WA Minimum Conditions of Employment Act, the employing entity needs to consider carefully its potential liability in the event of a dispute.

- **Frequency of Fund Raising Events:**

The ATO have issued a determination "Frequency of fund-raising events determination (1) 2001". This states that an entity can have up to 15 Fund Raising Events in any financial years for the purposes of Section 40-165(1). For the entities that hold a number of Fund Raising Events, this will give them helpful guidance. Where an Entity is holding more Fund Raising Events than 15, they will need to consider the sub-entity provisions.

- **Imputation Credits:**

Where an entity receives income distributions from Discretionary Trusts, Fixed Investment Trusts or Deceased Estates which include income from Franked Dividends, the Imputation Credits can be recouped. In our June 2001 Newsletter, we referred to this eligibility in respect to Discretionary Trusts only. The entitlement is much wider than that. A special form for claiming Imputation Credits can be made available by the ATO.

- **Fund Raising Dinners:**

Attached is a recent advice from ATO in respect to Fund Raising Dinners. This is an attempt by ATO to provide more helpful guidelines for Fund Raising Organisations in a difficult area. Please note in particular the comments in respect to acknowledgments of gifts.

#### **ATO Audits:**

ATO have been conducting reviews of GST Registered Entities. These reviews have mainly been carried out by way of telephone interviews. A very small proportion of the reviews conducted so far have been for charitable and religious entities, **but** with almost every one of the Not-For-Profit Entities, there was eligibility for GST refunds. This seems to confirm our concerns, that where a Not-For-Profit Entity receives of substantial GST Refunds, they are more likely to be subject to a GST review or audit by the ATO. On the other hand, the reviews conducted by ATO have resulted in a substantial net increase in total GST liability across the board. The ATO are finding these reviews profitable.

The Not-for-Profit Sector has over 65,000 GST registrations. More than half of the GST registrations, were voluntary (having a turnover of less than \$100,000). The reason for the high number of voluntary registrations is that the Not-For-Profit sector is eligible for substantial credits – it reduces operating costs. In the ATO Report on the first year of GST, it states there will be a continuing focus on de-registration through education. Note that where the ATO offers advice encouraging de-registration, that their objective is to reduce the GST refunds. They are not impartial in this – they are seeking to save the Government money. Not-For-Profit Entities need to carefully note the cost in human resources for the entity in continuing to be GST registered as against the dollar benefit of the refund recovered.

The BAS includes a question at the end of the form enquiring the time taken to complete the form. ATO advise that the average time reported by clients to complete a BAS was two hours. However, independent market research conducted by the ATO indicates that the average time to complete BAS information is 19 hours. When answering, include the total time taken in classifying GST transactions – not just the time taken to complete the final results. The Democrats have stated that it is a part of their policy to seek to subsidise small business and the Not-for-Profit Sector in respect to the high cost of compliance with the GST/BAS activity. There may be a future benefit in ensuring the time identified is more accurate.

The ATO Report also indicates that the cost of recovery of GST is noticeably below the international average. ATO administration costs in respect to GST confirms that this has been a beneficial move for Government.

**Property Sales:**

An entity that is not registered for GST needs to view their position if they sell property. The sale of a capital asset will affect "Turnover" for the purposes of identifying responsibility to be registered for GST. Therefore a Church or small charity which re-locates premises may well need to register for GST because of the sale of non-residential property. Once registered the entity is obliged to remain inside the GST system for 12 months. When selling the premises a GST registered entity needs to charge GST on the sale. If the contract does not include reference to the GST (possibly because the entity has not considered the implications of the matter) the entity is still obliged to pay GST to the ATO. There will be instances where a GST liability exists for these reasons without the entity being aware of the matter.

\* There are instances where some payments need to be "split" e.g. motor vehicle licences, insurance accounts. This arises where a part of the expense being paid is not subject to GST. With the vehicle licence the licence itself is GST free but the third party insurance component is subject to GST. When recording the various components should be separated for GST purposes, even though the net value still gets posted to vehicle license expense account. Similar instances exist in other areas.

Where a payment or a refund of net GST/PAYG is made, take care to split the result between "GST Collected", "GST Paid" and "PAYG Liability". Where an entity is using a computer system the GST liability or refund entitlement is almost always posted to an account on Balance Sheet. When a payment or refund is effected, these should be cleared and reconciled with the Balance Sheet Account. Many instances have been identified where such reconciliation has not been made. The result has been a Balance Sheet distortion in respect to GST or PAYG. Where entities are reporting on a Cash basis, this reconciliation process is not simple.