

## Are you a Charity?

A recent Administrative Appeals Tribunal addresses the question of whether a commercial business operated by a religious institution would qualify for Income Tax Exempt Charity (ITEC) or Tax Concession Charity (TCC) status.

ITEC applied from 1 July 2000 until 30 June 2005. From 1 July 2005 TCC applied. TCC has wider application as it addresses other matters in addition to Income Tax exemption. It has also removed the option of self-assessment that was previously available.

In AAT Case T 2003/66, the issue under review was whether a company limited by guarantee carrying on a business of Funeral Directors but effectively controlled by a religious institution was eligible for ITEC or TCC status. The company carried on other income-earning activities prior to 1996. The Tribunal held that it was entitled to ITEC up to 1996. However, from the establishment of the Funeral Parlour business, the AAT denied ITEC/TCC status.

From 1 July 2005, TCC rules came into play. The entity set up a new structure as a Charitable Trust from March 2005 and have applied for TCC endorsement of the new entity as a Charitable Trust. ATO have refused the TCC application. An objection to this has been lodged with ATO. We are not aware of the outcome of the objection at this time.

There are significant similarities in this case to the decision of the court in *Glebe Administration Board –V- Commissioner of Payroll Tax* of 1987, which confirmed that significant commercial activities carried out for the purposes of supporting a charity would not be Income Tax exempt.

This decision has prompted a close examination of the usefulness of discretionary trusts to conduct a trading operation and to allocate income for charitable purposes. At this point in time this is still possible.

In addition, the issue of the TR2005/22 in December 2005 has highlighted the conditions applicable to companies controlled by exempt entities. There may be an urgent need to review the structures of various entities to ensure their income tax exemption post 1 July 2006.



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## Newsletter



### *“Getting it Right”:*

Add-Ministry has the unique opportunity of arranging a Seminar which we believe will be of significance for all working in the Not for Profit Sector.

The Australian Not-for-Profit Network is holding their Annual Conference in WA this year. This is bringing to Perth very experienced accountants working in this Sector. The Seminar will be the first phase of their Annual Conference.

Full details are set out in the leaflet enclosed with this newsletter.

**March 2006**

## Bank Link:

Bank Link provides a facility to transfer your bank statements on to your computer direct from your bank. This enables basic details such as amounts and dates to be automatically inserted without the need to key them in. It also provides a process to recognise regularly recurring transactions so that they can be inserted in a Bank Link ledger automatically. You will receive a statement of unrecognised transactions for you to code and forward to your Accountant or Bookkeeper. The Bank Link ledger can be easily integrated with your MYOB or Quick Books file at month end.

The Bank Link arrangements need to be formalised through the accountants regularly servicing your organisation but will save considerable data input time for a modest monthly cost.

## GST and Hire Purchase:

The procedure for posting GST in respect to Hire Purchase payments depends on whether your BAS report is presented on an accruals basis or a cash basis. Most charities and churches are presenting their BAS on a cash basis – even when the annual accounts are prepared on an accruals basis. The difference between the BAS reporting and the annual accounts reporting has sometimes caused some misunderstandings.

If GST is reported to ATO on a cash basis the input tax credit available is one eleventh of the monthly instalment. This is the requirement of the law irrespective of what the suppliers' invoice shows. We are aware of some instances where the supplier shows the first instalment incorporates the whole of the GST on the contract. If you are reporting on a cash basis this is not appropriate.

Where GST is reported on an accruals basis the full amount of GST in respect to the purchase can be claimed at the commencement of the contract.



## Salary Sacrifice Arrangements:

Religious institutions and Public Benevolent Institutions frequently use salary sacrifice (often referred to as salary packaging) arrangements to provide effective tax benefits for appropriate staff. There continued to be misunderstandings occurring as to some of the conditions in these circumstances. We highlight some key features below –

- Fringe Benefit Tax exemption is available to religious institutions for payments to religious practitioners only if the practitioner is primarily carrying out religious duties. Therefore administrative or other non-religious activities do not qualify.
- Fringe Benefit Tax exemption is available for all Public Benevolent Institution employees but subject to a capping of \$30,000 "grossed up". The "grossing up" process has some complexities as it depends upon the nature of the transaction for GST purposes as to which formula is to be used.
- The salary sacrifice arrangements need to be properly documented. The ATO anticipate that the arrangement should be entered into before the staff member commences duties (or receives a pay increase). The salary sacrifice agreement should be in writing. Backdating is not appropriate.
- Where the employee incurs expenses and those expenses are paid under the salary sacrifice arrangement the employing entity is able to claim the GST credits for themselves providing they have appropriate documents. We recommend a formal written assignment of the GST credits. The assignment can be easily included in the wording of a requisition for recoup of expenses or payment of expenses, as the case may be.
- The PAYG summaries issued to staff members has a box on the top right hand corner for "reportable fringe benefits". For religious institutions making payments to eligible religious practitioners for relevant religious duties, this box should be ignored. For religious practitioners, it is inappropriate to show anything in that box. This is because of the way the actual law is worded in these instances. For Public Benevolent Institutions and Charities, this box should include the grossed up value of all fringe benefits included in the salary sacrifice arrangement other than exempt benefits.
- Salary sacrifice arrangements extend to the provision of rent-free accommodation. Churches sometimes overlook this point.

- Each organisation providing fringe benefits (whether exempt or assessable benefits) needs to keep appropriate records. It is recommended that they have a policy in place that has been approved by the Board, Council or Committee that is charged with the management of the entity. There needs to be an expense for eligibility for salary sacrifice to be available. A gift does not qualify, as it is a voluntary choice, not an expense.
- Examples of exempt benefits (the exemption being available irrespective of whether it is a commercial organisation, a Charity with the Fringe Benefits Tax concession or an exempt body such as a Public Benevolent Institution or religious institution) include a notebook computer and mobile phone.
- Centrelink have differing methods for measuring income depending on the nature of the Centrelink benefit being received. Where a reportable fringe benefit is shown on a PAYG summary at the grossed up level, Centrelink will "gross it down" to the original cost to ensure the staff member is not unduly disadvantaged. Certain types of benefits received by Ministers of Religion (which are excluded from the "reportable benefits" box), are still taken into account by Centrelink for some Centrelink allowances. This area is complex. If a staff member is experiencing difficulty with Centrelink in this area, it may be a case which warrants asking for a Centrelink decision to be reviewed.

## Mutuality Principle:

Many Not for Profit entities, other than charities, are subject to the Tax Rule of Mutuality. Sporting clubs and similar community organisations are examples of such entities. Income of such entities that is derived other than from members are subject to special tax rules. This exclusion of member income or "mutual" income was upset in the Coleambally Irrigation Mutual Co-operative Ltd –V- Commissioner of Taxation case in September 2004. The decision of the Federal Court in this instance was not seen by the Government to be consistent with the appropriate public policy. This was addressed in the recent Tax Law Amendment No. 6 Bill of 2005 which was approved by the Senate on 1 March 2005. This amendment to the Law ensures that the original mutuality principal, in respect to membership subscriptions and other receipts from mutual dealings with members continue to be excluded from taxable income. Entities commonly affected include sporting clubs, professional associations and friendly societies.