

Transferring money overseas?

The Anti-Money Laundering and Counter-Terrorism Financing Act 2006, places obligations on entities that transfer money overseas. The initial obligation is to register with AUSTRAC-

www.austrac.gov.au/business/registration

There are also ongoing reporting obligations.

HOWEVER, where the entity is merely transferring its own money, registration is NOT required.

Therefore, charitable institutions remitting their own money to overseas charities do not need to take any action. The obligation arises when the remittance is for another person's money, or where you are an agent, or similar.

Indigenous Corporations: -

Effective from 1 July 2007, there is a new Federal Act relating to indigenous corporations. This is the Corporations (Aboriginal and Torres Strait Islanders) Act 2006. It replaces the earlier Aboriginal Council and Associations Act of 1976. The new Act, as was the old, is administered by the Registrar of Aboriginal Corporations within the Dept. of Families, Community Services and Indigenous Affairs. All Aboriginal Corporations registered under the earlier Act will be deemed to be Corporations under this new Act from the commencement of the new legislation. It was introduced with a view to overcoming shortcomings in the existing legislation relating to inadequate protection for members, rigidity of legal structure and insufficient third party protection (including funding agencies). The new Act is aligned with the present Corporations Act in some important ways, particularly in relating to the statutory duties required by directors and other officers. Also, as with the Corporations Act, the new Act has a system of replaceable Rules so that Corporations can design their Constitutions to fit their needs and circumstances more appropriately.

GST and Fuel Cards:

The use of a fuel card raises the issue of whether the fuel-card provider is merely providing a financial supply, (which would make transactions input-taxed), or alternatively, the supply is for the supply of fuel. GST R 2005/1 sets out the complex circumstances here. The ruling

nevertheless identifies that where a fuel card is provided by an oil company to a fuel merchant on the one hand and to a fuel card customer on the other, this would be accepted as a taxable supply. An alternative that is acceptable would be where the arrangement is to buy company branded fuel. Other variations in the provision of fuel cards will often be accepted as a taxable supply, but there are exceptions. Again this is a complex area and we refer you to the GST Ruling for more information.

Website:

We have now established a website which is available at:
www.addministry.org.au

Current and earlier newsletters are available on the website. There are also available a number of documents which will be of use to the charitable and religious institutions we are here to serve. We will be adding new documents from time to time. We encourage you to use this service.

Publications available:

Voluntary Treasurers' Handbook —
hard copy — 59 pages\$30.00

Income Tax Guide for Overseas Workers —
hard copy—30 pages\$25.00

(GST Free supply under Section 38-250 of GST Act)



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Newsletter



“These are the Commandments. Those over there are the government guidelines that go with them.”

Gift Fund simplification:

In the June 2007 Newsletter, we identified there were significant changes to the Gift Fund Rules approved by Parliament earlier this year. ATO have now issued additional information to explain the changes. The key document is a Fact Sheet known as “Gift Fund Requirements (NAT 3194). There are also details provided in Non-Profit News Service # 179 “Changes to the Gift Fund Requirements for DGRs” and Non-Profit News Service # 180 “Endorsement Requirement for DGRs Have Changed”.

The information provided in the June Newsletter has been confirmed by this detail.

October 2007

Meaning of 'Not For Profit' and 'Charity':

The Australian Accounting Standards Board defines a not-for-profit entity as one whose principal objective is not to generate profit. Most not-for-profit entities would have some difficulty with this definition.

CPA Australia recently commissioned the University of WA Graduate School of Management to survey CPA members to identify a more appropriate definition. The focus that has emerged from this research is to say - "an entity is a not-for-profit entity when –

- it has operating purposes other than to provide goods and services at a profit;
- no member has the right to benefit from any surpluses from the entity, and
- the entity does not have the right to transfer ownership to its members."

CPA Australia has referred this information to the Board with a request that they review the present definition in Accounting Standards.

In the meantime, ATO have published a draft Taxation Determination TD 2007/D10. They have raised a different issue as to whether the incorporation of an entity as a charity under the Corporations Act or the Associations Incorporations Act, is sufficient for qualifying as a rebatable employer for Fringe Benefits Tax purposes. In respect to benefits under taxation law, their focus is clearly to ensure that Tax Concession Charity endorsement is essential in such circumstances – to remove doubt.

Fringe Benefits Tax Snippets: -

1. Personal digital assistants: - Under the Fringe Benefits Tax Assessment Act there is an exemption provided for mobile phones and personal digital assistants (PDAs). The exemption applies if these items are provided primarily for use in the employee's employment. With the increasing number of products available on the market, it is not easy to identify a single primary function with phones and PDAs as they have multiple other functions now. ATO does not accept that a multiple function device should automatically be treated as exempt. The ATO's view is that where an employer provides a device which has no prominent function, and if the intention is to provide a mobile phone, primarily for use in the employee's employment, then, and only then, can it be treated as an exempt item. The emphasis on "purpose" makes it clear that there is

no automatic exemption for these items.

2. Home mortgage payments: -ATO advise that where an employee has both a mortgage offset account and a draw-down facility for a mortgage, they will accept payments to either account as an expense payment fringe benefit. Reference ATO ID 2001/532.

3. Car Fringe Benefits: - ATO advise that where an employee makes an after-tax payment in relation to a car fringe benefit, after the close of the FBT year but in relation to that year, then the payment should be treated as a recipient's payment for that year and credited accordingly. However, remember that GST should be included in the payment if the employer is registered for GST.

4. Record keeping - common errors: ATO advise that common errors with the recording for car fringe benefits purposes include:

- Log books providing inadequate information about car use.
- Employee contributions are incorrectly treated for income tax and GST purposes.
- Misunderstandings about the calculation where a car is garaged at an employee's residence. In particular, ATO states that in such circumstances the car would normally be considered to be available for private use.

ATO expects the description of purpose for the journey to be detailed enough to show a journey was for business. More information is available on the ATO website at: www.ato.gov.au/employers

Minor benefits:

ATO have released a Draft Tax Ruling TR 2007/D6. Minor benefits are exempt benefits for Fringe Benefits Tax purposes where the notional taxable value of the benefit is less than \$300. However, there are conditions and some benefits are specifically excluded. The primary condition to be considered refers to infrequency, irregularity and the other circumstances surrounding the provision of minor benefits. One of the more frequent uses of minor benefits would be small gifts at Christmas time. It appears that such a benefit would normally pass the test without difficulty. However, the Draft Ruling is extensive. If there are concerns regarding detail, reference should be made directly to the document.

Update on Associations Incorporations Act:

The latest advice from DOCEP is that they hope the Draft Bill will go to State Cabinet later this year. They are expecting that it will be presented to Parliament with a view to it being debated early in 2008. There have been a large number of submissions from associations around the State, and DOCEP have expressed appreciation of the considerable interest shown. As a consequence of the submissions, many modifications have been made resulting in a softening of the Draft Bill in their revision. The consultation process has been of benefit to all concerned.

GST Update:

Time limit on GST refunds: Normally a GST refund must be claimed within 4 years of the end of the tax period to which the entitlement relates. The procedure for claiming refunds is through the Business Activity Statement (BAS). For entities with a turnover below \$20,000,000, ATO will accept a correction being made in the next available BAS provided the correction is below \$5,000. However, where the claim exceeds \$5,000, ATO expects you to amend the BAS in the relevant BAS period. This can either be done electronically or by mail. Correcting an error in a BAS for the period to September 2003 or later can be made up to and including the September 2007 BAS.

The most common reasons for the need for an adjustment would be: -

- To make a claim in respect to a tax invoice where the invoice was not available earlier
- To correct a clerical error in coding. (There may be instances where a GST free supply has been wrongly coded as a taxable supply.)

Motor vehicle trade-ins by charities:

Where a charitable or religious institution purchases a motor vehicle and trades in an existing vehicle, there are two transactions – the purchase of a vehicle and the sale of a vehicle. Issues relating to the trade-in are sometimes overlooked. In normal circumstances, GST would apply to the trade-in. However, the non-commercial rules affecting charities also apply to the trade-in. It will therefore be GST free if the payment received is less than 75% of the GSTR inclusive amount paid when the vehicle was originally purchased.