

FBT and portable electronic devices: The Fringe Benefits Tax Assessment Act has been amended to restrict FBT exemption for portable electronic devices to be only available for items used primarily for work-related purposes. The change also restricts the exemption to one item per employee per FBT year unless the item is a replacement item.

This change came into effect on 13 May 2008 when the Federal Budget was announced.

Minor benefits—FBT: Taxation Ruling TR 2007/12 clarifies the ATO view in relation to minor benefits. The Ruling points out that not all benefits below \$300 threshold will be exempt.

Examples given in the Ruling of what would constitute an exempt minor benefit may include Christmas gifts, a Christmas party, a one-off welcome gift to a new employee, a store voucher, a meal etc.

The ATO has issued an Impact Statement which provides an understanding of their views arising from the High Court decision in their favour.

New Regulatory Changes coming: At the Council of Australian Governments (COAG) meeting on 3 July 2008, significant decisions were made intended to simplify reporting and regulatory areas. While implementation will need careful planning, it should benefit both Government, business and the Not-For-Profit Sector. Initial areas targeted include; -

- National O H & S Laws,
- National consumer policy and
- Simplifying a national approach to Business Names.

The item, almost hidden, yet of considerable interest to all, was the announcement of a plan for Standard Business Reporting (SBR). The aim is to remove duplication between government reporting agencies and reduce the reporting obligations where possible. The intention is to work with software providers in design of systems and to enable reporting information to be 'pre-filled' directly from the systems that businesses use. More information is available at:

www.sbr.gov.au

Visit our Web Page:

New Document: We have included a publication entitled "*On Board—Model for Organisational Compliance*". This publication, used by permission, provides a useful model that can be adapted to fit a Board in respect to its areas of compliance and also provide useful guidance regarding induction of new Board members.

The Missionary and Overseas Workers Income Tax Guide is currently subject to a major revision and should be available by late July. The guide will include some new features not previously included, such as a section on superannuation.

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)



Locked Bag 5
BAYSWATER WA 6933

Phone: 08 9271 1844
Fax: 08 9271 1944
addministry@hardings.org.au



Newsletter



JULY 2008

Snippets!

Tax Rate changes: From 1 July 2008, the income tax rates have changed. Employers need to ensure their records have been changed appropriately. It is also timely to ensure that you have current Employment Declarations for tax purposes in your file records.

Political donations: Effective from 1 July 2008, a tax deduction is no longer available for political donations.

GST on forfeited deposit: A recent High Court of Australia case "FC of T v Reliance Carpet 2008 ATC" held that GST was payable on a forfeited deposit under a Contract of Sale of land.

What is a Charity?: There are interesting developments emerging in respect to what is deemed to be a 'charity' in Tax Law. A summary of some key matters is set out below: -

In 2005, Australian Taxation Office (ATO) introduced Tax Rulings TR2005/21 and TR 2005/22. These relate to the business activities operated by a charity and the meaning of public charitable purposes, and whether Tax Concession Charity (TCC) status is available to an entity, primarily operating a business activity for the benefit of a charity. Effectively, ATO's position has been that where the dominant activity cannot be identified as charitable, TCC status is not available – notwithstanding the fact that the financial benefit of the commercial activity passes to a charity.

The full Federal Court decision in **Word Investments** handed down on 14 November 2007, found against ATO regarding the commercial activities of Word Investments. ATO have been granted leave to appeal to the High Court.

In Word Investments case, the entity was a subsidiary of Wycliffe Bible Translators. Word has operated more than one commercial activity as the fundraising arm for Wycliffe and passed its surplus income on to Wycliffe. Word is a Company Limited by Guarantee.

There are several issues arising from the judgement, that identify that Word Investments case will not often be replicated. The Court found that Word's Objects were identical with the Objects of Wycliffe. The policy of the Board was consistent with its Objects, and its activities were consistent with the Objects. The organisation had operated in an identical manner for many years. The Full Court therefore found that in this instance they believed TCC endorsement was appropriate.

In an interesting adjunct to the judgment, the Court stated that the meaning of the term "Charity" is not rigid but movable, and adapts to changing community values.

Because of the special circumstances in Word Investments case, the decision may not benefit many. However, it may well cause the ATO to review the Tax Ruling. If the High Court decision supports the view of the Federal Court, this widens the understanding of "charitable institution".

The Income Tax Assessment Act differentiates between a Charitable Institution and a Charitable Fund. This has relevance for both Tax Concession Charity (TCC) endorsement and Deductible Gift Recipient (DGR) endorsement.

At its simplest, a Charitable Fund has, as its activity, that of a fund-raiser or a conduit or both, for the benefit of another charity or group of charities.

There are many different categories of Charitable Funds identified mainly in the DGR provisions of Division 30 of the Income Tax Assessment Act 1997.

A Charitable Institution on the other hand, carries out charitable activities. It also often has a substantial fund-raising role as well.

In the recent **SIMAID** judgement, SIMAID failed in its application as a Public Benevolent Institution (PBI) on the grounds that it was a Charitable Fund operating an overseas aid fund. As such, it could not also be a Charitable Institution. Institution status was essential for PBI endorsement.

The **Victorian Women Lawyers Association** have been approved as a Charity by a single judge of the Federal Court on 27 June 2008.

It would seem at first glance that this Association would really be a professional body for women members of the legal profession and therefore not qualify as a charity. ATO are currently considering the implications of this decision. However, a detailed analysis before the Court identifies its wide ranging activities. The Association argues that its activities were "beneficial to the community".

The judge accepted that the principal purpose of the Association was to remove barriers and to increase opportunities for the advancement of women in the legal profession and this was to overcome a well known social deficit, namely the substantial under-representation of women in the legal profession. While a complex case, it introduces additional uncertainties about the standing of Tax Ruling TR2005/21 and TR2005/22.

ATO are considering the implications of this decision.

Land Tax Exemption: the State Administrative Tribunal (SAT) of WA found in favour of Brightwater (a PBI), against the Commissioner of State Revenue. They held that Brightwater's property in Inglewood was used for aged care purposes, which is a benevolent activity, notwithstanding the site had not been in use for several years. SAT accepted Brightwater's argument that the buildings previously on the subject land had been demolished, and plans were in hand for development for new independent living units on the land. Delays had occurred for legal reasons, and State Revenue had sought to recover land tax on vacant land, on the rounds that it was not currently used for a benevolent purpose.

SAT found that in the cases argued before it in this class action, the charitable purpose was clearly justified. The well-aged units provided a model whereby residents could be transferred to Hostel and Nursing Home care. The average age of the residents exceeded 80 years, even though the minimum age for acceptance was 55 years. They also provided resources with aged people's needs clearly in mind.

Rates Exemptions: Uniting Church Homes and others undertook a class action against City of Stirling for rates exemption, in respect to well-aged units. The Stirling Council had considered that the units developed were now of a sumptuous nature, and also were being sold and being bought in the real estate market as significant assets. The Council considered that this changed matters from the original concept that well-aged units controlled by a charity should be treated as exempt property for rating purposes. In this and other cases, terms such as "exclusive use" and "ancillary use" feature for consideration. The State Administration Tribunal found in favour of Uniting Church Homes.

Superannuation and Insurance: A further 1 July 2008 change is that employer nominated superannuation funds are required to offer minimum levels of insurance death cover to members as a part of the superannuation policy.

An employer-nominated superannuation fund is a default fund where an employer chooses to pay an employee's superannuation guarantee contributions to if the employee does not nominate a fund.

For further information 'phone ATO on 13 10 20.