

TREASURER'S INSTRUCTION 25

TAXATION POLICIES

Reissued: 21 January 2015

Effective: 29 May 2014

Scope

25.1 This instruction applies to all public authorities unless otherwise stated.

Objective

- 25.2 To outline procedures for the preparation of Commonwealth and State taxation returns and Commonwealth private taxation rulings.
- 25.3 To require certain prior approvals before a private taxation ruling is lodged with the Australian Taxation Office or legal counsel is engaged to pursue a taxation matter/disagreement with the Australian Taxation Office.

Interpretation and Definitions

- 25.4 This instruction should be interpreted and applied in accordance with Treasurer's Instruction 1 *Interpretation and Application*.
- 25.5 To assist with the interpretation and application of this instruction and compliance with tax obligations, the Department of Treasury and Finance has issued a *Financial Management Toolkit* and taxation manuals for FBT, GST and PAYG.
- 25.6 For the purposes of this instruction, unless otherwise defined below, terms used are as defined in the *Fringe Benefit Tax Assessment Act 1986* (FBTAA), *A New Tax System (Goods and Services Tax) Act 1999* and the *Income Tax Assessment Act 1936* (ITAA).

Actual method means determining the taxable value of entertainment provided to recipients by the employer treating each item of expenditure of food or drink separately under the FBTAA. The employer is required to determine whether the provision of each benefit is tax exempt body meal entertainment or non-meal entertainment and treat it accordingly.

An associate for an SA public authority includes all employees of other SA public authorities and all employees of SA local government authorities but does not include employees of public authorities of other States or Territories. An associate for an SA Government employee includes a spouse and children.

The term associate is defined in Sections 135U(5) and 159 of the FBTAA and Section 318 of the ITAA. These definitions are extremely comprehensive and FBT return preparers will need to refer to both the FBTAA and ITAA.

Associate provisions means the FBTAA makes an employer liable to pay tax on benefits provided to its employees by either the employer or an associate of the employer, or a third party under an arrangement with either the employer, or an associate of the employer.

Government related entity means all public authorities under the *Public Finance and Audit Act 1987* and *State Procurement Act 2004* and includes a class of government related entities ie Schools, Hospitals.

Private taxation ruling is a written expression of opinion by the Commissioner of Taxation about the way in which a tax law or tax laws will apply to the applicant in relation to an arrangement in respect of a specified year of income. For example: a private tax ruling (and extension), administratively binding advice, exercise of the Commissioner of Taxation's discretion (and extension).

Instruction

State and Commonwealth taxation returns

- 25.7 The Chief Executive of each public authority must ensure that the public authority complies with the requirements of all Commonwealth and State taxation legislation.
- 25.8 The Chief Executive of each public authority must ensure that:
- 25.8.1 Business Activity Statements are prepared promptly and lodged with the Australian Taxation Office within 21 days of the end of the tax period;
 - 25.8.2 Fringe Benefit Taxation returns are prepared promptly and lodged with the Australian Taxation Office by 21 May of each year; and
 - 25.8.3 Payroll Tax returns are prepared promptly and lodged with the Commissioner of State Taxation within 7 days of the end of the tax period.

Private taxation rulings

- 25.9 The Chief Executive of each public authority must forward applications for private taxation rulings to the Department of Treasury and Finance for approval by the Under Treasurer prior to lodgement with the Australian Taxation Office.
- 25.10 Applications must include a:
- hard and soft copy of the ruling request and all attachments; and
 - certification by the Chief Executive that all information contained in the ruling request and any attached documents are true and correct; and
 - certification by the Chief Executive that the appropriate taxation provisions of the relevant taxation law and interpretative decisions of the Commissioner of Taxation (eg rulings and determinations) have been considered; and the relevant taxation provisions and interpretative decisions have been referred to in the ruling request.

Fringe Benefits Tax - entertainment

- 25.11 All public authorities, other than public hospitals and public benevolent institutions, must classify entertainment fringe benefits as tax exempt body entertainment fringe benefits. The 'Actual method' must be used for determining the taxable value of a tax exempt body entertainment fringe benefit to ensure that the total FBT liability for SA Government will be met under the associate provisions.
- 25.12 All public authorities must pay FBT on the proportion of the tax exempt body "meal" entertainment that relates to any SA Government employee(s) and their associate(s). Where tax exempt body "meal" entertainment relates to a mixture of SA Government employees and other persons, the expenditure must be apportioned between the number of SA Government employees and other persons. That is, the public authority that pays for the tax exempt body "meal" entertainment must pay the FBT.
- 25.13 All public authorities that have provided tax exempt body "recreational" entertainment fringe benefits to employees of another SA Government public authority (including associates) will provide notification to that authority (ie the SA Government employees' employer) to enable that authority (ie the employer) to, where required, pay the FBT and report that benefit on the employees' payment summary. Notification will be provided within 44 days of the end of the FBT year (ie 14 May).

Fringe Benefits Tax – living away from home allowance

- 25.14 From 1 October 2012, before a public authority provides an employee with a living away from home allowance (LAFHA) benefit, that public authority must obtain a statutory declaration from that employee stating that he or she has not received a concessional tax LAFHA benefit (up to the 12 month limit) for that location from that public authority or any other public authority. The FBTAA advises that an employee can only receive concessional tax LAFHA benefits for a maximum of 12 months at one location for the duration of their employment. Due to the associate provisions, this 12 month limit applies for the duration of the employee's employment with the SA State Government, regardless of any movements between government related entities during the period of employment in the SA State Government.

Other taxation matters

- 25.15 All public authorities must self assess whether that authority's taxes, fees and charges are exempt from Goods and Services Tax or not under Division 81 (including associated regulations) of the *A New Tax System (Goods and Services Tax) Act 1999*. Assessments are to be forwarded to the Department of Treasury and Finance for consideration and recommended action, if any.
- 25.16 The Chief Executive of each public authority must inform, in writing, the Department of Treasury and Finance of any disputes which may lead to litigation or other processes (eg Alternative Dispute Resolution Processes for notional GST) with the ATO as these may have wider tax policy and/or GST base integrity implications for the State.

- 25.17 The Chief Executive of each public authority must seek the Under Treasurer's approval prior to engaging legal counsel to pursue a taxation matter/disagreement with the Australian Taxation Office.
- 25.18 The Chief Executive of each public authority must provide to the Department of Treasury and Finance information on taxation matters or taxation returns as requested by the Under Treasurer or an officer nominated by the Under Treasurer.
- 25.19 The Chief Executive of each public authority must advise the Under Treasurer and the Chief Executive of the Department of the Premier and Cabinet where a Chief Executive has agreed with another Chief Executive to transfer employees between two public authorities pursuant to section 9(3) and 9(4) of the *Public Sector Act 2009*. The advice must include details of the public authorities involved; the date employees/function is transferred; the nature of the transfer of employees/function; the number of employees transferred and any budget impacts.

For queries contact:
Department of Treasury and Finance
Government Accounting, Reporting and Procurement Branch

Financial Management Team
Telephone No. (08) 8226 9529

The Department of Treasury and Finance has issued a *Financial Management Toolkit* and taxation manuals for FBT, GST and PAYG which contain guidance in relation to taxation matters.