

Issue - Disaggregation and its impact on:

1. novated lease vehicles and the impact when employees transfer between departments

Part XIC gives State and Territory governments the authority to nominate one or more eligible State or Territory bodies, from the list of such bodies in s 135T(1), to be the employer of each employee of the State or Territory that have sufficient connection with the nominated body. This devolves the administration and payment of FBT by State and Territory governments to departmental level. An employee is considered to have sufficient connection with a body if the employee performs duties wholly and principally for that body and not for any other body, or is of a class of employees that the State or Territory has specified under s 135S(2)(c). A government body that pays, or is liable to pay, salary or wages is an employer in its own right.

While Pt XIC authorises the transfer of administrative responsibility for FBT matters to State and Territory departments, it does not transfer ultimate responsibility for FBT obligations, which remain with the State or Territory governments: s 135U(4).

Where a State or Territory body ceases to exist, the State or Territory is regarded, from the date of cessation, to be the employer and to have revoked the relevant nomination from the start of the following FBT year: s 135U(6).

Legislative Summary:

- Sec.135S – outlines who can nominate, what form the nomination must take and the fact the nomination can be amended or revoked
- Sec.135T – specifies the legislative framework from the States and Territories that must be applied to identify the “*eligible State or Territory body*”
- Sec.135U –
 - ss(1) identifies the nominated State or Territory body as the employer
 - ss(2) & (3) - requires a sufficient connection with the body
 - ss(4) – the State / Territory is still ultimately responsible
 - ss(5) – nominated bodies are taken to be a company and are related to each other
 - ss(6) – the State/Territory becomes the employer if a nominated body ceases to exist
- Sec. 135V – apportionment of notional tax amounts from the State to the nominated bodies
- Sec 135W – notional tax calculations reverting to the State when nominated body ceases to exist
- Sec. 135X – written agreement between the Commissioner and State for carry forward of values, etc.

"employer" means:

- (a) a current employer;
- (b) a future employer; or
- (c) a former employer;

but does not include:

- (d) the Commonwealth; or
- (e) an authority of the Commonwealth that cannot, by a law of the Commonwealth, be made liable to taxation by the Commonwealth.

"current employer" means a person (including a government body) who pays, or is liable to pay, salary or wages, and includes:

- (a) in the case of a partnership—each partner; and
- (b) in the case of any other unincorporated association or body of persons—its manager or other principal officer.

"government body" means the Commonwealth, a State, a Territory or an authority of the Commonwealth or of a State or Territory (pursuant to para.135U(5)(c) of the FBTAA, a nominated State or Territory body is taken to be a government body)

Subsection 135U(1) of the FBTAA identifies the nominated body (rather than the State) as the employer for purposes of the FBTAA.

Issue #1 – Status of Novated Leases when employee transfers between Departments

- Under a novated lease arrangement a tripartite agreement is entered into between the employee, leasing company and the employer (Crown)
- When an employee leaves the Queensland State Government, the novated lease collapses and the employee is personally responsible for the car lease until a subsequent employer agrees to enter into a novated lease
 - At the time the original agreement is terminated an odometer reading would be required and the FBT calculation based on the annualised distance travelled at that time.
 - When a new novation is entered into the opening odometer reading would begin the FBT calculation cycle with the new employer.
- Under existing novation arrangements, the departmental representatives sign the novation agreement on behalf of the State.

Comment – under FBT legislation the critical issue is not a novated lease but rather the employer who provides the benefits to the employees. Where an employee moves between departments the Deed of Novation will remain valid as the State is party to the agreement. However, when an employee moves departments (employers) then a new fringe benefit arises with the new employer and action needs to be taken.

- When an employee moves departments the critical issue will be entry of the employee onto the payroll system of the new employer.

- When an employee transfers between departments it is considered that the critical deciding factor will be the employee's entry into the new department's payroll system.
 - At this point the respective **salary sacrifice provider will need to be advised by the employee**
 - Employee will need to obtain a 'closing odometer' reading on the date of transfer to the payroll system.
 - Employees will need to be aware that FBT will be calculated in a series of increments over the course of the year that may result in higher than expected FBT liabilities where the annual travel is not uniform over the course of the year
 - Temporary secondments, where the employee is seconded and continues to be paid by the original department will not result in an "employer transfer"
 - The new department will be responsible for the issue of a payment summary to the employee and will be responsible for FBT on the novated lease from that time
 - The Salary Sacrifice Providers will need to be advised of the changes in departmental employer as soon as possible so that the necessary administrative changes can be effected.

Discussions with XXX (ATO) on 3 June 2011 in regard to the above issues:

Issue # 1

- ATO focus on who is the provider of the benefit – ie. In whose name is the "car held"
- The Standard Deed of Novation as prepared by Crown Law identifies the parties as the State, the Finance Company and the Employee. The Schedule to the Deed identifies "**State of Queensland acting through a Department or Agency being: ...**" It was agreed that the State is the contracted entity and any movement by an employee between departments will not amount to a new benefit with a new employer
- Rather than calculate a new benefit the ATO requirement is that the total annual liability is to be apportioned between the departments to which the employee has been transferred over the course of the year.
- Transfer dates will be based on dates that the employee has been removed from or entered into the payroll system of the respective departments