

Machinery of government changes: Goods and Services Tax, Fringe Benefits Tax and income tax issues

This Circular discusses the issues and provides guidance on the action needed by agencies to comply with changes in GST and FBT responsibilities resulting from administrative and machinery of government changes.

Summary:

'Machinery of government' (MOG) changes and 'administrative changes' refer to changes to the allocation and reallocation of functions between government departments/agencies and Ministers. These changes include the creation or abolition of government departments and agencies. MOG changes can have implications for agencies in meeting their Goods and Services Tax (GST) and Fringe Benefits Tax (FBT) responsibilities.

In New South Wales the Governor may make administrative changes by issuing Orders under the *Public Sector Employment and Management Act 2002* to establish, abolish and change agencies. Machinery of government/administrative changes may also be made under specific legislation applying to a particular agency including Orders pursuant to a particular Act.

GST and FBT

The registration of government agencies for GST and FBT purposes has a number of consequences for agencies subject to MOG changes. Agencies must consider a range of matters resulting from MOG changes (e.g. IT, accounting, legal, tax, personnel, accommodation and industrial) which may be complex and time-consuming.

Agencies are responsible for ensuring that GST and FBT obligations are fulfilled correctly following MOG changes. This would be assisted by early modification of agency systems, timely advice of changes to suppliers and customers and close liaison with other agencies directly affected by the MOG changes.

GST

With regard to GST, the Australian Taxation Office (ATO) has provided a formal Determination that where MOG changes are specified in an Order issued pursuant to the *Public Sector Employment and Management Act 2002*, the Commissioner of Taxation (the Commissioner) will exercise discretion to treat documents that are not tax invoices as tax invoices. The time periods for the exercise of the discretion are as follows:

- Where an Order is issued on or before the commencement date of a MOG change specified in the Order, the Commissioner will exercise discretion for a transitional period of three months starting from the commencement date of the MOG change specified in the Order.
- Where an Order is issued after the commencement date of a MOG change specified in the Order, the Commissioner will exercise discretion for a transitional period starting from the date of commencement of the MOG change specified in the Order to a date three months after the date of the Order.

Where a MOG change is specified in an instrument issued under State legislation other than the *Public Sector Employment and Management Act 2002*, the relevant parties to the MOG change may request the Commissioner to exercise discretion at the time when the MOG change takes effect.

Income tax

The ATO has informed Treasury that MOG changes will generally have no impact on current employees' tax file number employment declarations.

- Current employees do not need to sign new declarations under new agency names.
- New employees to government, however, will need to sign tax file number employment declarations under agencies' new names.

The ATO has also informed NSW Treasury there is flexibility with regard to payment summaries (formerly called group certificates).

- A single payment summary can be given to employees at the end of the financial year under the name of the new agency that covers both the period of employment under the former agency name and the new agency name.
- Alternatively separate payment summaries can be provided under the former agency name and the new agency name.

Other matters

NSW Treasury does not provide technical or legal advice on GST, FBT or income tax. Where necessary agencies should obtain technical tax advice from their tax advisers or by contacting the ATO Business tax enquiries line on 13 28 66.

This Treasury Circular replaces the previous circular (NSW TC 05/08 issued on 7 September 2005) relating to MOG changes and the associated GST and FBT issues.

Philip Gaetjens
Secretary

Attachments to this Circular:

- Attachment A: GST Implications of Machinery of Government Changes
- Attachment B: Commissioner of Taxation's Determination under ss.29-70(1B)
- Attachment C: FBT Implications of Machinery of Government Changes
- Attachment D: Income tax issues.

Further Information: GST: James George (ph. 02 9228 4823, email: james.george@treasury.nsw.gov.au)
FBT: Henriette Prego (02 9228 3873, email: henriette.prego@treasury.nsw.gov.au)
NSW Treasury Internet: www.treasury.nsw.gov.au

Attachment A

GST Implications of Machinery of Government Changes

Purpose

The following information provides guidance on GST matters that, where necessary, agencies must consider and act on as a result of MOG changes.

Background

MOG changes include the abolition of an agency; the creation of an agency; the transfer of part of one agency to another agency and the change of name of an agency. Whenever MOG changes occur there are a number of changes that may need to be made within affected agencies, e.g. IT, accounting, legal, tax, personnel and accommodation changes.

In implementing MOG changes agencies need to take account of the GST impacts without allowing the GST implications to drive their planning to the exclusion of other important factors. Agencies are responsible for ensuring their GST obligations are fulfilled correctly following MOG changes. This would be assisted by agencies making early modification of systems, timely advice of changes to suppliers and customers and close liaison with other agencies directly affected by MOG changes.

Commissioner of Taxation's 'Determination' on tax invoices

The ATO has provided Treasury with a formal Determination where the Commissioner of Taxation (the Commissioner) has agreed to exercise discretion under subsection 29-70(1B) of the *A New Tax System (Goods and Services Tax) Act 1999* to treat documents that are not tax invoices as tax invoices for a transitional period (refer Attachment B).

The Determination applies to NSW Government entities affected by MOG changes made pursuant to the *Public Sector Employment and Management Act 2002*. The time periods for the exercise of the discretion are as follows:

- Where an Order is issued on or before the commencement date of a MOG change specified in the Order, the Commissioner will exercise discretion for a transitional period of three months starting from the commencement date of the MOG change specified in the Order.
- Where an Order is issued after the commencement date of a MOG change specified in the Order, the Commissioner will exercise discretion for a transitional period starting from the date of commencement of the MOG change specified in the Order to a date three months after the date of the Order.

If agencies need a period longer than the periods covered by the Determination they should contact the ATO directly to request an extension of time beyond these periods and explain the reasons for seeking the extension.

The Determination covers only those MOG changes made pursuant to the *Public Sector Employment and Management Act 2002*. This will cover most, but not necessarily all, MOG changes. Where a MOG change is specified in an instrument issued under State legislation other than the *Public Sector Employment and Management Act 2002*, the relevant parties to the MOG change may request the Commissioner to exercise discretion at the time when the MOG change takes effect.

Issues to consider following MOG changes

Since the commencement of GST from 1 July 2000 and the registration of agencies for GST purposes there are a number of GST related issues that agencies affected by MOG changes need to consider and act on, where necessary.

1. *Supplies that you make – you may need to change the tax invoices that you issue because your name has changed, the agency has been abolished or a new one created.*

If you make supplies you are required to issue a tax invoice in respect of each taxable supply that you make. Because all tax invoices must have the identity and Australian Business Number (ABN) of the supplier on them, any MOG change that results in a change to the name or ABN of the agency making the supplies will require changes to be made to the tax invoices issued by that agency.

A change to the name or ABN of an agency making supplies may arise from MOG changes which abolish an agency, create an agency or change the name of an agency. It could also arise where a part or division of an agency is transferred from one agency to another agency.

Actions you should take include:

- Determine whether any of the required information on the tax invoices you issue has to change as a result of MOG changes. These are likely to result from registration changes that you may need to make.
- Depending on whether you use pre-printed stationery or generate tax invoices/receipts on plain paper from your systems (including cash registers), decide what actions need to be taken to be able to produce tax invoices/receipts with the new information on them.
- Develop a plan, with a timetable, to change the relevant information in your tax invoices to accord with the registration changes you have to make.
- Ensure the plan is coordinated with other actions that need to be taken in moving through the MOG changes, particularly the ABN/GST registration changes that need to occur.
- If other agencies are likely to be affected, e.g. if you have acquired a branch or division from another agency, coordinate with the other agency so that there is no duplication of tax invoices for the same supply being made by that division.

2. *Acquisitions that you receive – you may need to contact suppliers to advise them to alter their tax invoices for amounts of \$1,000 or more because your name and ABN have changed. In addition, there may be situations where part of an agency has moved and there are goods ordered by the losing agency that have to be paid for by the acquiring agency.*

All agencies purchase goods and services to enable them to conduct their operations. To be able to claim input tax credits to which your agency is entitled you need to hold a valid tax invoice at the time you lodge your Business Activity Statement (BAS). The supplier is required to show the identity or ABN of the recipient on the tax invoice if the total price of the goods or services to which the tax invoice relates is \$1000 or more. If the MOG changes affect both of these variables, then the supplier needs to be advised of the new details. Even if the tax invoice is for an amount below \$1000, some suppliers still show the recipient details on the tax invoice. Following a MOG change and to avoid confusion, it would be prudent for a recipient to advise its suppliers of a change to either their name or ABN.

Inform all suppliers of any changes to your details as the recipient. There is an additional complication in respect of acquisitions in the situation where a part of an agency (e.g. a division) is moved between agencies by the MOG changes. It could be that purchase orders have been issued in respect of that division by the losing agency but the goods or services will be received and paid for by the gaining agency. The need to communicate with suppliers and between the gaining agency and losing agency is very important in this situation.

Actions you should take in respect of purchases include:

- Determine, in parallel with planning for registration changes and other changes required by the MOG changes, what alterations need to be made in relation to recipient details on tax invoices you receive from your suppliers.
- Prepare advice to issue to your suppliers, telling them what changes they will need to make to their tax invoices and, importantly, the date of effect for such changes.
- If necessary, because of the nature of the MOG changes, liaise with other relevant agencies to coordinate any changes and advice to suppliers.
- In planning your approach, bear in mind that the ATO's Determination only allows a three month transitional period during which tax invoices showing incorrect details because of the impact of MOG changes will be accepted for GST purposes.

Recipient Created Tax Invoices (RCTIs)

Some of the acquisitions you receive may require you to issue a recipient created tax invoice to the supplier. This is a common practice for agencies that make grants. All of the issues raised above in relation to acquisitions need to be considered in relation to RCTI's. However, because the agency controls the issue of RCTIs, the agency can ensure that appropriate details, i.e. those relevant to the particular transaction and stage of the MOG changes, are included on the RCTI when it is issued to the supplier.

3. Registration changes – will be necessary where name changes occur, agencies are abolished or created, and grouping of agencies changes.

MOG changes that create new agencies, abolish existing agencies, change agencies' names, or move units or divisions between agencies can have an impact not only on agencies' individual registrations but also on GST groups that some agencies and associated units have formed. In dealing with registration issues arising from MOG changes, the following actions will need to be considered:

- Identify whether there is an impact on your existing registration, either ABN or GST or both.
- Determine whether you need to liaise with another agency to find out whether anything in the way it is registered affects your existing or proposed registration.
- Decide, in conjunction with other agencies affected if necessary, the date from which you want the changes to your registration to be effective. Ideally, it should be the date from which you are able and intending to operate in your new identity.

Other issues agencies need to consider include:

- 4. *Reimbursements between agencies – there may be a requirement for an agency to reimburse another for expenditure made in respect of a part of an agency transferred as a result of MOG changes.***
- 5. *As a result of new agency structures, new transactions may occur which will require analysis of the GST implications.***
- 6. *Controls will be needed to ensure all proper documentation required under Commonwealth tax law is kept.***
- 7. *If agencies join corporate services arrangements, a clear understanding of legislative policy and operational policy is required, particularly where service level agreements are in place.***

ATO Guidance

A tax invoice must include information to establish the identity of the supplier, and the recipient if applicable. Information sufficient to identify the supplier or recipient includes, but is not limited to, the legal name of the entity, the business name, or the trading name.

The ATO has produced a guide on GST and MOG changes which agencies should follow to assist their compliance with the GST legislation. The guide helps agencies meet their GST obligations during MOG changes. It covers some areas of the GST law that may apply during MOG changes and provides links to more detailed information.

The guide is available on the ATO's website www.ato.gov.au and can be accessed using the following link: <http://www.ato.gov.au/government/content.asp?doc=/content/00239286.htm>.

Attachment B



Australian Government
Australian Taxation Office

New South Wales Treasury
(Office of Financial Management)
Attention: Mr James George
Level 26 Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000

Reply to: PO Box 3001
PENRITH NSW 2740
Our reference: 1011815682897
Contact officer: Don Eldridge
Phone: 13 28 69
Fax: 1300 650 128
Your reference:
Portal receipt number:
ABN: 55 437 667 728

13 July 2011

Notice of GST decision For your information

Dear Sir

You wrote to us on 11 March 2011 asking about Machinery of Government changes and invoice discretion. This is our response, which contains:

- our decision and our reasons for making it
- an explanation of your review rights.

Our decision has been authorised by Tim Fenner.

Notice of Decision

This decision applies to:

OFFICE OF FINANCIAL MANAGEMENT

ABN: 55437667728

Question 1

With regard to Machinery of Government (MOG) changes specified in an order, issued pursuant to the *Public Sector Employment and Management Act 2002*, will the Commissioner of Taxation (Commissioner) exercise his discretion under subsection 29-70(1B) of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) to treat:

- (a) documents issued by the losing department or agency (containing its details) for **supplies** made by the gaining department or agency as tax invoices for the recipients of those supplies to claim input tax credits (ITC)
- (b) documents issued to the losing department or agency (containing its details) for **purchases** made by the gaining department or agency as tax invoices for the gaining department or agency to claim ITC
- (c) documents issued by the losing department or agency (containing its details) under a recipient created tax invoice (RCTI) agreement (between the losing department or agency and the suppliers) for supplies made to the gaining department or agency as RCTIs for the gaining department or agency to claim ITC, and
- (d) documents issued by the gaining department or agency (containing its details) under a recipient created tax invoice RCTI agreement (between the losing department or agency and the suppliers) for supplies made to the gaining department or agency as RCTIs for the gaining department or agency to claim ITC.

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Decision 1

Yes. Where MOG changes are specified in an Order issued pursuant to the *Public Sector Employment and Management Act 2002*, the Commissioner will exercise his discretion under subsection 29-70(1B) of the GST Act to treat documents that are not tax invoices as tax invoices.

Where an Order is issued on or before the commencement date of a MOG change specified in the Order, the Commissioner will exercise his discretion for a transitional period of three months starting from the commencement date of the MOG change specified in the proclamation.

Where an Order is issued after the commencement date of a MOG change specified in the Order, the Commissioner will exercise his discretion for a transitional period starting from the date of commencement of the MOG change specified in the Order to a date three months after the date of the Order.

This discretion is exercised for the matters referred to in Question 1 in respect of a MOG change specified in an Order issued pursuant to the *Public Sector Employment and Management Act 2002*.

Question 2

With regard to MOG changes specified in an instrument issued under a State legislation other than the *Public Sector Employment and Management Act 2002*, will the Commissioner exercise his discretion under subsection 29-70(1B) of the GST Act to treat:

- (a) documents issued by the losing department or agency (containing its details) for **supplies** made by the gaining department or agency as tax invoices for the recipients of those supplies to claim input tax credits (ITC)
- (b) documents issued to the losing department or agency (containing its details) for **purchases** made by the gaining department or agency as tax invoices for the gaining department or agency to claim ITC
- (c) documents issued by the losing department or agency (containing its details) under a recipient created tax invoice (RCTI) agreement (between the losing department or agency and the suppliers) for supplies made to the gaining department or agency as RCTIs for the gaining department or agency to claim ITC
- (d) documents issued by the gaining department or agency (containing its details) under a RCTI agreement (between the losing department or agency and the suppliers) for supplies made to the gaining department or agency as RCTIs for the gaining department or agency to claim ITC

Decision 2

Where a MOG change is specified in an instrument issued under a State legislation other than the *Public Sector Employment and Management Act 2002*, the relevant parties to the MOG change may request the Commissioner to exercise his discretion under subsection 29-70(1B) of the GST Act for the matters referred to in Question 2 at the time when the MOG change takes effect.

Relevant facts and circumstances

Our decision is based on the following facts.

At the time a MOG change takes effect, the change in relation to the transferring of functions to a gaining/new department or agency, involves, among other things:

- transferring any property, assets, rights, debts, liabilities and obligations held by the losing department to the gaining department
- treating a reference to the losing department in any document or arrangement as a reference to the gaining department.

In New South Wales (NSW), the governing legislation for MOG changes is the *Public Sector Employment and Management Act 2002*, which makes provision for employment, management and governance matters relating to the public sector of the State of NSW and for other purposes.

MOG changes may also be made by other means, for example, other legislation. These MOG changes include all public sector agencies. A public sector agency includes, for example, a body corporate controlled by the government, an instrumentality of the Crown or an employing authority. However, these occur less often than MOG changes under the *Public Sector Employment and Management Act 2002*.

Under the *Public Sector Employment and Management Act 2002*, the Governor can issue an Order to establish, abolish, or change an administrative unit, being a department or attached office.

Parts of the Commonwealth, a State or a Territory may register for GST even if they are not separate legal entities.

Administrative consequences for agencies resulting from MOG changes include:

- following the MOG change, the losing agency will continue to process all of the transactions relating to the transferred functions for a number of months following the date of the movement of the financial reporting responsibilities,

a consequence of the losing agency continuing to process transactions for the transferred functions is that supplies made by the transferred functions (i.e. gaining agencies) may for a period of time continue to be invoiced in the name of the losing agency,
- the losing agencies will also have outstanding orders they have placed with suppliers that relate the operation of the transferred functions. Suppliers will raise tax invoices to the losing agency. However, the supplies under those orders will be made to the gaining agency,
- losing agencies and various suppliers may have entered into RCTI agreements that specify certain sales to be made by the suppliers to the losing agencies for use in operating the transferred functions. After the MOG change comes into effect, those suppliers then make sales to the gaining agency. The gaining agency is liable to make payments to the suppliers and can claim the GST credits. The losing agency may continue to issue documents with its ABN for sales made to the gaining agency under those RCTI agreements. However, the RCTI agreements will no longer be valid as the losing agency is no longer the recipient of the supply.

Due to the inherent risk attached with allowing RCTIs in another entity's name, The Treasury, on behalf of the NSW State Government, must ensure that the new entity will have strict processing controls in place in relation to RCTIs to ensure that they are not used by the old entity to claim GST credits.

Reasons for decision

Detailed reasoning

Question 1.

The Commissioner has discretion under subsection 29-70(1B) of the GST Act to treat as a tax invoice a particular document that does not meet the requirements for being a tax invoice.

Further to this, Practice Statement Law Administration PS LA 2004/11 *The Commissioner's discretions to treat a particular document as a tax invoice or adjustment note* provides guidance in relation to exercising of the Commissioner's discretion

Paragraph 4 of Attachment A to PSLA states:

4. The exercise of the discretions may also be sought by the supplier, but in respect of documents that are yet to issue. For example, if the supplier discovers the defect and is attempting to change its computer systems to correct the error. In the latter case, it may be appropriate to exercise the discretion in order to allow the supplier a reasonable opportunity to advise its customers and make the necessary system changes to ensure it can issue valid documents.

Similarly paragraph 9, in relation to RCTIs states:

9. The exercise of the discretions may also be sought by the recipient, but in respect of documents that are yet to issue. For example, if it discovers the defect and is attempting to change its computer systems to correct the error. Depending on the circumstances, it may be appropriate to exercise the discretions in order to allow the recipient a reasonable opportunity to advise its customers and make the necessary system changes to ensure it can issue valid RCTIs and RCANs

A MOG change at state level may occur any time, and when these changes occur, the losing government departments and agencies will have outstanding orders with suppliers. It is important that these departments/agencies ensure that they hold tax invoices for purchases made after the MOG change. Similarly, they are required to provide tax invoices for sales made after the MOG change.

However the ATO recognises that when a MOG change occurs, it takes time to implement administrative processes to account for the transfer of functions across agencies, and that resultant 'tax invoices' will contain the details of the losing government department or agency which has placed an order before the MOG change. Where this occurs these documents will not meet the requirements of a tax invoice.

Furthermore, where a document is issued by a losing government department or agency (under a RCTI agreement which the losing government department or agency and the supplier have entered into) for a supply made to the gaining government department or agency, the document will not be a tax invoice that is a RCTI.

In order for government departments and agencies and departments to implement administrative procedures as a result of a MOG change, the Commissioner will exercise his discretion under subsection 29-70(1B) of the GST Act to treat documents that are not tax invoices as being tax invoices as follows.

The exercising of the tax invoice discretion under this subsection will apply in respect of all NSW State Government departments and agencies listed in an Order, issued under the *Public Sector Employment and Management Act 2002*.

Where an Order is issued on or before the commencement date of a MOG change specified in the Order, the Commissioner will exercise his discretion for a transitional period of three months starting from the commencement date of the MOG change specified in the Order.

Where an Order is issued after the commencement date of a MOG change specified in the Order, the Commissioner will exercise his discretion for a transitional period starting from the date of commencement of the MOG change specified in the Order to a date three months after the date of the Order.

The relevant parties to a MOG change may make a further request for the exercise of the discretion where an extension of time is required beyond either of the periods referred to in the above paragraphs.

Question 2.

MOG changes may be announced under other State legislations. Where this occurs it is likely to apply to a particular agency and have a narrower application. It is also likely to result from a more

protracted planning process. Further, it is not possible to identify, in advance, the legislation or agencies affected.

Therefore, where a MOG change is specified in an instrument issued under a State legislation other than the *Public Sector Employment and Management Act 2002*, the relevant parties to the MOG change may request the Commissioner to exercise his discretion under subsection 29-70(1B) of the GST Act for the matters referred to in Question 2 at the time when the MOG change takes effect.

More information

If you have any questions, please phone **13 28 69** between 8.00am and 5.00pm, Monday to Friday, and ask for Don Eldridge on (08) 926 88104 .

When you phone us, please have the reference number **1011815682897** ready so we can quickly access your case details.

Yours faithfully,

James O'Halloran
Deputy Commissioner of Taxation

Per



(Don Eldridge)

Explanation of review rights

You can contact the person handling your case and ask the Tax Office to review the decision. A review is normally conducted by someone who was not involved in making the original decision. You may also request a review under the *Administrative Decisions (Judicial Review) Act 1977* (ADJR Act).

Reviews under the ADJR ACT

The ADJR Act provides you with two main rights:

1. You can write to the Tax Office and ask us to provide you with a written statement of:
 - the findings of material questions of fact
 - the evidence these findings were based upon, and
 - the reasons for our decision.
2. You can apply to the Federal Court of Australia or the Federal Magistrates Court for a review of our decision.

If you decide to apply to the Federal Court or the Federal Magistrates Court for a review, we suggest you seek professional advice on how to proceed. You may lodge your application at the Federal Court or Federal Magistrates Court in your State or Territory and you must lodge it within 28 days from 1 June 2011.

More information about this process, including where to lodge your application, can be obtained from the Federal Court website www.fedcourt.gov.au or from the Federal Magistrates Court website www.fmc.gov.au.

Attachment C

FBT Implications of Machinery of Government Changes

Background

Since disaggregation of the Crown's FBT return in **2001**, General Government Budget Dependent entities assumed the responsibility for their own FBT obligations to the Australian Taxation Office (ATO). These entities are known as 'nominated entities' for FBT purposes. The information contained in this document relates solely to issues affecting nominated entities as a result of:

- Machinery of government (MOG) changes.
- Further disaggregation within the ambit of the *Public Sector Employment and Management Act 2002* (NSW) (PSEMA) or
- restructure and/or changes under the PSEMA (section 104).

Whenever these changes in structure occur, there are a number of factors that should be considered by the affected nominated department(s) and the Crown to ensure their tax obligations are met. As a nominated body is not a legal entity in its own right (for fringe benefits taxing purposes) but is part of the "body politic" i.e. The Crown, rights and obligations that would be either conferred or imposed on a nominated body as a result of treating it as an employer are instead conferred or imposed on the Crown. It is therefore important that these rights or obligations are appropriately and responsibly handled by the nominated entities to ensure the FBT obligations are met.

Topics discussed in this document are:

- what is a nominated body;
- commencement date for a nominated body;
- further disaggregation under the PSEMA;
- creating/listing a new department under the PSEMA (including creating/listing entities resulting from a merger);
- name change (including name changes resulting from a merger);
- nominated body ceasing to exist;
- notification of FBT liability at cessation;
- reportable fringe benefits amount; and
- general issues.

What is a nominated body?

NSW may nominate an "eligible State body" for the purposes of Part XIC of the *Fringe Benefits Tax Assessment Act 1986* (C'th) (the FBT Act). An eligible State body is defined in section 135T of the FBT Act as being a "department" within the meaning of section 6 of the *Public Sector Employment and Management Act 2002 of New South Wales* (PSEMA).

Commencement date for a nominated body

For a department to be a nominated body, the State of New South Wales (Crown) via the NSW Treasury (Treasury), must have nominated the department to the ATO **on or before 21 May** in the year of tax.

Where nomination occurs **after** 21 May in the year of the tax, the FBT obligations for that department rest with the Crown until the end of that FBT year, i.e. 31 March following nomination, (for example, if nomination occurred on 1 August 2010, the FBT obligations would rest with the Crown until 31 March 2011). Although the FBT obligations rest with the Crown, the nominated body must:

- liaise with Treasury FBT officer to ensure payments and information required by the Crown is met as requested.
- ensure sufficient funding is transferred to the Crown (Treasury) to enable quarterly FBT instalment payments to be made to the ATO; and
- at the end of the first FBT year, prepare and submit a fully compliant and signed FBT return to the Director, Crown Asset and Liability Management Division (CALM), NSW Treasury by 10 May to enable NSW Treasury to prepare and consolidate FBT return for the Crown and forward to the ATO by the due date.

Once nominated, that department remains a nominated body until the nomination is revoked, i.e. nomination is only required once.

Further disaggregation under the PSEMA

An agency may wish to disaggregate other entities currently covered by section 6 of the PSEMA. Any such disaggregation must occur at the end of the FBT year (i.e. 31 March) with the nomination and FBT amount payable by the new department to the ATO before 21 May of the new FBT year. An agency will be unable to disaggregate a department after 21 May without the prior approval being obtained from NSW Treasury.

Once disaggregation and nomination has occurred, responsibility for compliance with the FBT regime is the responsibility of the new department. As the Crown will provide no additional funding, agencies must ensure sufficient funding is transferred to the new department to cover its FBT liability.

Agencies must notify the Director, CALM, NSW Treasury when a department is to be disaggregated under the PSEMA. This notification should include the name of the department to be nominated, the relevant section of the PSEMA which applies and notional taxes for the newly nominated body and the "parent" department (excluding the notional tax of the department to be nominated). The notification should be forwarded to NSW Treasury **by 10 May** to enable NSW Treasury to inform the ATO by 21 May.

Creating/Listing a department under the PSEMA

A new department

Where a new department is created under section 104 of the PSEMA and nomination is made to the ATO on or before 21 May, the new department will be a nominated body from 1 April in the year of the nomination.

Where the nomination occurs after 21 May the FBT responsibility rests with the Crown until the end of that particular FBT year. This means the Crown will pay the quarterly FBT instalments and lodge the end of year FBT return to the ATO. However, to enable the Crown to meet these responsibilities the nominated body must:

- liaise with Treasury FBT officer for assistance in this process to ensure requirements are met;
- ensure sufficient funding is transferred to the Crown to enable the quarterly FBT instalment payments to be made to the ATO; and
- at the end of the first FBT year, prepare and submit a fully compliant and signed FBT return to the Director, CALM, NSW Treasury by 10 May to enable NSW Treasury to consolidate the Crown FBT return and submit the return to the ATO by the due date 21 May of the FBT year.

For example, resulting from a MOG change a new NSW Government department ABC is created from 1 July 2010. As ABC is created after 21 May 2010, the FBT responsibility rests with the Crown until the end of that FBT year, i.e. 31 March 2011. ABC must ensure sufficient funding is transferred to the Crown to cover the quarterly FBT payments for September 2010, December 2010, and March 2011. ABC is also required to prepare and forward its annual FBT return for the year ended 31 March 2011 to the Director, CALM, NSW Treasury by 10 May 2011. Providing the Crown advises the ATO on or before 21 May 2011 that ABC is a nominated body, ABC will be responsible for its own FBT obligations from 1 April 2011.

A new department resulting from a merger

Where a merger involves entities being amalgamated or abolished with functions being transferred to a new entity, all of the entities will cease to exist. The ceased entities are required to notify the ATO and the Director, CALM, NSW Treasury, of the date they ceased to exist, and lodge a final FBT return from 1 April to the date of cessation. Payment of any outstanding FBT liability must also be made when the final return is lodged with the ATO.

Provided the merger and nomination to the ATO occurs between 1 April and 21 May, the new department will be a nominated body from 1 April in the year of nomination. However, where the merger and nomination occurs after 21 May, the FBT responsibility rests with the Crown until the end of that FBT year. This means that the Crown will pay the quarterly FBT instalments and lodge the end of year FBT return with the ATO. However, to enable the Crown to meet these responsibilities the nominated body must:

- liaise with Treasury FBT officer for assistance in this process to ensure requirements are met;
- ensure sufficient funding is transferred to the Crown to enable the quarterly FBT instalment payments to be made to the ATO; and
- at the end of the first FBT year, prepare and submit a fully compliant and signed FBT return to the Director, CALM, NSW Treasury by 10 May to enable NSW Treasury to on forward the return to the ATO.

For example, the amalgamation of two hypothetical budget dependent agencies, the Office of Consumer Affairs and the Department of Labour Relations to form a new agency called the Department of Consumer and Employment Affairs will result in both the Office of Consumer Affairs and Department of Labour Relations ceasing to exist. The ceased agencies are required to notify the ATO and the Director, CALM, NSW Treasury, of the date they ceased to exist and lodge a final FBT return from 1 April to the date of cessation. If the Department of Consumer and Employment Affairs becomes a nominated body on or before 21 May, it will be responsible for its own FBT obligations from 1 April in the year of nomination. However, if it becomes a nominated body after 21 May the FBT obligations for the remainder of that year will revert back to the Crown. (i.e. from the date of cessation until 31 March).

If the merger results in a new department that is not covered by PSEMA (section 6), then consideration should be given to whether:

- the department should be registered separately as a “current employer” under the FBT Act (e.g. A statutory authority who is able to employ); or
- the department’s FBT liability should be included in the FBT return of a nominated body preferable that of the portfolio department.

Name change

Name change only

A change in the name of a nominated body will not result in the nominated body ceasing to exist. A nominated body which has its name changed will need to advise the ATO, and the Director, CALM, NSW Treasury, of its change in name in the same manner as any other employer who changes its name. Any name change must be the same as the name published under the PSEMA.

For example, changing the name of the Aboriginal Affairs Department to the Department of Indigenous Affairs will not result in the nominated body ceasing to exist.

Name change as a result of two or more entities merging

Where the name change is associated with an increase in functions as a result of another nominated body being abolished, only the department that is abolished will cease to exist. The ceased department is required to notify the ATO, and the Director, CALM, NSW Treasury, of the date that it ceased to exist and lodge a final FBT return from 1 April to the date of cessation. Payment of any outstanding FBT liability must be made when the final return is lodged with the ATO.

The nominated body which has changed its name will need to advise the ATO, and the Director, CALM, NSW Treasury, of its name change. **Any name change must be the same as the name published under the PSEMA.** Provided there is an ongoing function which remains after the restructure, a nominated body that increases or decreases its functions and changes its name will not cease to exist.

For example, if the Department of Rivers (a hypothetical department) is abolished with its functions transferred to the Department of Land and Environment that also has its name changed to become Environment NSW, then only the Department of Rivers has ceased to exist. The Department of Rivers is required to notify the ATO and the Director, CALM, NSW Treasury of the date it ceased to exist and file a final FBT return for the period of 1 April to the date of cessation with the ATO. The Department of Land and Environment will need to:

- change its name;
- notify the ATO and the Director, CALM, NSW Treasury of the name change; and
- vary its FBT instalments to include the remaining instalments of the Department of Rivers.

Nominated body ceasing to exist

A nominated body will cease to exist when there is a substantive change in structure. For example, two agencies merging to form a single agency, one agency being split into two agencies, an agency/nominated body becoming a statutory authority etc. A name change by itself will not result in the nominated body ceasing to exist.

For example, if the Department of Rivers (a hypothetical department) was abolished on 30 June 2010, the Department of Rivers would be responsible for preparing and lodging a final FBT return with the ATO for the period 1 April 2010 to 30 June 2010.

- The Department of Rivers will cease to be considered to be the 'employer' for FBT purposes at 30 June 2010.
- The abolished department must ensure on their final FBT return they answer question 2 on page 3 of the FBT return "Do you expect to lodge an FBT return for 2010-11 or future years?" Departments should tick "No".
- The FBT responsibility from 1 July 2010 to 31 March 2011 may revert to the Crown, however, Department representatives should in the first instance liaise with Treasury FBT officer for assistance in the process to ensure requirements are met.
- Abolished departments must ensure sufficient funding is transferred to the Crown to enable the quarterly FBT instalments to be made to the ATO.

In the case where a nominated body becomes a statutory authority, the new statutory body (a separate government body) becomes the employer and the Crown will not have an FBT liability for the remainder of the year. The statutory authority will not become liable to pay FBT instalments until it lodges its first return. However prior to a statutory authority registering for FBT they must ensure that:

- the new Statutory body can employ under the FBT Act and PSEMA
- the Statutory Authority's FBT liability may need to be included in the FBT return of a nominated body, preferably that of the portfolio department;
 - e.g. Transport NSW is the portfolio department for Roads and Traffic Authority which is the statutory body listed under PSEMA ,schedule 1, Part 2.
- liaise with Treasury FBT officer for assistance in this process to ensure requirements are met.

Notification of FBT liability at cessation

Where there is a transfer of employees and functions to either another nominated body, or to the Crown, the Crown (via NSW Treasury) is required to advise the ATO of the notional tax of the nominated entities for the year after the change. The notional tax must include both the tax that was paid by the ceased department in the year of change and the tax that was paid for the remainder of the year by either the continuing nominated body, or the Crown. Therefore where a nominated body ceases to exist, **at the date of cessation that department must advise** the Director, CALM, NSW Treasury the following:

- the date of cessation of the department
- the amount of tax paid to the date of cessation
- the amount of tax payable for the remainder of the FBT year
- Department's tax file number (TFN)
- Australian Business Number (ABN)

This information should be forwarded to NSW Treasury by no later than 10 May. NSW Treasury is required by the ATO to collate the data provided by completing the “Nomination or revoke an eligible State or Territory Body” and submit to the ATO by no later than 21 May of the FBT year.

Reportable fringe benefits amount

For reportable fringe benefits purposes, both the nominated body that ceased to exist and the nominated body to which the employee has transferred (or the Crown if the employee was not transferred to a nominated body) will need to separately calculate the value of the fringe benefits provided to the employee. Both the ceased department and the nominated body (or the Crown) to which the employee was transferred will apply the \$2,000 reporting threshold separately in calculating the reportable fringe benefits amount.

General issues

Entities need to deal with all issues arising from changes in a coordinated and cooperative way, without allowing the FBT impacts to drive planning to the exclusion of other important factors.

Entities have a responsibility to take all reasonable steps to minimise the impact of changes on their FBT obligations. Such reasonable steps include early modification of systems, timelines to address relevant issues and close liaison with NSW Treasury and other entities directly affected by the changes.

Communication between all affected entities is critical to the success of any changes required.

Attachment D

Income Tax Issues

Employment declarations

The ATO has informed NSW Treasury that MOG changes will generally have no impact on current employees' tax file number employment declarations.

- Current employees do not need to sign new declarations under new agency names.
- New employees to government, however, will need to sign tax file number employment declarations under agencies' new names.

Payment summaries

The ATO has also informed Treasury there is flexibility with regard to payment summaries (formerly called group certificates) following MOG changes.

- A single payment summary can be given to employees at the end of the financial year under the name of the new agency that covers both the period of employment under the former agency name and the new agency name.
- Alternatively separate payment summaries can be provided under the former agency name and the new agency name.