



## Agency compliance with goods and services tax (GST) and fringe benefits tax (FBT)

**This circular sets out agencies' responsibilities for complying with the Goods and Services Tax (GST) and Fringe Benefit Tax (FBT). This Circular applies to all general government and public sector agencies.**

### Summary:

Agencies were made aware of their obligations to comply with the GST as part of the Treasury's GST implementation program in 1999-2000. Agencies have been aware of their FBT obligations since disaggregation of the Crown FBT return in April 2001.

Agencies are responsible for:

- Complying with all relevant taxation laws, including GST and FBT
- Obtaining appropriate technical and legal advice to facilitate tax compliance
- Ensuring that adequate management arrangements and internal controls, including internal audit plans which include GST and FBT compliance, are in place to facilitate tax compliance.

Agencies are encouraged to use the Australian Taxation Office's (ATO) *Better Practice Guide for the Management of GST Administration* and *GST Governance and Risk Management Guide* to assist with GST compliance and the ATO's "*Better practices for the administration of FBT*" to assist with FBT compliance.

NSW Treasury will provide assistance in several ways including representing the interests of NSW in Commonwealth/State GST and FBT forums, arranging GST and FBT seminars for agencies and issuing Treasury Circulars when necessary. Treasury, however, does not provide technical or legal advice on GST or FBT.

This Circular applies to all general government and public sector agencies.

Michael Lambert  
Acting Secretary

**Further Information:** GST: James George ([james.george@treasury.nsw.gov.au](mailto:james.george@treasury.nsw.gov.au), ph. 9228 4823),  
FBT: Henriette Prego ([henriette.prego@treasury.nsw.gov.au](mailto:henriette.prego@treasury.nsw.gov.au), ph. 9228 3873)

NSW Treasury Internet : [www.treasury.nsw.gov.au](http://www.treasury.nsw.gov.au)

## GST Compliance

Agencies were made aware of their obligations to comply with the GST as part of the Treasury's GST implementation program in 1999-2000. Agencies may be subject to a tax audit by the ATO like any other business and in addition may be subject to audits by the NSW Auditor-General.

In terms of the application of the GST to government the *Intergovernmental Agreement on Federal Financial Relations* (which succeeded the original *Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations*), agreed by the Commonwealth, state and territory governments, states that:

The Parties intend that the Commonwealth, States, Territories and local governments and their statutory corporations and authorities will operate as if they were subject to the GST legislation. They will be entitled to register, pay GST or make voluntary or notional payments where necessary and will be entitled to claim input tax credits in the same way as non-government organisations. All such payments will be included in GST revenue. (Clause A28 of Schedule A)

The Intergovernmental Agreement means that agencies need to comply with the Commonwealth's GST legislation and cannot argue in court or otherwise that they are not legally or constitutionally liable to comply with the GST. That is, it is not open to agencies to question the underlying policy intent concerning the application of the GST to government.

Agency responsibilities:

- **Agencies are responsible for complying with all relevant taxation laws, including GST.** These compliance obligations include remitting GST to the ATO in a timely manner, claiming all input tax credits to which they are entitled (and which reduce agency running costs) and producing and maintaining the required documentation such as Business Activity Statements (BAS), receipts and invoices. As part of their compliance responsibilities agencies also need to ensure they report agency name changes and restructures and update their documentation consistent with Treasury's Circular on Machinery of Government Changes.
- **Agencies are responsible for obtaining appropriate technical and legal advice to facilitate tax compliance.** This includes private rulings obtained from the ATO and tax/legal advice obtained from suitably qualified advisers.
- **Agencies are responsible for ensuring that adequate management arrangements and internal controls, including internal audit plans which include GST compliance, are in place to facilitate compliance with all relevant GST legislation.** Tax compliance, including GST, should already be part of agencies' usual financial management practices. Including taxation compliance in internal auditing plans should give agencies confidence that they are complying with their tax obligations.
- **Where serious disputes arise with the ATO agencies need to inform Treasury before commencing litigation.** With the GST now maturing into its second decade there is an increasing willingness of government entities (not necessarily within NSW) to challenge the ATO view of the GST law. Agencies should inform Treasury where serious disputes arise potentially leading to litigation with the ATO and that could have wider GST policy or GST base integrity implications affecting state revenue. Treasury can discuss these broad policy issues with Commonwealth and interstate Treasuries if necessary. While recognising agencies' rights to manage disagreements with the ATO, Treasury aims to achieve the right policy outcomes and maintain the integrity of the GST base which is in the state's broader financial interests.

The ATO has produced the publication *A Better Practice Guide for the Management of GST Administration* to assist government agencies establish appropriate internal control frameworks for the effective management of GST administration within their organisations. This publication is available from the ATO website at [www.ato.gov.au](http://www.ato.gov.au) (type "better practice guide" into the search function to access the document).

The ATO has advised that agencies which apply the Guide tend to be more compliant with their GST obligations. Treasury encourages agencies to use the Guide as necessary to assist with complying with their GST obligations.

The ATO has also produced a *GST Governance and Risk Management Guide* (available at [www.ato.gov.au](http://www.ato.gov.au)). The guide has been developed for use by large public and privately operated entities with turnover of more than A\$250 million. The guide is designed as a process for large organisations to conduct an assessment and consider the effectiveness of their governance, risk management, assurance and control environment as they apply to GST compliance. ATO reviews of GST compliance can include business integrity reviews. Agencies are encouraged to use the guide to assist their compliance with GST.

## **FBT Compliance**

Agencies have been aware of their obligations since disaggregation of the Crown FBT return in April 2001. General Government Budget Dependent agencies were advised of their roles and responsibilities in order to comply with the ATO. Agencies may be subject to audits from the ATO just like any other business, and in addition may be subject to audits by the NSW Auditor-General.

Agency responsibilities:

- Agencies are responsible for registration of a newly created agency, change of name etc with the ATO for FBT compliance. Instructions are provided in Treasury's Circular on Machinery of Government Changes.
- Agencies are responsible for obtaining appropriate technical and legal advice to facilitate FBT compliance. This includes private rulings obtained from the ATO and tax/legal advice obtained from suitably qualified advisors.
- Agencies must ensure records are maintained accurately. Business Activity quarterly statements must be prepared and lodged with the ATO in the specified time frame.
- Agencies are responsible to the ATO for any instances of non compliance. Agencies should review their policies and procedures on a regular basis to ensure that they reflect current legislation and tax office rulings. This information can be accessed on the ATO website [www.ato.gov.au](http://www.ato.gov.au).
- Agencies should have the structure, processes and controls in place to enable them to meet their FBT obligations in an accurate and timely manner which enables them to be compliant with Australian Tax Laws.
- Agencies should be proactive in solving day to day FBT issues with the ATO and be aware of the *Better practices for the administration of FBT* available via [www.ato.gov.au](http://www.ato.gov.au). The better practices guide will help your agency:
  - meet its FBT obligations in a manner that complies with Australian tax laws
  - work out and accurately report reportable fringe benefit amounts for individual employees.
- The better practice publication should be used in conjunction with and not as a substitute for FBT legislation and Tax Office guidance.

## Treasury Assistance

NSW Treasury will assist agencies with compliance in the following ways:

- Representing the interests of NSW in Commonwealth/State GST and FBT forums.
- Issuing Treasury Circulars when necessary (e.g. on Machinery of Government Changes).
- Assisting with major across-agency GST/FBT issues where there is a significant common issue that is best dealt with by Treasury taking the lead (e.g. by making submissions to the ATO on key draft GST rulings).
- Facilitating access to technical GST advice obtained by agencies that may be relevant to other agencies by distributing the advice to agency Chief Financial Officers once the originating agency has forwarded the advice to Treasury (this is aimed at reducing the cost of agencies obtaining multiple advice on the same or similar issues). Agencies should note, however, that the individual facts of an agency's particular circumstances will determine the appropriate tax treatment. Agencies therefore need to exercise caution in applying advice obtained by another agency to their own particular circumstances. If there is doubt agencies should seek separate advice from the ATO or their own tax advisers.

Importantly, Treasury does not provide technical or legal advice on GST or FBT. Agencies should consult either the ATO or their tax advisers for technical or legal advice. As set out above, if agencies believe that the advice they receive may be relevant to other agencies (and are content for that advice to be distributed to other agencies) they should forward the advice to Treasury for distribution to other agencies.

- Holding an annual GST seminar for agencies focusing on issues of concern to the ATO and informing agencies of the ATO's compliance plans for the year ahead.
- Providing "proof of identity" to the ATO for entities seeking GST registration once those entities have forwarded their GST registration applications to the ATO.
- Nominating 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). Treasury must nominate the department to the ATO on or before 21 May in the year of tax.
- Revising the Fringe Benefits Tax Manual, Policy & Guideline Paper every 3 years. The current edition (TPP09-1) was reviewed by Deloitte's and published on the Treasury web site in February 2009.

In addition, NSW Treasury in conjunction with Deloitte's:

- organises an annual half day seminar to assist agencies with FBT legislation and administrative guidelines issued by the ATO.
- issues an FBT Newsletter annually in September to NSW Government agencies.
- agencies are requested to provide topics of discussion and questions for the seminar and newsletter.