

Blake Dawson

# Not for Profit Legislation

Teresa Dyson  
PARTNER

**17 March 2010**

# Introduction and overview

**Setting the scene: current and recent enquiries into the NFP sector and relevant cases**

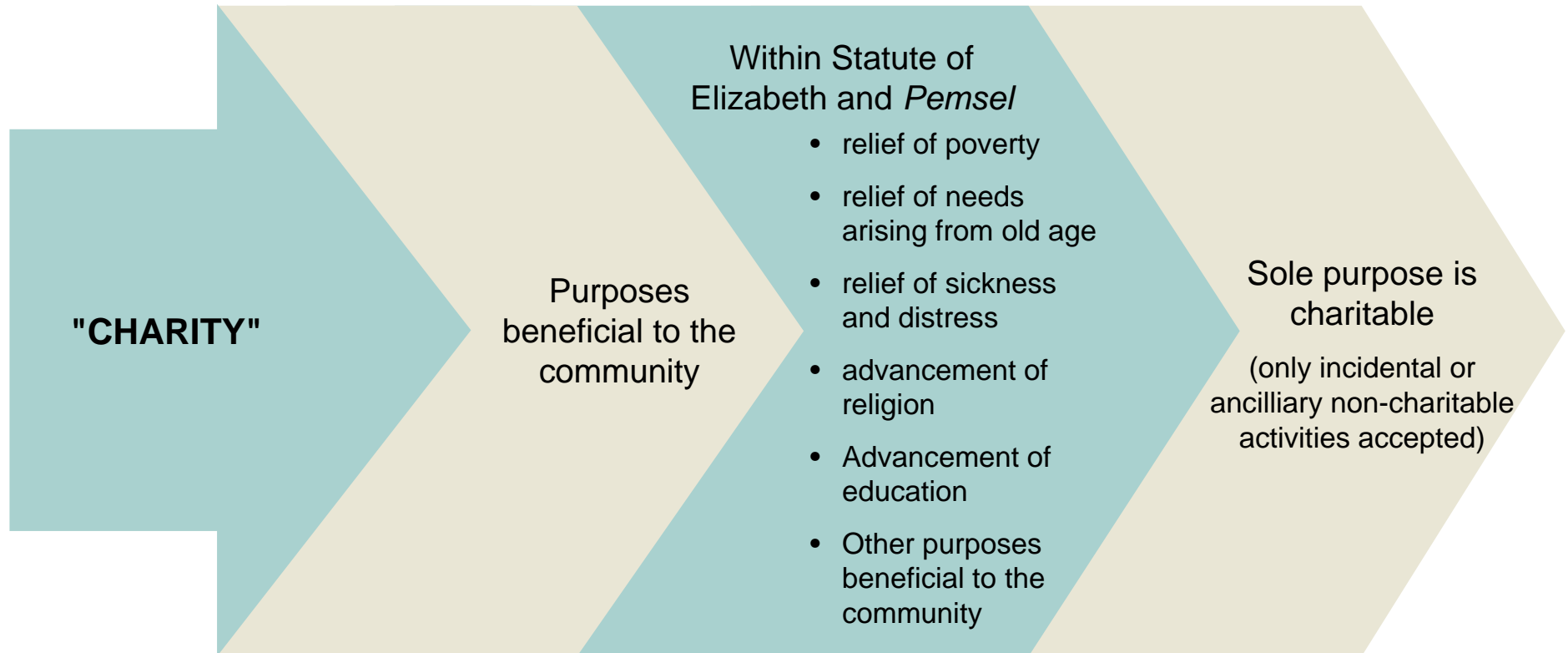
**Division 50: entities exempt from income tax**

**GST and FBT**

**ATO compliance programs**

# Division 50 - entities exempt from income tax

# Taxation Ruling TR 2005/21: Charities



# Non-charitable purposes



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Confers private benefits



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(Some) sporting, recreational or social purposes



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Political (including lobbying)



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Illegal or against public policy



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Commercial or governmental  
(consider *Word Investments* and *Central Bayside General Practice Association*)



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Vague or insufficient value to the community

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# Income tax exempt status

**Create entity**

Incorporate company or association / settle trust

**Objects**

Ensure charitable purposes reflected in objects

**Required clauses**

Include ATO mandated clauses as to non-profit organisation and dissolution on winding up

**In Australia**

Request endorsement from date of application

**Date**

Entity must have an ABN ([www.abr.gov.au](http://www.abr.gov.au))

**ABN**

Generally activities must be carried out in Australia

**Apply to ATO**

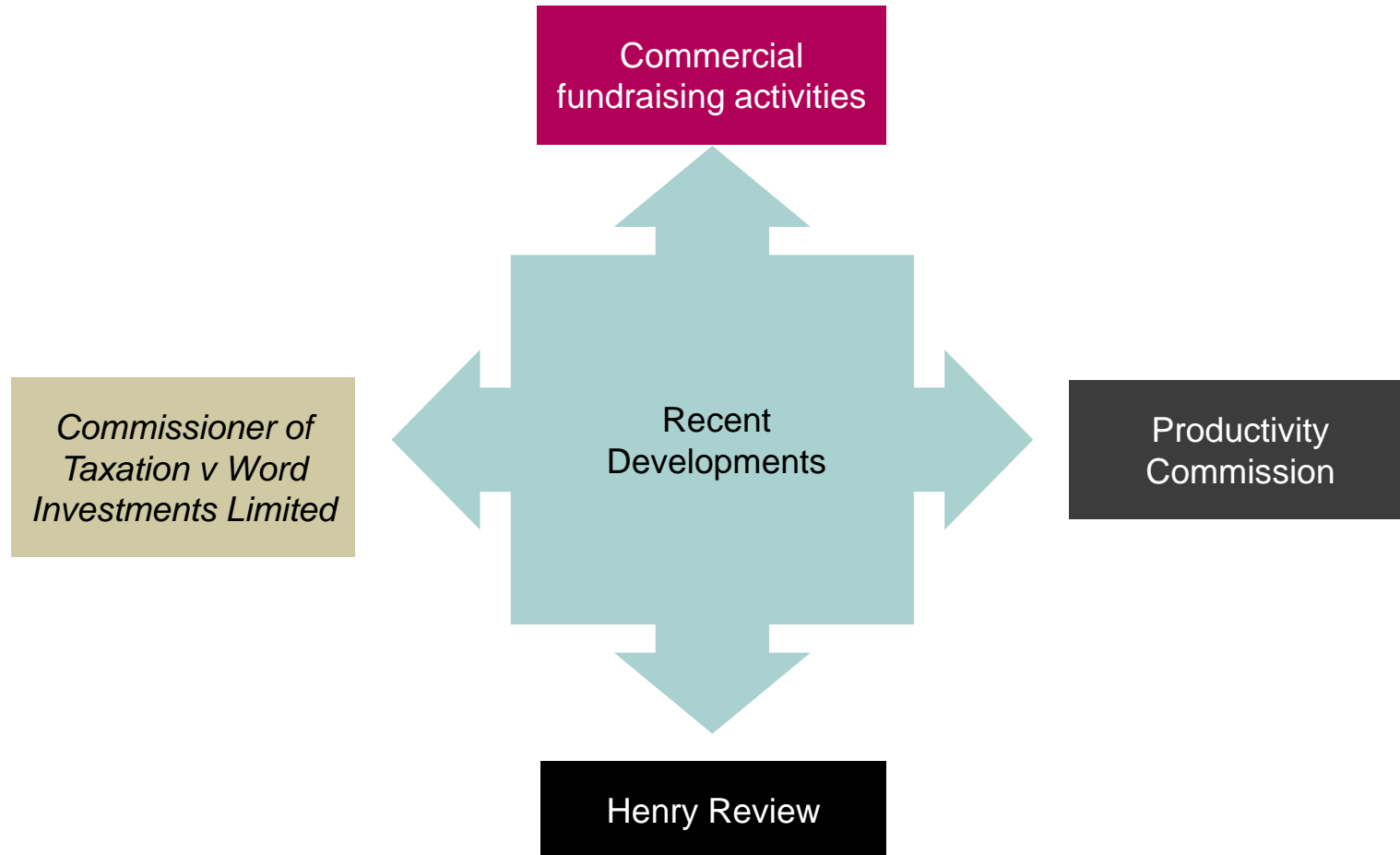
If charitable institution, charitable fund or income tax exempt fund (others can self asses). Include statement of activities/purposes.

# Practical steps: endorsement maintenance

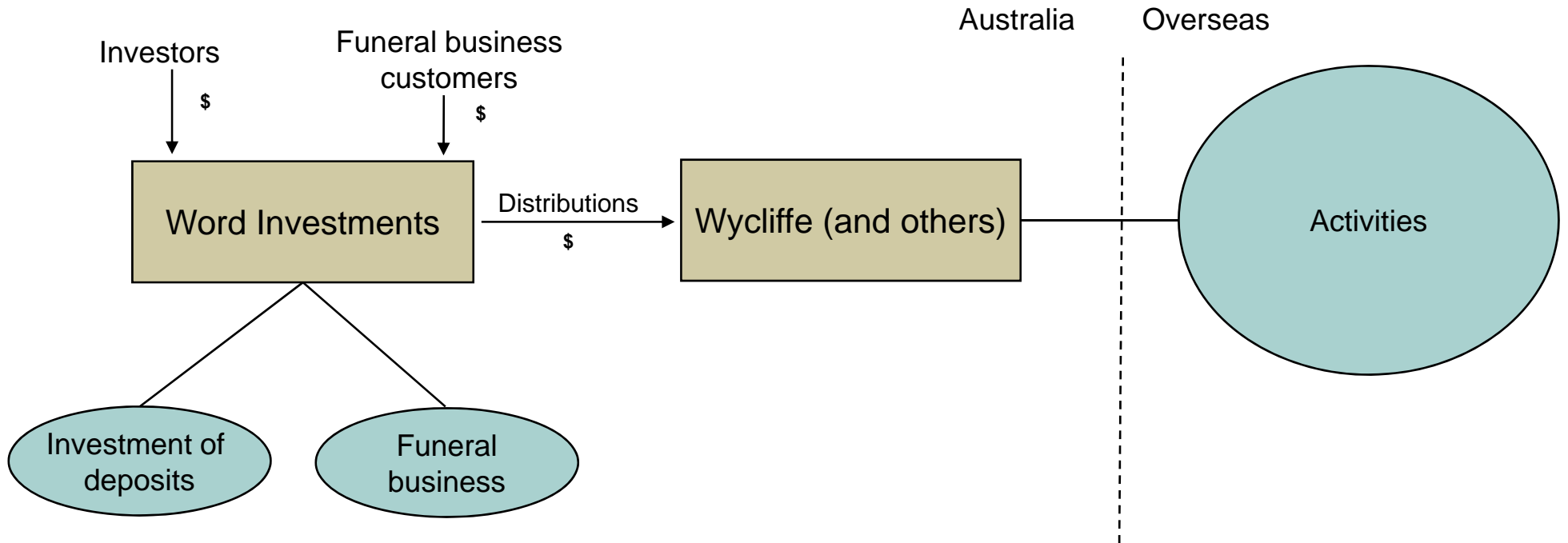
- 1 Maintain records
- 2 Conduct regular internal reviews (at least yearly, or on occurrence of significant change, event, expenditure or acceptance of funds)
- 3 Composition of board/control of entity or advisory group for gift fund: responsible persons
- 4 Any change in constituent documents or objects

# Recent Developments

# Trading / commercial activities



# Word Investments - Facts



# Word Investments - Decision

ISSUE	MAJORITY <i>(Gummow, Hayne, Heydon and Crennan JJ)</i>
<b>Were Word's objects confined to charitable purposes?</b>	<ul style="list-style-type: none"><li>• object of profit not an end in itself</li><li>• founders had charitable purpose</li></ul>
<b>Could an entity like Word be a "charitable institution"?</b>	<ul style="list-style-type: none"><li>• natural and probable consequence of purposes/activities, not "means"</li></ul>
<b>Did Word fail to ensure distributions were used for advancement of religion?</b>	<ul style="list-style-type: none"><li>• no evidence to the contrary</li><li>• accordingly, no hurdle to entitlement for ITEC status</li></ul>
<b>Did Word have a physical presence in Australia?</b>	<ul style="list-style-type: none"><li>• decisions to make payments (and actual payments) made in Australia</li></ul>

# Government response to *Word*

## "Interim response" to HC decision in *Word* Investments (12 May 2009)

### Commercial activities of charities

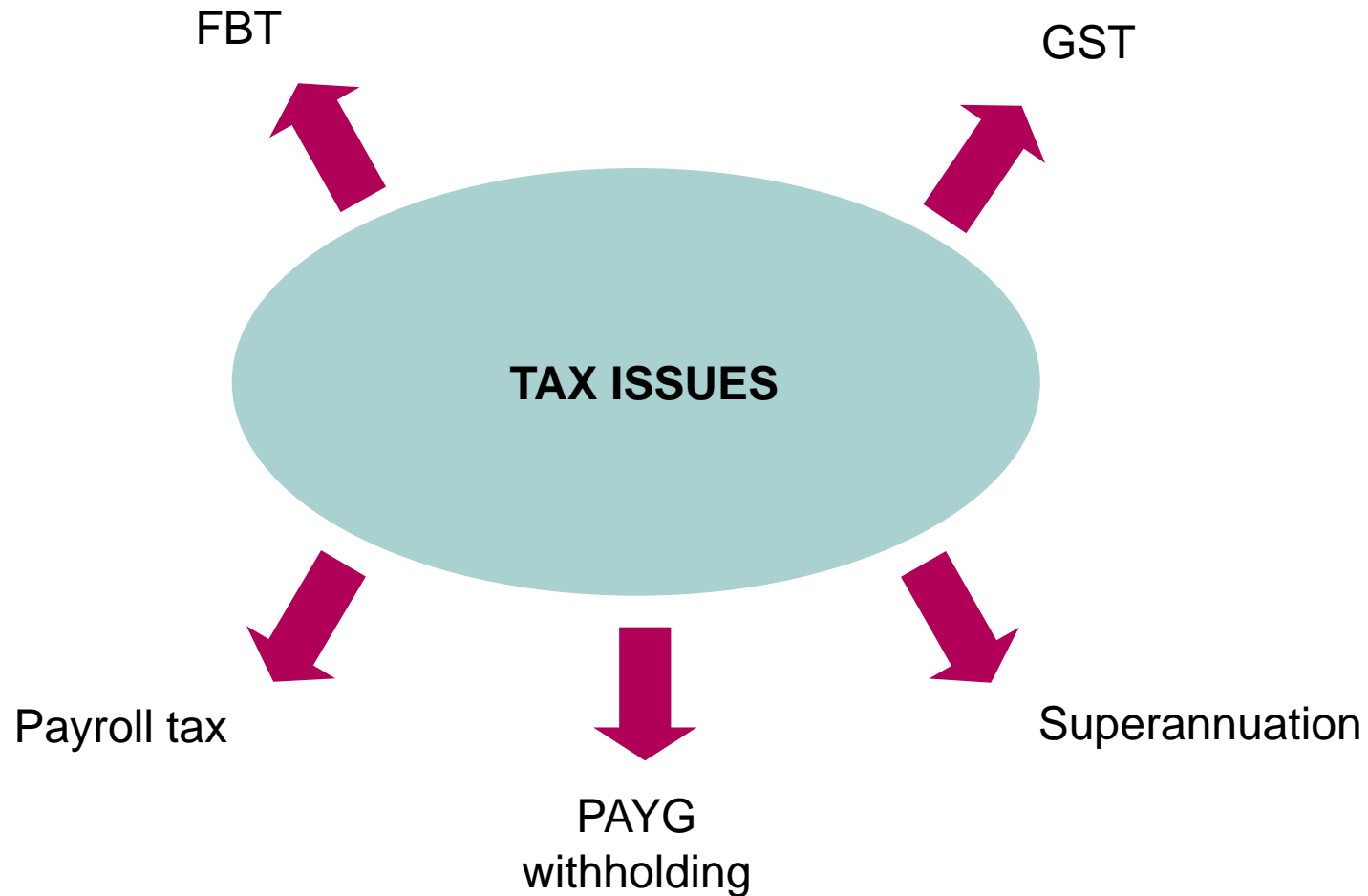
- Government to wait for Henry Review and Productivity Commission Report
- Government may act sooner if "adverse implications arise"

### Passing funds to overseas charities

- Recall *Word* held to incur expenditure and pursue objectives principally 'in Australia'
- Government to amend 'in Australia' requirements in Division 50 to reverse decision that tax exempt entities can direct funds to overseas projects
- Public consultation

# FBT, GST and beyond

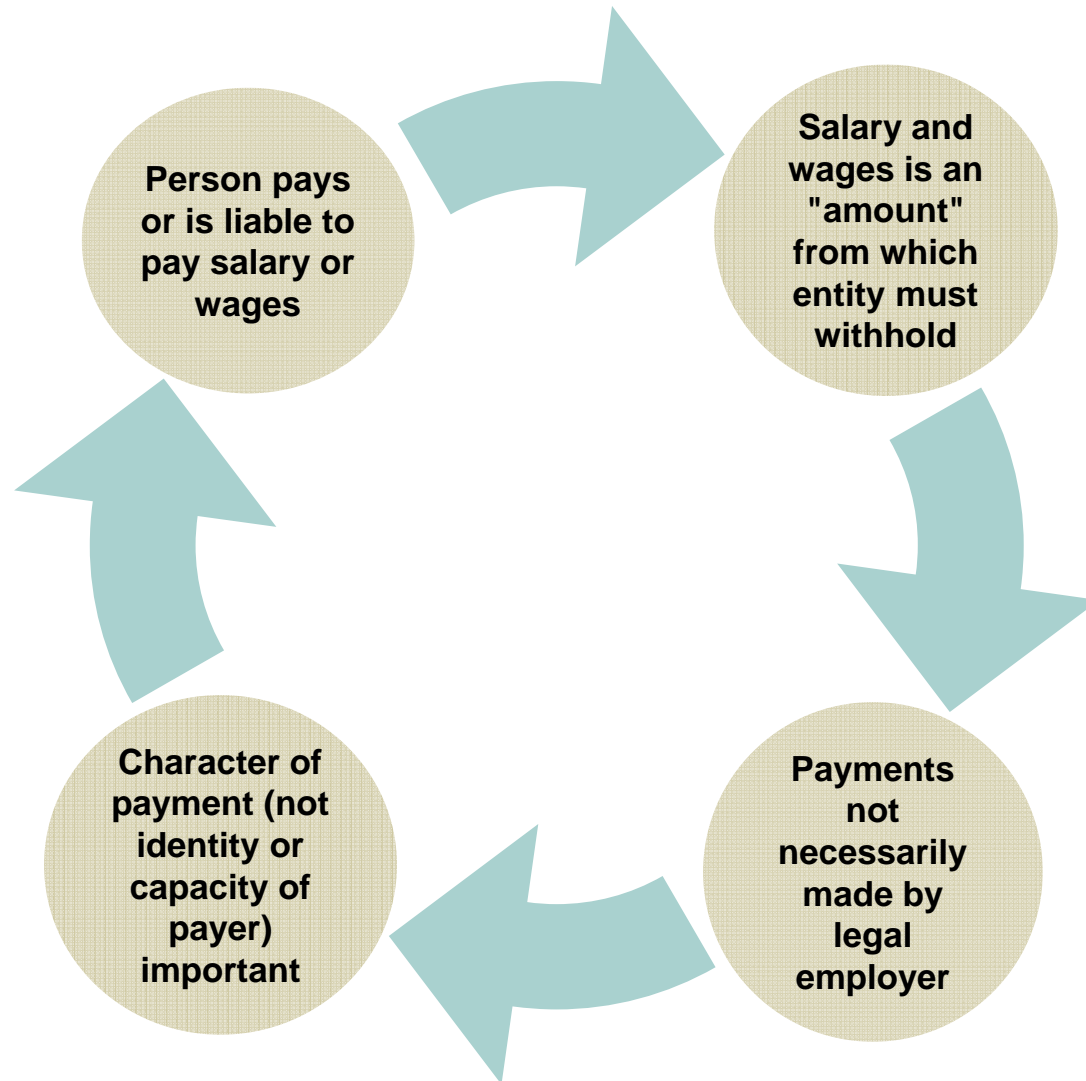
# Employee remuneration



# FBT comparison table

	SSA with FBT exempt employer (eg PBI with a \$30,000 cap)	SSA with rebatable employer (eg ITEC)	No SSA
<b>Salary</b>	\$44,000	\$44,000	\$60,000
<b>Income tax (09/10 rates, excl Medicare Levy)</b>	\$7,050	\$7,050	\$11,850
<b>Non-cash benefit (no input tax credit)</b>	\$16,000	\$16,000	Nil
<b>Fringe benefits tax</b>	Nil	\$7,232	Nil
<b>Net position of employee</b>	<b>\$52,950</b>	<b>\$52,950</b>	<b>\$48,150</b>
<b>Net cost to employer</b>	<b>\$60,000</b>	<b>\$67,232</b>	<b>\$60,000</b>

# FBT – who is the employer?



# GST - registration

**Registration  
turnover threshold  
\$150,000 for NFP  
(current and  
projected GST  
turnover)**

**Register to claim  
input tax credits for  
any GST included in  
price of purchases**

**(note obligations –  
BAS, tax invoices)**

**Certain NFPs can  
have sub-entities  
established and  
registered for GST**

**(threshold applies  
separately to each  
sub-entity)**

# GST – retirement villages

- Charitable institution or trustee of a charitable fund
- ABN
- Specifically endorsed

Residential premises, intended to accommodate persons at least 55 years (inc communal facilities)

NOT

- for provision of residential care
- commercial residential premises

Supply is made to resident of retirement village and is:

- accommodation in the village;
- related service; or
- meals.

**Eligible entity**

**Residential premises**

**Nature of supply**

# Questions / Comments