
SUMMER 2005

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Superannuation: member choice of fund

Superannuation Fund members will be able to choose the fund they wish their employer to contribute to, effective 1st July 2005. This will compliment the portability rules that came into effect on 1st July 2004.

Employers will have to give their employees a choice as to where their superannuation guarantee contributions are to be paid (currently 9% of the employee's salary).

Financial services reform legislation recently enacted should ensure members are provided with sufficient information to enable comparison and contrast in respect of performance and costs relating to the various funds.

If the employee neglects to choose or chooses a fund that the employer cannot contribute to, only the employer will be able to choose the fund.

Choice must be given unless employees are already covered by Federal Certified Agreements, Australian Workplace Agreements or State Awards that specify the superannuation fund to which contributions must be made.

Where Federal Awards are applicable it is recommended that employers still offer employees choice despite the award specifying a superannuation fund

to which the contribution must be made.

Employers must, by 28th July 2005, provide their employees with a Standard Choice Form to enable them to nominate a fund of choice (this form will be developed by the Australian Taxation Office).

Should an employee fail to nominate a fund the employer may continue to contribute to the employee's existing fund (as long as that fund offers death benefits).

Also the employer can reject choice nominations if the employee has chosen a different fund within the previous 12 months or certain information about the chosen fund is not supplied.

Practical approach by Tax Office to GST invoices

Businesses which don't hold a valid tax invoice but can substantiate the transaction from other records may still be able to claim a GST credit.

The Tax Office has issued a practice statement which clarifies its approach to tax invoices for GST purposes. The Practice Statement recognises that sometimes there is a very good reason for not having a tax invoice or for having one which does not contain all the required information:

- > Its own name, contact details and ABN;
- > Documents relating to the purchase;
- > The name, address and ABN (if known) of the supplier;
- > The nature, purposes and quantity of the purchase;
- > The amount paid or payable and the amount of GST included; and
- > Steps it has taken to obtain a tax invoice.

Requests for permission can be sent by email to the Tax Office at: GSTmail@ato.gov.au or by writing to GST General Technical Advice, P O Box 9935 in each capital city.

Claims for credit previously made.

If a business has already claimed a GST credit without having a valid tax invoice, it can write to the Tax Office explaining its circumstances and ask that the tax invoice be treated as valid.

If the Tax Office discovers a claim of this nature, for example during an audit, it will usually treat the tax invoices as valid and allow the business's claim if it:-

- > Is entitled to the GST credit; and
- > Has made a genuine attempt to comply with the requirements to hold a tax invoice.

Review of previous Tax Office decisions.

The Practice Statement applies from 1 July 2000. Accordingly, if the Tax Office has disallowed a claim for an input tax credit since that date because of an invalid tax invoice, a request for review can be made if the claimant believes the decision was not made in accordance with the policy.

Rental properties: new depreciation rules

The Australian Taxation Office (ATO) has moved to tighten the rules and reduce tax depreciation entitlements with respect of rental properties.

The focus is on capital items that are not plant and equipment and therefore cannot be depreciated. A rental property is described as the 'setting' and an item that forms part of the premises is part of the setting. That which is an integral part of the structure cannot be depreciated.

In determining whether or not an item is part of the setting the ATO will consider:

- > whether it is a permanent attachment;
- > whether the structure is complete without this item;
- > whether this item was intended to be permanent, or whether likely to be replaced within a relatively short time.

Capital works apportionments may be deductible over 25 years on part of the premises or setting. Some examples are electrical wiring & fixed light fittings, tiling, plumbing, locks etc. If any of these items become damaged or worn out, as a result of renting, the replacement cost may be deductible as a repair.

Depreciable items are those which are not attached to the premises and are not an integral part of the premises. The exception to this is machinery or 'plant' that can be depreciated despite being an integral part of a building or is part of the setting. Machinery includes hot water services, stoves, ovens and heating appliances. It also includes computers and micro-processors. Machinery does not include ducting, piping or wiring if it is not part of a machine.

Depreciation deductions are allowable over the useful life of an item, however low value assets may be written off immediately (cost less than \$300) or accelerated over a shorter period (low value pool assets costing less than \$1,000).

Are your buildings adequately insured?

With rising construction costs and increased insurance premiums, it is becoming increasingly imperative to accurately assess building replacement cost estimates.

The consequences of inaccurate assessment of replacement costs can be disastrous as a result of the following scenarios:

- > By having undervalued insurance replacement estimates, the owner runs the risk of significant losses in the event of a major disaster such as fire or earthquake;
- > If underinsured and in the case of partial loss, the insurer may only pay to the level of insurance cover, leaving the owner to meet the shortfall.

Traditionally, valuers have given opinions on market values of buildings based on the prevailing market sale price of buildings; however, it may be advisable to employ an appropriately qualified quantity surveyor to ascertain the replacement cost of a building to ensure insurance cover is accurate and adequate.

Buying or selling a business?

There are a number of aspects to be considered when buying or selling a business, for example income tax implications, CGT GST and other areas.

Income Tax Considerations

Trading Stock – Sale of trading stock gives rise to assessable income for the vendor and a deduction for the purchaser. Vendors and purchasers have opposing aims in that the vendor will want to minimise the value allocated to trading stock and maximise the value allocated to CGT assets that get concessional tax treatment.

Trading stock is deemed acquired / disposed at time of settlement / completion of the contract. Consignment of the stock could be considered if the purchaser has insufficient funds to acquire outright (vendor finance) or where the value of this trading stock cannot be agreed at the point of sale of the business.

This method has some business risk as the vendor would be relying on the purchaser to sell the stock at a favourable price. A commission basis of sale may be advisable. Also, the business may not be GST free or a going concern if trading stock is not being supplied as part of the business sale. For security purposes consideration should also be given to a retention of title clause in the contract under these circumstances.

Work in Progress (WIP)

Work in progress, being unbilled work, can be sold as part of the sale of the business. It is treated similarly to trading stock. Generally the purchaser receives a deduction and the vendor is assessed as revenue income or sale.

If the sale consideration is not allocated to W.I.P. and the value of W.I.P. cannot be precisely determined, no assessable income arises for the vendor (effectively treated as part of goodwill).

Depreciable Assets

Sale of depreciable assets gives rise to:

- > A balancing adjustment for the vendor. This is the difference between the sale proceeds and the closing written down value and is taxable;
- > First element cost for the purchaser that is the purchase price, upon which future depreciation is calculated.

No CGT is likely to arise on the sale of depreciable assets. The purchaser would prefer to allocate consideration to trading stock over depreciable assets and this is not likely to adversely affect tax implications for the vendor.

The purchaser will also prefer to allocate consideration to depreciable assets over CGT assets as a deduction can be claimed through depreciation.

If the sale consideration is not allocated in the contract of sale, both parties can make their own 'reasonable' allocation. This will generally be accepted by the ATO unless commercially unrealistic. Be aware that specific market value rules apply between related parties.

A vendor lease of depreciable assets / property may be a useful means of retaining valuable assets and generating an income stream for the vendor and provide a form of vendor financing.

The vendor will want to minimise the value allocated to depreciable assets to minimise assessable income.

Employee Entitlements

If the sale of a business takes the form of a sale of an entity, the liabilities, including employee entitlements are effectively transferred to the purchaser. In certain industries the employee entitlements will transfer to the new employer even when the entity is not acquired.

There are three ways to deal with these accumulated benefits:

- > Do nothing;
- > Reduce the purchase price;
- > The vendor makes a leave transfer payment.

Be mindful that leave transfer payments will only be tax deductible if:

- > They are made pursuant to an award, Australian law etc., and
- > They only cover leave entitlements.

Reductions in the purchase price to reflect employee entitlements being taken over will be a capital adjustment and not deductible or assessable.

Redundancies

The vendor may be able, or required, to make redundancy payments. Owners that are also employees may be able to utilise the redundancy provisions to make tax free bona fide redundancy payments. The tax free component is \$6,194 plus \$3,097 for each completed year of service (indexed each year).

To qualify, the employee's role must be redundant i.e. the employee no longer requires an employee to carry out work of a particular kind or carry out work at the same location.

Superannuation reporting relief

A recent amendment to superannuation law removes the requirement for employers to report to employees (generally within 30 days of the end of each quarter).

However, other workplace legislation still requires reporting via employee pay-slip of super contributed. Reporting by superannuation funds will also continue.

Reduced GST compliance for small business

Certain entities can elect to report and pay GST liability on an annual basis. Currently they can report annually but are still required to pay quarterly.

Businesses are eligible to make this election if they are registered for GST and have a turnover less than \$50,000 per annum.

Liability of Trustees / Directors for trust debts

Directors of trustee companies have the usual duties and responsibilities under Corporations law and the law generally.

A recent Court decision has highlighted the fact that directors of a corporate trustee may be liable when the efforts of the creditor to access trust property, to satisfy outstanding liabilities are unsuccessful.

The Corporations Act provides that if a trustee company:

- > Cannot discharge a liability; and
- > Is not entitled to be indemnified against that liability out of trust assets, a director of the trustee company may be liable for that debt.

The Court decision, in which a director was held liable, revolved around a legal claim for a liability where there were no assets in the trust. It was held that the director caused the trust to be without the funds to discharge the liability.

The finding is contrary to general belief in situations where the trust deed provides a right of indemnity but there is a deficiency in trust assets and potentially greatly exceeds the potential personal liability of a director of a trustee company.

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We would like to take this opportunity to thank you for referring your family, friends and colleagues to us. The greatest compliment we can receive is a referral that introduces a new client to our office from you.

MERRY CHRISTMAS & A HAPPY NEW YEAR