

More information can be obtained from the Department Website at: www.facs.gov.au/internet/facsinternet.nsf/aboutfacs/programs/harm_nav.htm

This includes 19 pages of guidelines and a five page application form along with other detailed information.

To qualify there may well need to be some changes in your entity's constitution. There will also be other significant requirements regarding the control of the DGR Gift Fund. These control mechanisms are more onerous than the already substantial DGR Fund Rules.

Many Churches are already engaged, as a substantial part of their ministry, in activities that will fit these new provisions. While some structural changes may be relevant it may well assist the financial support for such arrangements.

PROPERTY SALES

Charitable and Church entities that sell Real Estate need to pay close attention to the GST Rules. When selling property, other than residential property, which is utilised as a part of the enterprise in which the entity is engaged there are GST obligations. Therefore a proposed disposal at, say, \$100,000.00 would normally need to have GST included as a provision of the contract. Careful attention needs to be given to the wording in the contract. The standard REIWA contract includes words to ensure the GST issue is raised for consideration. However the words utilised may not always be appropriate to the circumstances.

Where the property was originally purchased prior to 1 July 2000 it is possible that the impost of GST can be reduced by the application of what is known as the Margin Scheme. Where the Margin Scheme is applied then GST is only imposed on the increase in value from 1 July 2000 to the time of sale. However for the Margin Scheme to apply there needs to be valuation as at 1 July 2000 provided by a licensed valuer. The contract should also include a statement to the effect that the Margin Scheme has been applied (though this is not always essential it is highly desirable for clarity to all).

There are a number of potential problems that can occur here. As a consequence the ATO have recently issued two Facts Sheets to give greater clarity to this area.

They are available on the ATO Tax Reform website, via the Search facility, as NAT 8680 and NAT 8682.

TRADE IN OF MOTOR VEHICLES

The ATO has commenced random checks on the GST implications for entities that have sold or traded in vehicles and other assets. As with property sales, the GST effect on sale proceeds are often overlooked. Care should be taken to ensure that GST is paid to ATO at 1/11 of the sale price or trade in value.

However, the supply (ie. Sale or trade in) of the asset may be GST-free where the consideration (ie. Sale or trade in value) is less than 75% of the original cost of that asset.

GENERAL DGR CHANGES

Legislation currently before the Senate provides for significant changes relating to the gifting provisions in Income Tax law. When passed (hopefully in August 2003) this provides for gifts of property or cash to be spread over five years at the discretion of the donor. It is also intended to allow specifically listed DGR's to be transferred from the Income Tax Assessment Act 1997 to the Regulations. This will simplify significantly additions to these specific entities.



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GST NEWSLETTER

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HAVE YOU A VALID TAX INVOICE?

Are you prepared for a Tax Office GST/PAYG Audit?

The ATO have now commenced their audit checks and are applying themselves to this task with considerable energy. In the early stages of the introduction of the new tax system the ATO have been very helpful in terms of education and advice. This aspect of the ATO's approach still continues but is balanced out by what will become an increasingly aggressive audit surveillance. Experience in other countries with the introduction of similar taxes reveals that an audit review will be very cash productive for the ATO.

Are you ready?

Entities with substantial GST refunds (such as Churches and Charities) will obviously attract more attention than those with substantial payments. However the fundamental issue is to ensure that your records are reliably maintained. You need to ensure that you have available Tax Invoice support for all payments. Remember that for any payment above \$50.00, irrespective of whether the entity or person in receipt of payment is registered for GST needs to be supported by an Invoice quoting the entity or person's ABN. If this is not available then the PAYG Withholding rules apply. If the entity is registered for GST then you need to ensure that the invoice complies with the requirements of a valid Tax Invoice. The rules in themselves are simple enough, but with the passage of time they may have been forgotten. These rules are summarised below:

- § Payment of \$50.00 or less – no tax invoice is required. You can claim GST credits even if the entity or person is not registered for GST. This is a concession in the GST law.
- § Payments above \$50.00 and less than \$1,000.00 must include the ABN of the supplier, the GST inclusive price, the words **Tax Invoice**, date of issue, name of supplier, and a general description of things supplied.
- § Supplies in excess of \$1,000.00 must also include the name of the recipient, the address or ABN of the recipient and more extensive detail in respect to the goods or services supplied.

If a supplier does not provide you with an appropriate tax invoice then it would be our recommendation that the supplier be advised of the shortcomings of their Invoice and payment should be withheld until compliance has been made.

GST ON MANSE/RECTORY

The ATO have issued a new Fact Sheet entitled “GST and the Application of the Non-Commercial Activity Rules for Charities to the Provision of Fringe Benefits”. You can find this on the ATO Tax Reform website at www.taxreform.ato.gov.au. Follow the links to “Business-including Non-Profit” then go to the Search facility. Be sure to identify the document name exactly as described above.

This new Fact Sheet identifies the ATO’s understanding in respect to the supply of residential accommodation. This identifies circumstances where the supply of accommodation will not be GST free and will, as a consequence, be input taxed. Where the supply of the accommodation is identifiable as GST free then GST credits can be claimed. Where it is input tax then no GST credits can be claimed.

In a separate publication, which refers to the Fact Sheet, the ATO draw attention to the fact that there are different practices with different Christian denominations. They advise that they are currently holding discussions with representatives of a number of denominations to seek to identify the circumstances in which accommodation is provided.

There will therefore no doubt be additional information later. However the key emphasis in this additional statement reads “In some cases the church is obliged to provide accommodation ... to the religious practitioner regardless of the activities, if any, carried out by the religious practitioner. The supply of accommodation is dependent on the recipient’s status as a religious practitioner and is not a consequence of the provision of their activities. In those circumstances the ATO accept the supply of the accommodation as GST free. They state that they will have regard to the governing rules of the Church in circumstances such as this.

With some entities these matters will warrant some review of recommendations being made to Church leaders.

NEW DGR PROVISIONS

“DGR” stands for Deductible Gift Recipient. Endorsement as a DGR enables an entity to provide donors of gifts with the right to claim a tax deduction in their personal tax return. The most widely recognised DGR’s are known as Public Benevolent Institutions (PBI’s) but there are a wide range of other, lesser known, DGR funds approved by tax law.

There are two new DGR categories available, which warrant consideration. There are also some other more general changes.

Health Promotion Charities

The Federal Treasurer announced in June 2000 that legislation would be introduced to clarify the position of entities that were previously PBI’s but for some reason had lost, or were in danger of losing, their PBI status. In the Treasurer’s press release he stated, “This is because their principal activity may now be indirectly rather than directly relieving, for example, sickness, distress or suffering”. As a result of this modest change in emphasis the entity would lose their PBI status and as a consequence lose their DGR concessions and their Fringe Benefits exemptions.

In a newly released draft known as Tax Determination 2003/D14 the ATO have identified the Rules that apply in respect of the concessions for such entities – now called “Health Promotion Charities”. This ensures their status as Income Tax Exempt, DGR and Fringe Benefits Tax Exempt. It also identifies that these provisions, although newly expressed in legislative form, are backdated.

If any entity has lost their status in recent times this will enable it to seek reinstatement of the tax concessions.

Harm Prevention Charities

Legislation passed in June 2003 introduced a totally new category of charity entitled “Harm Prevention Charitable Institutions”. These provisions take effect from 1 July 2003 and offer DGR status to entities that are providing support facilities to people in distress.

To qualify the principal activity of the Institution must be the promotion of the prevention or the control of human behaviour that is harmful or abusive to human beings. Behaviour that is harmful or abusive includes:

- § Emotional abuse
- § Sexual abuse
- § Physical abuse
- § Suicide
- § Self harm
- § Substance abuse
- § Harmful gambling

In the past taxation legislation has offered little relief in terms of tax deductibility to many charities that are providing vital services for those in need. A key reason for this apparently was the difficulty of proving that a crisis existed until after the calamity. Therefore the PBI/DGR benefits were made available to the ambulance workers who aided the broken body at the foot of the cliff. However those who sought to erect a fence at the top of the cliff received no such benefits.

This has changed with the introduction of this new law.

Notwithstanding the introduction of this new law and its potential substantial benefit to many entities, including Churches, the provisions for obtaining endorsement as a DGR under these provisions are substantial. The Commonwealth Department of Family and Community Services are responsible for maintaining the Register of Harm Prevention Charitable Institutions. Once their approval has been given then the ATO endorsement as a DGR will automatically follow.