

TAX INVOICES AND OFFERS

Often an entity will offer to its members or the wider public an opportunity to subscribe for a magazine, attend a seminar or obtain some other goods. To respond to the offer an applicant needs to complete a form (or respond per internet) or similar. The ATO have now agreed, in an addendum to GST Ruling (GSTR 2000/17), to a simplification of procedures in respect to the issuing of tax invoices in such circumstances.

Provided the offer includes the ABN of the supplier and includes words such as "this forms becomes a tax invoice upon completion and submission" then the application becomes a tax invoice and can be accepted as a satisfactory basis for payment and the claiming of GST credits.

In such circumstances the applicant needs to retain a copy of the application/tax invoice as well as submitting a copy to the supplier.

BARTER TRANSACTIONS

It is not uncommon for charitable and religious organisations to participate in Barter transactions where there is a trade off of one supply for another instead of the payment of money. Such Barter transactions are also deemed to be taxable supplies and are subject to the provisions of GST.

SALE OF CAPITAL ASSETS

Where an entity is registered for GST it will normally need to account for GST on the disposal of a capital asset where the asset is used in the enterprise. Capital assets include cars, office equipment or land and buildings.

These provisions do NOT apply where the asset sold is not a business asset, or where the asset is a part of a business being sold as a going concern. It also will not apply if the asset sold is residential premises or farm land.

There are also instances where an asset was used in respect to the provision of a financial supply. In such circumstances a decreasing adjustment in respect to the disposal may be available. This relates to the GST paid on acquisition of the asset, to the extent the input taxed credit could not be claimed at that time.

Where there is a sale of land and buildings and the property was owned at the introduction of the GST law, on 1 July 2000, then there may well be benefits to the purchaser and/or vendor in applying the Margin Scheme. Detailed information about the Margin Scheme is available in GST Ruling GSTR 2000/21.

NEW DGR PROVISION

The Government has extended the deductible gift recipient (DGR) legislation to include a new category.

The recent inquiry into the Definition of Charities highlighted to the Federal Government some difficulties entities were experiencing in obtaining DGR benefits. Many worthy entities, which are not Public Benevolent Institutions, were unable to achieve DGR Benefits. As a consequence the Government have expanded the law by adding a new Item 4.1.3 to Section 30-45 of the Income Tax Assessment Act 1997. This new item reads "A Public Fund established and maintained for the relief of persons in Australia who are in necessitous circumstances".

To obtain recognition as a PBI an entity needs to provide direct relief of poverty, sickness, suffering, distress, misfortune, destitution or helplessness. This new provision, Item 4.1.3 for DGR Benefits, is wider in referring to "necessitous circumstances". It is possible that the easing of emotional stress may qualify under this new item, whereas emotional distress does not qualify under the PBI provisions.

Please note that this addition to law does not grant PBI status (with its additional benefits under Fringe Benefits Tax law) but provides DGR status and is therefore of considerable benefit in obtaining donations and also, in some circumstances, grants from funding agencies.

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GST NEWSLETTER

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INTRODUCING ADD-MINISTRY

With this Newsletter is a leaflet introducing you to Add-Ministry Inc. As you will see Add-Ministry is a new Not-For-Profit entity that seeks to provide administrative support to the Not-For-Profit Sector.

At the launch of Add-Ministry on 20 March 2003 Noel Harding said, "If it was possible to provide within a Not-For-Profit Association the whole range of services provided by an Accounting Practice we would have done so. However there are legal and professional obligations relating to audit and tax agent services that require them to be the personal responsibility of the accounting practitioner." However there are a whole range of services relating to bookkeeping, computer services, accounting advice and tax advice generally that Add-Ministry can provide and we trust you will take the opportunity of accessing these services in areas where they may be of assistance. Your enquiries to Noel Harding or Shirley Fourie are encouraged.

PAYG FOR MINISTERS

In our June 2002 Newsletter we advised of important changes regarding PAYG and Ministers of Religion. It appears these changes are not widely understood. For this reason we summarise the advice we provided in June 2002 as follows:

- A religious practitioner is not eligible for an ABN. PAYG Withholding Tax will normally apply to payments to religious practitioners such as preaching fees.
- Payments of \$50.00 or less will continue to be free of Withholding Tax.
- Funeral Fees will continue to be free of Withholding Tax.

- Occasional preaching fees and lecturing fees paid by religious institutions will continue to be free of Withholding Tax provided the services do not exceed two days in any quarter. (However see later qualification).
- Where preaching or lecturing services exceed 2 days in a quarter the religious institution needs to obtain a TFN Declaration from the Minister and withhold tax at normal employee rates, or is obliged to apply the 48.5% Withholding Tax required by PAYG Rules.
- Payments by non-religious institutions for religious services of an occasional nature in most circumstances continue to have a zero percentage rating.
- Payments by non-religious institutions for religious services of an ongoing nature will require a TFN Declaration and be subject to TFN Withholding arrangements when the payment exceeds \$100.00 per week.

The provision of the concession for occasional preaching fees being free of Withholding Tax where the services do not exceed 2 days in a quarter is a concession by the ATO for occasional pulpit supply and similar occasions. However this is not an absolute situation. It is our understanding that the intention of the ATO Ruling is to exempt modest payments from PAYG Withholding under these provisions. Where the payment made is substantial this position may well be different. There are circumstances where a preacher is in Australia for a short period of time and his place of residence for tax purposes is in some other country. A payment – gift, love offering or whatever, would be income for an Australian resident but for the overseas resident would not be assessable income in Australia (but would be subject to the appropriate taxation laws in the preacher’s place of residence). To deduct PAYG Withholding Tax from such a payment appears illogical. Because of the 2-day exemption rule it would often be outside the PAYG arrangements also.

For a visiting preacher who is a non resident the simplest solution for the Church is to arrange for a declaration by the preacher on the ATO form “Statement by a Supplier”. The preacher could mark the section on the form which reads “I am a non resident who is not carrying on an enterprise in Australia.” Copies of this form can be provided by the ATO and the form reference is NAT3346-6.2000.

There are other circumstances where the payment to the visiting preacher is really intended to be a payment of support to the Christian organisation with which he serves.

If this is the case then the Church needs the ABN of that Christian organisation and should pay the cheque to that organisation to ensure the matter is recorded correctly.

The most concerning situation is where a Church, as a gracious act, gives the visiting preacher a large amount, such as the whole of the offering from the service at which he preaches. In these circumstances the dollar amount may be quite large. We are aware of instances where it would be well in excess of \$1,000.00. The ATO had no awareness of such a possibility when the 2-day concession was granted.

We would encourage Churches who may follow such a process to obtain direct advice from ATO PAYG Withholding Policy Unit if you have concerns here. The contact details are:

Fax: 03 9275 4425; Email: huseyin.kuyucu@ato.gov.au

We are seeking further clarification in these areas from ATO.

SUPERANNUATION GUARANTEE (SG) PAYMENTS

Effective from 1 July 2003, employers will be required to make 9% Superannuation Guarantee contributions on at least a quarterly basis, payable by the 28th of the following month.

In addition, employers must report to employees in writing the amount and destination of the Superannuation Guarantee contributions within 30 days of each contribution being paid.

Significant penalties apply if either of these obligations is not complied with in the required times.

Employers who are not up-to-date with Superannuation Guarantee contributions need to consider their positions immediately to ensure the 2002-2003 superannuation is paid promptly. Computer systems may need to be altered so that details of Superannuation Guarantee contributions paid can be shown on payslips, or some other reporting system may be required.

GST ON GIFTS

A recent ATO Interpretive Decision (ID 2002/1) considered the issue of the claiming of GST credits where the goods purchased were used as gifts. In the example cited the issue was whether a school was entitled to input tax credits in such circumstances. The ATO decision is that the input tax credits on gifts were entitled to be claimed in the particular circumstances.

The ATO identified that gifts were provided to members of the school community:

- During times of illness,
- As a gesture of good will, or
- As a small token of appreciation for tax deductible gifts made to the schools building fund.

The ATO stated that the support of parents, past students and friends is fundamental to the schools existence. Gifts are given to encourage such people to support the school, and make donations that lead to the construction of buildings and facilities.

The principle involved in this decision would be relevant in a number of other circumstances as well.

The ATO have also issued a GST Determination (GSTD 2002/5). The ATO conclude that where a speaker at a conference is presented with a token of appreciation that this will normally not be considered to be a supply of the speaker’s services for GST purposes. This related to instances where the gift was of a modest nature such as a book, bouquet of flowers or similar and where there was no request by the speaker or any expectation of the receipt of a gift.

GST ON PRIZES

The ATO has now finalised a ruling on the impact of GST regarding prizes (GSTR 2002/3). This Ruling relates to GST as it affects the supplier and also the recipient of a prize and is different to their original views as expressed in a draft ruling (GSTR 2001/D7). This ruling applies in respect to supplies after 2 October 2002.

Where the prize relates to a gambling activity, including a lottery or raffle, the entity providing the prize is entitled to an input tax credit in respect of any goods which comprise the prize or part of the prize.

The decision regarding non-gambling prizes has some wider considerations. The position may vary depending on whether the participant pays a fee or not. The position of the supplier needs to be considered in the light of the multitude of circumstances that may apply. Affected entities are encouraged to obtain a copy of the Ruling (GSTR 2002/3) to consider the matter in the light of their own particular circumstances.