GST – Cancellation of Registration

The ATO are currently sending out letters and questionnaires to smaller Not For Profit entities. Their purpose is to encourage the entities to consider cancelling their GST registration. In the information provided they set out some benefits of not being registered for GST.

Alongside the benefits of not being registered for GST you need to consider the benefits of being registered for GST. While there are some inconveniences in being obliged to complete periodic BAS reports to ATO, the reduction in overall expenditure because of the obtaining of GST credits needs to be given full weight. By far the majority of entities that we have reviewed are deriving significant financial benefit from being registered for GST. On the other hand, a small number are struggling with the matter. That small group of entities may need to give cancellation appropriate weight.

We consider the review of GST registration for small entities is timely. If the Not For Profit entity has a turnover of less than $100,000 GST registration is not obligatory. Turnover, you will recall, does not include income from gifts. Therefore, many entities with a significant income base derived primarily from gifts or donations are not obliged to register.

The questionnaire attached to the ATO circular raises some very helpful questions to consider when reviewing the matter. It is therefore a helpful review process. However, completion of the questionnaire is NOT compulsory. (We have verified it is optional with ATO but it will assist them to have an understanding of your issues.) Similarly, the issue of whether a small entity wishes to remain registered for GST or wishes to cancel its registration for GST, is entirely for the entity and its management committee to determine.

GST – Margin Scheme

Where real estate is being sold, care needs to be taken in respect to the wording of the sale contract regarding the GST component. Current offer agreements provided by Real Estate Institute of WA make provision of a general nature in respect to GST. However, the seller and the buyer of real estate need to carefully consider the impact of GST on the transaction and also take care that the documents are accurately worded.

GST law provides some special concessions in respect to the sale of real estate. However, these concessions are only available subject to certain key rules. One such concession is sale of a going concern. Another concession is to apply what is called the “margin scheme”. The Margin Scheme was introduced on 1 July 2000 to determine the GST payable on supplies of real estate acquired prior to that date. For example, a property purchased on 1 January 2001 and sold on 1 January 2005, GST would be payable on the full proceeds of the property on 1 January 2005. However, if a property purchased on 1 January 1960 and sold on 1 January 2005, GST could be payable only on the difference, or “margin”, between the market value of the property on 1 July 2000 and the proceeds of the property on 1 January 2005. This represents a substantial saving of GST. However, no GST credits are available to the purchaser under the margin scheme, even if registered for GST.

There are new rules in place to regulate such transactions. The *GST Act* has been amended relating to the margin scheme to provide greater certainty in respect to transactions. These changes apply from 17th March 2005 but only became law on 29th June 2005. There are also some very recent draft GST Rulings that have issued.

For the margin scheme to apply under the new arrangements, the seller and the buyer must agree in writing that the margin scheme is to apply. This change generally applies to contracts entered into on or after 29th June 2005. The “margin” is to be calculated by reference to the amount the seller actually paid for the acquisition of the property rather than the sale price, or its market value on 1st July 2000.

There are a number of other significant rules relating to margin scheme including supplies of real estate between members of a GST group and between Associates. It is essential that there is strict compliance with the rules or the arrangement will not be effective. The most important issue is to be able to prove value. Where a valuer is required, it needs to be a licensed valuer and the valuation needs to comply with some specific rules.

If an adjustment to a BAS is required because of these changes, ATO advise that any adjustment must be made in accordance with ATO requirements.

ATO Audits

The ATO has released some details of their compliance program for the current financial year. Some comments here may be helpful as the Not for Profit sector can expect to be a visible target now. The availability of large GST credits to most charitable and religious institutions means that the sector is now an identified target for ATO compliance activity.

ATO advise that they have three levels of approach by way of Enquiry, Review or Audit. These are different and escalating steps in their compliance program. However prior to such activity the ATO are conducting a substantial behind the scenes computer based analysis of potential risk to government revenue. They are now obtaining links with substantial computer databases in relation to real estate transactions, vehicle licensing and insurance claims amongst a number of areas of enquiry. It can be assumed therefore that behind what appears to be a routine enquiry by the ATO can be some significant information from a transaction recorded on some other industry computer register. The ATO will normally be quite open as to the type of approach that they are presenting. If the approach is by letter they will often state that it is a review or an audit that they are conducting. If the approach is by phone contact or in person the ATO officer can be asked to identify the nature of the matter and will normally advise the entity as to the purpose of his enquiry.

One of the objectives by ATO is to encourage the making of a voluntary disclosure if there has been an omission made by the entity they have approached. Where a voluntary disclosure is made, even at the outset of the more serious ATO Audit Program, they will still provide the benefit of the 80% reduction in penalties.

As a number of Not for Profit entities have participated in real estate and motor vehicle transactions where the GST implications have not been properly understood this approach by ATO is most helpful. It provides to the entity an opportunity of dealing with the matter without onerous cost.

GST – Fund Raising Events and Non-Profit Sub-Entities

Now that GST has been in place for over five years it is possible that some treasurers and administrators may have overlooked the earlier decisions by their organizations in respect to fund raising and sub-entities.

The GST law provides for Not for Profit entities to establish sub-entities for GST purposes. This enables the parent entity, being an entity registered for GST, to exclude from its GST obligations a particular division of its organisation from GST record keeping obligations. It needs to be a specific department or division of the entity. The GST non-profit sub-entity can then either be separately registered for GST or, as is most commonly the case, be excluded from the normal GST registration of the entity. This is beneficial regarding activities which are not consistent with the main charitable purpose of the entity. For churches this would most commonly relate to youth activities and other socially related activities where a fee of a modest nature is charged but the activity is not in itself charitable or religious in its character. Predominately these activities are of a social nature. Unless the sub-entity structure is provided then GST needs to be paid on whatever fee is charged.

Many charitable and religious entities set up non-profit sub-entities when GST first came in and gradual changes in office bearers means that the original provisions may have now been overlooked. The issue is that if GST credits are now being claimed on the goods or services purchased for this particular part of an entity then GST must also be paid on the activities provided for the participants.

A further alternative provided in GST law was enabling a particular activity to be identified as a GST fundraising event. This enables the fundraising activity to be excluded from the GST reporting obligations. However it also means that the GST credits are not available to the entity on expenses related to the fundraising activity.

In both instances a decision of the governing body/management committee is needed to establish that a division or activity has been given a special classification for GST purposes.

The provisions of Section 63-5 and 40-160 of the *GST Act* apply for these matters.

Please note that the sub-entity provisions relate to GST law only.

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