

LAND PRICE PLUS GST

A NSW Court of Appeal has confirmed that a Purchaser must pay GST over and above the stated price in the Contract.

The Purchaser claimed the purchased price was inclusive of GST, whereas the Vendor claimed the purchase price was exclusive of GST.

The standard Contract for Sale of Land had a clause which provided, subject to any other provisions, if a party must pay the price or any other amount to the other party, GST was not to be added to the price. However, amongst the "Further Provisions" was a clause that provided in addition to any purchase price, the Purchaser must pay the Vendor an amount equal to any GST payable by the Vendor in connection with the sale of the property.

The Contract also provided the sale was a taxable supply and the margin scheme did not apply. The "Further Provisions" in the contract required the Purchaser to **pay an additional amount equal to the GST** payable by the Vendor.

DOCEP LAW CHANGES

Associations Incorporation Act - The Government have announced a complete review of the 1987 Associations Incorporation's Act. It is anticipated the new draft legislation will be available for public comment in the very near future. It is anticipated that the new Act will be in force early in the year 2007.

We understand that the new Act will introduce an obligatory annual report. It is quite possible that it will introduce provisions relating to compulsory audit. In some other States there is an exception provided in respect to audit for very small entities and it was hoped that the new WA Legislation would make similar provisions. However in an era when open accountability is seen to be of significant importance to the wider community changes of this nature can be anticipated.

Charitable Collections Act 1946 - Similarly the Charitable Collections Act is being reviewed. It is anticipated that a new Act will be approved by Parliament in 2007 in respect to all Public Collections. Currently the Charitable Collections Act excludes; religious purpose, education, animal welfare, conservation & environment from the definition of "charitable purposes". The new legislation is likely to expand the scope of the Act to include all Public Collections. Currently, where a Church seeks to raise money **from the public** for a charitable purpose, as opposed to a religious purpose, they need a license. The exclusion for religious purposes does not cover the charitable (non-religious) activity.

SARGENTS CHARITABLE FOUNDATION CASE NSW

This case concerned whether or not stamp duty was payable on various contracts entered into by the Foundation. An exemption from stamp duty is available in NSW if the entity is a charitable institution. The Case then focused on whether or not the Foundation was a charitable institution. This Case will be a leading authority on this matter.

The Court decided that the Foundation was not yet an *institution* since it had not actually done any charitable work, raised any charitable funds or made any charitable disbursements. Consequently the foundation had not yet acted for charitable purposes nor had it constructed anything that resembles an institution. The Trustees had not appointed staff nor created an office or even conducted a public appeal. The Trustees had only brought property into the Foundation Trust and leased or held those properties for later resale. Their intention was probably to accumulate money for the future charitable purposes of the Foundation. The Court held that "the respondents were no more than simple Trustees and possessed no quality or function that could justify their being described as an institution" and that the transaction for which exemption is claimed must be used for the charitable or benevolent purposes of the organisation. It cannot be let or sold for profit."

The lesson for us is to remind Trustees that they have to perform charitable acts early if they intend to seek stamp duty exemptions where evidence of "institution" status is critical. While this is a NSW Case it is likely to be followed in other States.



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Newsletter



NEW TAX DEDUCTIBLE FUNDS

New Government initiatives in the area of philanthropy have seen the introduction of five new Deductible Gift Recipient (DGR) categories. The Act (Tax Laws Amendment (2006 Measures No 3) 2006) to provide these benefits was given Royal Assent on 30 June 2006. The effective commencement date is 1st July 2006.

July 2006

The changes to the Income Tax Assessment Act 1997 add the following new categories :-

1. A Public Fund for the reconstruction or repair of a damaged war memorial.

This provides a new category at Item 5.1.2 of Section 30-50. This is a Public Fund set up solely to provide funds for the reconstruction or critical repair of a war memorial. The structure needs to be clearly identifiable as a memorial. It must be situated in Australia or its territories and must commemorate events of a conflict in which Australia or Australians participated. The memorial must be solely or mainly used for public commemorations.

Reconstruction has been identified as involving repairing significant and unforeseen damage arising from an event such as fire, vandalism, flooding or earthquake. Critical repair arises where a failure to repair the damage (however caused) could endanger public safety and significantly compromise the structural integrity of the memorial.

2. A Public Fund to provide money for relief from distress in a developed country or for relief from disasters in Australia.

Disaster relief is now available in three distinct areas. Relief in a *developing* or in a *developed* country; or within Australia.

Overseas Disaster Relief - Item 9.1.1 of Section 30-80 has been amended so that it now reads "a Public Fund declared by the Treasurer to be a *developing country* relief fund". This is to differentiate between Item 9.1.1 which is for developing countries and new Item 9.1.2 which is for developed countries.

This new requirement is for a public fund operated by a Public Benevolent Institution (PBI) solely to provide money for relief of people outside Australia other than in a developing country. To be eligible the Minister for Foreign Affairs must have recognised the event as a disaster and identified the date of eligibility. It requires evidence that the disaster developed rapidly and resulted in the death or serious injury or other physical suffering of a large number of people or widespread damage to property or the natural environment.

This provides an opportunity for existing PBI's providing benevolent services *within* Australia to provide short term support in a crisis *outside* Australia in a *developed* country. The objective is to ensure speedy provision of DGR status to a new fund, separate to the existing PBI DGR fund.

Disasters Within Australia

Section 30-45 has had new Item 4.1.5 added. This provides for recognition as a DGR of a public fund established for charitable purposes solely for providing money for relief (including relief to

re-establish a community) within Australia. New Section 30-46 has been added to identify the conditions. The key requirements are that it is declared to be a state of emergency by a Minister of a State or Territory; it developed rapidly; it resulted in the death, serious injury or other physical suffering of a large number of people or widespread damage to property or the natural environment. Funds are eligible for DGR status for 2 years from the date the disaster declaration was made. This endorsement can be provided to a charitable institution, whether it is an existing DGR endorsed charity or merely has the Tax Concession Charity (TCC) endorsement.

3. Provision of short term direct care to animals in distress.

This DGR category is available to charitable institutions whose principal activity is providing short term direct care to animals (that have been lost, mistreated, orphaned, sick or injured). Eligibility relates to either native wildlife or domesticated animals. Section 30-45 has been expanded by the addition of 4.1.6 to allow for this new DGR facility.

The Explanatory Memorandum states that charitable institutions providing such care may undertake other minor activities in furtherance of their charitable activities such as providing veterinary services and/or promoting prevention of cruelty to animals. However the principal activity must be short term direct care.

4. A Charitable Institution which combines the activities of a Public Benevolent Institution and/or a Health Promotion Charity or Harm Prevention Charity.

Section 30-45 has been further expanded by the addition of Item 4.1.7. This Item states a charitable institution that would be a Public Benevolent Institution but for the fact that it also promotes the prevention or the control of diseases in human beings – but not as a principal activity, and/or it also promotes the prevention or the control of behaviour that is harmful or abusive to human beings - but not as a principal activity.

This allows DGR endorsement for an entity that has multiple beneficial activities but fails to qualify as either a PBI or a Health Promotion or Harm Prevention Charity as the majority of the activities do not fit specifically under one or the other of these heads. This new Charitable Services category allows the combination of activities to establish DGR eligibility. However where an entity has as its principal activity any one of the special categories they are expected to seek DGR status under the principal heading.

Endorsement under the Charitable Services category also provides eligibility for capped Fringe Benefits Tax rebate – but not exempt from FBT up to the capping threshold.

5. A Public Fund to provide scholarships, bursaries or prizes to promote education.

The table at Section 30-25 has been extended by the addition of new Item 2.1.13. This refers to a Public Fund that is established for charitable purposes, and also is established and maintained solely for providing money for scholarships, bursaries or prizes to which Section 30-37 applies.

The new Section 30-37 provides DGR status for an eligible scholarship, bursary or prize. It must be a Public Fund, available only to Australian citizens and permanent residents in Australia, and open to individuals or groups of individuals throughout a region of at least 200,000 people. It requires the educational courses to be approved courses of education. They may be pre-school, primary, secondary or tertiary courses. It may also be available for education in an overseas institution. It needs to be awarded for either merit or reasons of equity.

There is an expectation that such scholarships would be awarded on an objective set of criteria.

The explanatory memorandum gives numerous examples for clarification purposes in each of the five categories identified.

GST FREE RELIGIOUS CONFERENCES

ATO have issued a new interpretative decision ID2006/112. This addresses the GST free religious activities involved in an annual conference for a religious institution. It confirms, in this particular instance, that such activities are GST free. The ID is available on the ATO website.

RETENTION OF ELECTRONIC RECORDS

Charitable and religious institutions, like ordinary businesses, need to retain records, including electronic records, for several years. The records need to be retained in a format to enable the ATO to both access and understand them in order for them to carry out an audit. For record keeping purposes electronic records are subject to the same record keeping requirements as paper records.

ATO are concerned in particular about changes in computer software over time. They have issued a draft Tax Ruling TR2004/D23 which sets out their requirements here.

The obligation rests with the individual organisation to ensure compliance.