SIRAGUSA
ACCOUNTANTS & ADVISERS

Client Newsletter - Tax & Super

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Alternatives to a tax invoice for certain GST credit claims

Tax invoices are an essential element of Australia's taxation system, and serve both to collect taxation revenue related to the goods and services on which GST is levied as well as record the credits that are claimable by eligible businesses.

A business registered for GST will generally be required to hold a tax invoice for any transaction in order for an input tax credit to be claimed. The tax invoice can usually only be issued by the entity that made the taxable supply, which generally must issue a tax invoice as a normal incident of transactions, or within 28 days of a request to do so.

Tax invoices are not required where the GST-exclusive value of the transaction does not exceed $75 (that is, a GST-inclusive price of $82.50) or if the goods or services supplied are GST-free, such as many food items. (And if

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About this newsletter

Welcome to this edition of the Siragusa Accounting Group's client newsletter — where we keep you informed on the latest news and issues on tax and super. If you would like further information on any of the topics covered in this issue please contact us.

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Alternatives to a tax invoice for certain GST credit claims *continued*

you are wondering why $75, it's merely a reflection, in miniature, of the turnover threshold of $75,000 at which a business must be registered for GST.)

To qualify as a bone fide tax invoice, it generally must include certain details, such as the seller's identity (name, ABN), date, the form of supply, the price, the GST amount and so on.

Suppliers who fail to issue a tax invoice or adjustment note as required are liable to an administrative penalty from the ATO. If a tax invoice or adjustment note is not provided, it is generally expected that the recipient will make genuine reasonable attempts to request one. The emphasis however is on "genuine reasonable attempts", as the ATO does not generally require anyone to go to extraordinary lengths to pursue a supplier for the tax invoice.

If a tax invoice or adjustment note is not received within 28 days after the request, the erstwhile recipient may need to contact the ATO for assistance, providing details of the transaction and details of attempts to request the document. We can certainly help you with this.

There can be instances however where a recipient is unable to obtain a valid tax invoice after making all reasonable attempts. In these cases, there are allowances under the tax rules that let the ATO exercise a discretion to treat another document as a tax invoice. For example, if second-hand goods have been acquired from a registered seller and the business has made a record of the acquisition, or if creditable acquisitions are made of "reverse charged" supplies (ask this office what this means if it seems applicable).

Other instances of an option being available to claim GST credits where no tax invoice is available include the following.

PROGRESSIVE SUPPLIES

Certain rulings issued by the ATO contain guidelines on tax invoice requirements for taxable supplies that are provided on a "progressive or periodic" basis, where each progressive or periodic component of the supply is generally treated as a separate supply.

The relevant ATO ruling in these cases states that a single document can be a tax invoice for all components of the supply if it satisfies the tax invoice requirements and shows the price of each component of the supply.

A lease document therefore can be used as a tax invoice for each monthly rental, as long as all the requirements are satisfied. As a supplier, a business therefore does not have to issue separate tax invoices for each component of the supply.

Note however that if there are price variations for supplies made on a periodic or progressive basis (for example, lease payments adjusted for CPI or lease payments that include an amount for outgoings) and the taxpayer needs to rely on other documents, the exercise of a discretion from the ATO may be required.

Note also that if a business uses direct debit facilities, it would be advantageous for all parties to ensure that the lease document meets the requirements of a tax invoice to avoid the need to issue a separate tax invoice for each periodic payment.

CORPORATE CREDIT CARD STATEMENTS

In the case of a corporate credit card statement, as it is not being issued by the actual supplier of the goods or services, it would not normally qualify as a tax invoice. However the ATO has issued a ruling that allows businesses to claim input tax credits based on corporate credit card statements from approved corporate credit card providers where certain conditions are satisfied. These generally relate to the sort of information that is able to be accessed from the statement.

Generally, the credit card statement can only be used to claim the input tax credit where the supplier is making a taxable supply (that is, it is not a mixed supply) and the GST is exactly 1/11th of the supply. If the supply is a mixed supply or a taxable supply where GST is not 1/11th of the price, a tax invoice may be absolutely necessary to substantiate the input tax credit for the supply.

A condition required is that a supplying business has an effectively regulated corporate credit card policy that makes adjustments for circumstances when the card is used for private or personal expenditure.

OFFER DOCUMENTS

Subscriptions and renewals may be treated as tax invoices even though they are issued before a supply is made. The ATO will generally allow such offer documents to be treated as a tax invoice if they:

- meet the requirements in respect of the total of all supplies being offered when issued by the supplier
- indicate which supplies have been accepted, the total price and amount of GST payable in relation to what is supplied when completed by the prospective recipient, and
- include the following or similar statement — "this document will be a tax invoice for GST when fully completed and an entity makes a payment". ■

Can the ATO's public rulings help your outcomes?

The ATO can issue public rulings that provide guidance on the interpretation of various tax laws.

Photo by Nate Nessman on Unsplash

Public rulings generally deal with priority issues that have been found to require clarification, so if you have a concern about a particular area of tax law, you may find that many of your concerns are shared by others and may have already been addressed.

Public rulings provide taxpayers with certainty and protection if they follow the ruling as it applies to them. However, taxpayers who ignore public rulings may face severe penalties and interest.

Note that public rulings are binding on the Commissioner of Taxation (the Commissioner). They may offer some protection against having to pay a tax shortfall in the event that the ruling is found to be incorrect if the taxpayer relies on it.

The Commissioner may exercise his discretion about imposing a penalty on top of a tax shortfall where the taxpayer has drawn upon and relied on incorrect information contained in other publications. However, where these booklets and pamphlets are not classed as a "binding ruling", a tax shortfall resulting from a taxpayer relying on it when it may be incorrect would still need to be paid.

Type of public rulings

Public rulings can sometimes include:

- tax determinations and tax rulings
- tax return instructions
- information booklets
- ATO media releases, and
- speeches or statements by senior officers of the ATO, which must state that it or selected parts of it constitute a public ruling.

Public rulings can cover a number of taxes, which may include any of the following:

- income tax
- Medicare levy
- fringe benefits tax (FBT)
- withholding taxes
- indirect taxes – including goods and services tax (GST), wine tax and luxury car tax
- excise duty
- the administration or collection of the above taxes, levies and duties
- a net fuel amount, or the administration, collection or payment of a net fuel amount
- a net amount or the administration, collection or payment of a net amount; and
- a wine tax credit, or the administration or payment of a wine tax credit.

Rulings are treated as binding public rulings when they are made available to the public and they explicitly state that they are public rulings.

continued overleaf ⇨

Can the ATO's public rulings help your outcomes? continued

Date of effect of a public ruling

Public rulings state the ATO's interpretation of tax laws and is taken to have always applied unless:

- the ruling states that it applies only after a particular date, or
- the ATO feels it is unfair to disturb arrangements existing before that ruling.

What happens if you disregard a public ruling?

There is no compulsion on a taxpayer to follow a public ruling. However, if a taxpayer is subject to a tax shortfall penalty, a public ruling is a relevant authority in determining whether the taxpayer has a reasonably arguable position and if reasonable care was exercised. If there is a tax shortfall because a ruling was not followed, penalties can be imposed unless the taxpayer can demonstrate reasonable care was taken and they had a reasonably arguable position.

If in doubt, it would be prudent to follow the public ruling and then lodge an objection against the assessment or seek a private ruling (see below). By using either of these two approaches, the taxpayer protects their rights and avoids the possibilities of tax shortfall penalties.

What happens when a ruling is withdrawn?

In the case of withdrawal of part of a public ruling, the portion that was not withdrawn continues to hold effect for both past and future arrangements. For any arrangement that started before the withdrawal, the former ruling generally applies – provided it is favourable to the taxpayer.

For example, a public ruling dealing with expenditure incurred by an employer-sponsored super fund says deductions are allowed if the expenses are incurred on behalf of the fund by trustees of the super fund or the sponsoring employee. A further public ruling is issued, withdrawing the previous ruling as it affects trustees. In that case, the earlier ruling continues to apply to expenditure incurred by sponsoring employers.

What is the difference between a tax ruling and a tax determination?

A tax determination (TD) is a type of ruling regarding a very specific point of law and has the same status as a public binding ruling.

The difference between a TD and a public ruling is that a TD deals with single issues whereas a public ruling looks at all of the tax implications that might be involved in an arrangement or transaction.

Many times a TD is a result of a specific decision in case law. For example, a TD might deal with the assessibility of a particular receipt to advise whether it is income under ordinary concepts. A public ruling, on the other hand, may discuss the assessibility of the receipt in a much broader context.

Do online brochures and information booklets from the ATO constitute a public ruling?

As a general rule, a published booklet or other information issued (particularly online) does not become binding on the Commissioner unless the document or information specifically states that it is a public ruling.

What if my tax position is still unclear? Can a private binding ruling from the ATO help?

If there are no public rulings available that specifically deal with or provide guidance on your situation, it may be worth applying to the Commissioner for a private binding ruling.

A private ruling is a written ruling from the Commissioner that considers how the tax law applies or would apply to the taxpayer in relation to a particular arrangement. For example, a taxpayer may seek the Commissioner's position on whether the sale of real estate is on capital or revenue account.

The Commissioner is legally bound to adhere to a private binding if the taxpayer relies on it – the taxpayer however is not legally obliged to act in accordance with the ruling and can take another position available under tax law. In this regard, a private binding ruling would give the taxpayer certainty as to the position that the ATO would take.

For this and any other questions regarding rulings issued by the ATO, please contact us. ■

What you need to know about the beefed-up director penalty regime

Photo by Victor Freitas on Unsplash

Being a director of a company, as with any elevation of status, is a role that also brings with it added responsibilities and duties.

Company directors need to keep in mind that the Corporations Act holds directors personally liable for many of the legal and financial obligations expected from a company. These include, but are not limited to, any debts incurred if the company becomes insolvent and losses arising from a director's lapse of duty.

The corporate regulator, the Australian Securities and Investments Commission (ASIC), says failing to perform your duties as a director can, in the more extreme cases, lead to being found guilty of a criminal offence with a penalty of up to a maximum of $200,000, or imprisonment for up to five years, or both.

But on top of this there is also the ATO's "director penalty regime", which was introduced in 1993 but has since been updated. This ensures certain employer obligations are met, which can also become a director's personal liability should they not be paid. These include (since 2015) pay-as-you-go withholding amounts that employers are meant to withhold and send on to the ATO, and superannuation guarantee payments that are not paid on time (within 28 days of the end of each quarter). The latter generally also includes a "superannuation guarantee charge" (SGC, which is the amount not paid plus interest plus an administrative penalty).

As well as directors possibly facing personal liability, the options available to the ATO under its director penalty regime includes garnishee proceedings to recover amounts owed, offsetting amounts owed against any other tax credits, and initiating legal recovery proceedings.

Before any of such actions are taken however, the ATO is obliged to issue a "director penalty notice" outlining the unpaid amounts and remission options open to the concerned directors. Until recently (more below) it was generally the case that the ATO would issue a director penalty notice three months after the due date of the relevant overdue obligation should the owed amounts either not be paid or not reported to the ATO. Directors would have 21 days from the date of the notice to act, or be held personally liable.

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What you need to know about the beefed-up director penalty regime continued

Should the shortfall amounts be reported to the ATO within that three months, the director penalty is deemed "non-locked-down" — that is, there are still certain options available to avoid personal liability: pay the amounts owed; appoint an administrator; or begin winding up the company.

CHANGED CONDITIONS

A further change to the rules came into law only recently (from 1 March 2019), which mainly focuses on the superannuation payment obligations of employers. The change however could be said to flag a more rigid approach by the ATO on the collection of employer obligations. There is even some talk that GST liabilities will be covered under the director penalty regime in the future.

There is now to be no three month period allowed after the due date (28 days after each quarter) for superannuation guarantee (SG) and SGC payments. After the due date, the amounts owed by the company are "locked-down". In other words, directors become automatically personally liable.

Previously, placing a company into voluntary administration or insolvency within the 21 days from receiving a director penalty notice would avoid the penalty. This option, which the ATO seemed to be taking aim at, is now closed. For a recent financial year, the ATO estimated that more than $100 million of SGC debt was irrecoverable due to insolvent businesses, so the change to this part of the rules should help improve this outcome.

The Tax Commissioner is still left with some discretion in regard to the application of the rules, both incumbent and new. However the legislation states that the Commissioner must have regard to certain matters, including:

- the employer's history of compliance with the requirement to pay the SGC and compliance with any other tax laws
- whether the amount of unpaid SGC is substantial having regard to the size and nature of the business
- any steps the employer has made to pay the unpaid SG amount, and
- any other matter the Commissioner considers relevant. ■

Instant asset write-off

In last month's article about working from home, mention was made of the small business instant asset write-off. However this was written before the Federal Budget, which made changes to the write-off. The small business instant asset write-off threshold has now been increased to $30,000. It has also been extended to cover medium sized businesses (aggregated turnover to less than $50 million). Ask this office for details if you think your business qualifies. ■

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Super downsizer scheme essentials

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Under the superannuation downsizer scheme, people aged 65 and older can make a non-concessional (post-tax) contribution of up to $300,000 from the proceeds of selling what was once their family home. Downsizing enables more effective use of housing stock, and existing contribution caps and restrictions will not apply to the downsizer contribution. The scheme applies from 1 July 2018.

By enabling older Australians to make additional contributions to superannuation, the scheme also assists these individuals to better provide for their retirement, and also take advantage of the concessional taxation environment afforded to superannuation funds (including 15% tax on earnings, or tax-free when an account is in pension mode).

The key features of the downsizer scheme are as follows:

- The individual making the contribution must be aged 65 or over at the time they make a downsizer contribution (there is no maximum age limit)
- The contribution must be from the proceeds of the sale of an eligible Australian dwelling sold on or after 1 July 2018
- The dwelling must have been owned for at least 10 years
- The dwelling in whole or in part must have qualified for the main residence CGT exemption
- The contribution (or contributions) must be made within 90 days of the disposal of the dwelling
- The contribution must be no more than the lesser of $300,000 or the proceeds from the sale
- The individual must notify their superannuation fund in the approved form at the time the contribution is made that they wish to treat the contribution as a downsizer contribution
- The individual must not have previously made a downsizer contribution in respect of a different dwelling (but can make multiple contributions in respect of the same dwelling, provided that the 90-day time limit is met for each contribution).

Along with freeing up housing stock, the other benefit of the scheme is that it provides older Australians with greater capacity to contribute to superannuation.

The reason why taxpayers must be over the age of 65 to contribute is that the scheme is designed as an exception to the existing contribution rules that restricted this cohort from making significant super contributions in the following respects:

- **Work test** – This test requires that taxpayers aged 65-74 who wish to make voluntary contributions to superannuation must be in gainful employment for at least 40 hours within a 30-day period during the year in which they make a contribution. By removing this requirement for downsizer contributions, older Australians who no longer work significant hours can now inject sizeable sums into superannuation when they sell the family home.
- **Age restriction** – Taxpayers over the age of 75 generally cannot make voluntary personal contributions to superannuation (unless made within 28 days of turning 75). There is no maximum age cap on making a downsizer contribution.

continued overleaf

ATO's "living expenses" tool to help tackle the cash economy

It's known by a variety of names, such as the black economy, or even the cash or hidden economy. But whatever the label, its existence is a pebble in the ATO's shoe that it is forever looking to prise out.

As part of that ongoing effort, it has settled upon certain "averages" of what constitutes reasonable personal living expenses. When making an assessment in the course of examining your tax affairs, one of the tools that the ATO may employ is its set of average living expense guidelines.

These standards of living expenses are also there to help the ATO determine (in the absence of more obvious signals, such as blatant mis-statements in a return) if there is a need to consider auditing a certain taxpayer's tax affairs.

The guidelines are presented in the form of questionnaire worksheets, where taxpayers are asked certain details about the living expenses of their household. There are two worksheets; a concise one and a more detailed comprehensive worksheet. Each outlines what the ATO will generally look at when examining a taxpayer's personal living expenses.

The ATO worksheets can also be useful in helping to review the accuracy and completeness of your record keeping. The ATO says they can also be used at any time to:

- compare your household income to expenses, and assess if your declared income is enough to support your actual lifestyle
- review your record keeping
- make adjustments to your reported income
- help in considerations of whether making a voluntary disclosure is necessary.

The concise personal living expenses worksheet reveals a snap-shot of household incomings and outgoings. Significant outgoings only are deducted from income and the remaining amount needs to be enough to cover your other household expenses.

The comprehensive worksheet provides an in-depth analysis of all household incomings and outgoings. By comparing annual household funds and expenditure you can self-assess whether your declared income is enough to support your actual lifestyle.

Ask us for copies if you would like to use these worksheets. ■

Super downsizer scheme essentials continued

- **Non-concessional, bring forward cap** – Individuals aged 65 or over cannot use this cap, which allows younger taxpayers to bring forward up to three years' worth of non-concessional, after-tax, contributions (otherwise limited to $100,000 per year) by contributing up to $300,000 over a three-year period depending on their total super balance on 30 June at the previous financial year. For example, if you were under age 65 on 1 July 2018, had not triggered the bring forward cap in any of the previous two financial years and had a total super balance of less than $1.4 million at 30 June 2018, you are permitted to make a $300,000 contribution in 2018-19 but no more contributions for the following two financial years until 2021-22 without exceeding your bring forward cap.

Additionally, downsizer contributions are not subject to the $1.6 million total superannuation balance restriction. Since 1 July 2017, individuals cannot make non-concessional (after-tax) contributions to a superannuation account if they have a total superannuation balance of $1.6 million or more.

While the above contribution restrictions have been lifted in respect of downsizer contributions, the retirement phase transfer balance cap remains in place. That is, the $1.6 million limit on the amount of superannuation savings that an individual can have in tax-exempt income streams still applies. Therefore, if an individual has reached their $1.6 million transfer balance cap, while they can still make a downsizer contribution, that contribution must be allocated to an accumulation account (whereby earnings are taxed at 15%, rather than tax-exempt). ■