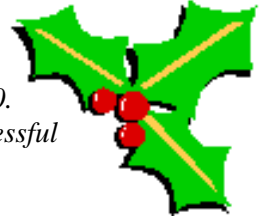


GRAYPE VINE NEWSLETTER

DECEMBER 2000



We extend to all our clients our best wishes for the festive season and would like to thank you for your support in 2000. We wish you and all your family and friends a happy and successful new year from the Partners and Staff.



Summer 2000 Issue

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Our office will close from Midday Friday 22nd December and will re-open on Monday 8th January 2001.



After the big build up to “the new millennium,” the year has passed very quickly for most. The last 6 months have certainly presented many challenges for ourselves and also our clients.

We would like to personally thank you our clients who have been very understanding during a period where all Accountants' resources have been fully tested. As we approach the second quarterly BAS we are all better prepared and relaxed about meeting our GST obligations.

We are also very grateful for the efforts of our staff, many being new additions who have rallied to the cause. We look forward to the new century with confidence.

The Partners



Taxing Trusts as Companies

Editor: An exposure draft on the new tax system under which many trusts are to be taxed like companies has been tabled in Parliament. While it's only an exposure draft, it has been supported by both sides of Parliament, so it looks like it will come into force on 1 July 2001 – largely unchanged

When this idea was first proposed, we were told that basically discretionary trusts would be taxed under a similar regime to companies – unfortunately, that is not the case and we now have a totally brand new system for trusts.

An overview of the new system

The following gives a brief overview of the new system as it was tabled:

- ❑ From 1 July 2001, non-fixed trusts (NFTs) will be taxed like companies, ie, they will pay tax at 30% on all their taxable income. Their distributions will be taxed like company dividends.
- ❑ The changes do not apply to fixed trusts (eg, most unit trusts). They will continue to be taxed as they are now.
- ❑ NFTs will be able to pass imputation credits to their members, along with their distributions.

Editor: The combination of the following two changes are most worrying

- ❑ Most distributions are deemed to be taken from profits first and then from contributed capital (the profits first rule).
- ❑ Interest free and other “non commercial” loans made by beneficiaries to the NFT are treated as contributed capital.

Editor: This means that if the “owner” lends money to the trust in anything but a very formal loan, when it is repaid it will be deemed to be taken from profits and is assessable to the beneficiary as a dividend. Hopefully, this part of the legislation will be revoked.

Cancellation of voluntary GST registration

The Tax Office has announced new rules for businesses under which they can cancel their voluntary GST registration or change from monthly to quarterly GST reporting, up to six months earlier than is possible under current law.

“A number of business people have changed their minds about registering voluntarily for GST or now want to pay GST quarterly rather than monthly,” Tax Commissioner, Michael Carmody said.

“Under current law, these changes can only be made after they’ve been in the system for at least 12 months. However, proposed changes to the law remove the 12-month barrier.”

The new law is expected to be in place by the end of December.

“Accordingly, I am announcing new rules to allow people to cancel their voluntary GST registration effective 31 December 2000. I am also announcing new rules to allow people to switch from quarterly to monthly GST reporting or vice versa.

Cancelling GST registration

People who have already applied and are still eligible (including those whose application was refused under current law) do *not* need to reapply.

The Tax Office will assess their application and notify them whether they are accepted. Those accepted will have their registration cancelled effective 31 December 2000.

ACCC warns service sector to include GST in prices

“Advertised prices for goods and services to the public should include the Goods and Services Tax”, ACCC Chairman, Professor Allan Fels has warned.

“Examples of concern have been menus in cafes, takeaway shops and restaurants, and advertisements for premium telephone information services that fail to disclose a GST-inclusive rate.

Premium telephone services are those which use numbers starting with ‘190’ (eg psychic lines, betting tips, chat lines).

“Prices displayed or quoted to the general public should include GST.

A business may separately indicate the GST component of price, but it must not be done in a way which may mislead consumers as to the actual price to be paid.

“Penalties for breaches of this part of the Act range up to \$200,000 for businesses and \$40,000 for individuals, per offence.

In addition to monetary penalties, the Court can impose injunctions and order corrective advertising”

Commissioner's BAS tips

The ATO has issued the following list of tips to business on the BAS.

- ❑ After paying at the Post Office or through electronic means (eg bPay) – remember to post in the actual form as this is required to complete the monthly transaction and to reconcile payment.
- ❑ Do not use non-numeric symbols such as \$+/- in fields as they will cause the form to be rejected by the Tax Office scanner.
- ❑ Do not enter cents in fields as they cause computation errors.
- ❑ Do not write n/a or indicate in any other way if a field is not applicable as this will also cause rejection – leave them blank.
- ❑ Use only black pens and not pens/pencils that the scanner can't read.
- ❑ If a mistake is made, use white-out and clearly write again.
- ❑ Do not add attachments or explanatory comments, as this will cause the BAS to be taken off-line for manual action.

Splitting super on marriage breakdowns

The Government has tabled legislation which provides for superannuation entitlements to be divided on marriage* breakdown.

Note (): It seems that this will not apply to de facto relationships.*

The amendments start one year after the day on which the Act receives the Royal Assent.

Under the current law, the court takes into account any superannuation interest held by the parties, and adjusts other property to balance the books (so to speak), but superannuation per se cannot be divided.

Basically, under the changes, parties will be able to make their own agreement on how superannuation is to be divided as long as it complies with the Act.

If it does comply, it will be binding on the parties and the court will generally not be able to make a different order.

Non Commercial Losses – New Tests for Farmers & Artists

New tax legislation will have a dramatic impact on claiming of losses from small business operations such as farms, artists, direct sellers and participants in some tax schemes.

For example, under existing law, losses from carrying on a “farming business” can be offset against other income such as salary and wages. From 1 July 2000 the new legislation imposes objective tests which must be met before the loss can be offset against other income. If you cannot satisfy one of the following tests, the losses are carried forward and offset against future profits from that operation.

The tests are;

- ❑ The loss relates to an activity with assessable income of at least \$20,000.
- ❑ The particular activity results in profits for tax purposes in 3 out of the past 5 years (including current year). This means it is a retrospective test.
- ❑ The value of real property assets used in carrying on the activity is at least \$500,000 or
- ❑ The value of certain other assets (excluding cars, motorcycles and similar vehicles) is at least \$100,000.

Special circumstances can be considered such as natural disasters or if a business is in start up phase and this will be judged against industry standard (eg Vineyard).

An exception applies to losses from a primary production activity or professional arts activity if the taxpayer has other assessable income of less than \$40,000.

The impact of this for many “part time farmers” could be quite serious. We encourage many clients affected to contact us urgently in the new year.

Warning to client's contracting through their own company etc. - Alienation of personal services income

Clients involved in the provision of personal services via a Company, Trust or Partnership structure such as consultants and contractors may be affected by this legislation. The intention of the legislation operative from 1 July 2000 is to restrict taxpayers from splitting income with family members and to have expenses scrutinised under the substantiation rules that apply to salary and wage earners.

The rules are as follows;

Where 80% or more of an individual's personal services income (earned by the company or trust) is from one source or associates of that source during the income year, the company or trust structure will be ignored and the individual assessed as if the income was earned in his or her name.

If 80% or more of your income is from one service, you can request a "personal services business determination" to avoid being assessed as an individual. The Commissioner will consider the following 2 tests.

- ❑ **Employment Test** relates to whether you engage others to do at least 20% of the principal work which you are paid to provide. It also relates to whether you have apprentices for at least half the year (secretarial support staff not relevant). Eg. If you are a computer consultant, do you employ another computer consultant who generates at least 20% of the income.
- ❑ **Business Premises Test** relates to whether you use and maintain physically separate business premises to conduct the activities that gain or produce the income (separate from your residence).

If you cannot satisfy one of the above tests you will be assessed as an individual and only be entitled to claim those deductions allowable under the substantiation rules.

Self Assessment

If in an income year each of your unrelated clients provides less than 80% of the income, you are able to self assess. No written determination is required.

Example 1

NEWC Pty Ltd provides computer programming services. John Newc does all the work involved in providing those services using the clients equipment and software. The income derived by Newc Pty Ltd is considered personal services income of John and he will be assessed as having derived the income himself and allowed expenses under the substantiation rules.

Example 2

John and Mary trade as a partnership providing sub contract services within the building industry. More than 80% of the income comes from John's work on one contractor on site. He does not supply any materials, only his labour, and minimal equipment is needed. The income of the partnership is personal services income and will be assessable to John.

What should you do?

If you believe you may be affected by these rules please contact this office to discuss your circumstances and how to obtain a private determination if appropriate.

STOP PRESS! BE PREPARED

Cash flows will be seriously challenged in the New Year as Banks tighten lending criteria, so be prepared.



Please Note: Many of the comments in this publication are general in nature and anyone intending to apply the information to practical circumstances should seek professional advice to independently verify their interpretation and the information's applicability to their particular circumstances.