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Tax News, Views and Clues

December 2008

Do You Have a Valid Tax Invoice?

In recent months we have seen considerable more activity from the Taxation Office in regards to completing GST Reviews.

This process involves looking at a listing of all of your GST transactions and then a sample check of some of these items. Whilst we all endeavour to ensure we have an invoice in all cases it seems that often suppliers need to be contacted to replace missing invoices. In many cases the only paperwork retained is a delivery docket. This is not a tax invoice and cannot take the place of a Tax invoice.

Tax invoices

Tax invoices are important documents for the operation of the GST system. Tax invoices must contain certain information to be valid. You must issue a tax invoice if any taxable sales you make of more than $82.50 (including GST), and the purchaser requests it.

What is a valid tax invoice?

A valid tax invoice for taxable sales that total $1,000 or more must contain:

- the words ‘tax invoice’ stated prominently
- the name of the supplier
- the ABN of the supplier
- the name of the recipient
- the address or ABN of the recipient
- the date of issue of the tax invoice
- the quantity of the goods or the extent of the services sold
- a brief description of the things sold, and
- the total price of the sale (including GST).

A valid tax invoice for both a **taxable sale and either a GST-free or input taxed sale**, must also:

- clearly identify each taxable sale
- show the total amount of GST to be paid, and
- show the total amount payable for the sales.

What if I claimed a GST credit without having a valid tax invoice?

If you claimed a GST credit without having a valid tax invoice, you can write to the Tax Office explaining your circumstances and ask that the tax invoice be treated as valid.

If the Tax Office discover a claim of this nature, for example during an audit, they will usually treat the tax invoices as valid and allow your claim if you:

- are entitled to the GST credit, and
- have made a genuine attempt to comply with the requirement to hold a tax invoice.

It is important that you ensure that you have valid Tax Invoices before making a claim for GST. The main issues when reviewing the invoices were that for more than $1,000 the tax invoice must have both your trading name and either your address or your ABN. In many cases only the name was shown and not the address or ABN.

In cases where a GST Registered Business sells goods to a private individual GST will apply. We are often asked this in relation to businesses selling Motor Vehicles to private individuals.

If you have any queries regards this matter please call our office on 9325 4255.

Main Residence

As a general rule, if a person who is an Australian resident earns a capital gain from the disposal of an asset, including a residence, they would be subject to capital gains tax on the gain.

Thus it is very important to make sure that whatever you class as your main residence is correctly recorded as that fact.

If you dwelling is your main residence in which you have an ownership interest then that property may well be exempt from capital gains tax, as a general rule.

The exemption also applies to any land which may be adjacent to a dwelling if the land was used primarily for private or domestic purposes. But the maximum area of land that is covered by this particular exemption, including the area of land on which the dwelling has been constructed, is not allowed to exceed two hectares.

In addition the adjacent land must be sold with the dwelling for the exemption from capital gains tax to apply.

It is interesting that neither the Income Tax Assessment Act of 1936 nor the Income Tax Assessment Act of 1997 provide any guidance to assist a taxpayer in calculating whether or not a dwelling is their main residence for tax purposes.

CGT Determination TD 51 issued by the Australian Taxation Office (ATO) discusses whether or not a dwelling is a taxpayer's sole or principal residence, and the ATO has provided its view of the factors which it would take into account to decide this question.

Those factors include, but are not limited to:

- The length of time the taxpayer has lived in the dwelling
- The place of residence of the taxpayer's family
- Whether the taxpayer has moved their personal belongings into the dwelling
- The address to which the taxpayer has their mail delivered
- The taxpayer's address on the electoral role
- The connection of services such as telephone, gas, and electricity, etc
- The taxpayer's intention in occupying the dwelling.

There has been case law to state that the mere intention to construct a dwelling or to occupy a dwelling as a main residence will not allow for the CGT exemption to apply.

Section 118-150 states that if a taxpayer builds, repairs or renovates a dwelling, they must live in the "new" dwelling for a minimum period of three (3) months before it can be considered to be their main residence.

If a taxpayer does not live in the "new" dwelling for a minimum period of three (3) months the dwelling can still be considered their main residence if that period was immediately succeeded by a period in which the taxpayer treats the dwelling as a main residence under the six years rule.

What is the six year rule?

The six year rule applies to someone who has a residence in Australia and goes because of employment or other family reasons, to another location, but does not buy a residence in that other location, they can elect to treat the former property as their residence for up to 6 years provided they move back into that residence for a period of time before disposing of it.

The law also allows the person to move away for a second period of no more than 6 years and again to move back into the property.

However, the key is not to have purchased another residential property anywhere else in the world.

Thus to sum up, the main residence exemption from capital gains tax does provide that relief provided the residence is occupied by the taxpayer for the periods mentioned above and the person moves into the property once purchased as soon as practicable to do so.

If a property is used for part of the period of ownership for earning income, then a pro rata calculation needs to be made for capital gains tax purposes if and when the property is sold.

There is no capital gains tax payable on the increase in value of a residence. It only applies when the property is disposed of.

For further clarification of this matter please do not hesitate to contact our office.

Superannuation - Tax Deductible

Unfortunately we still come across employers who have not paid their superannuation by the required date.

We will set out hereunder a table showing when superannuation is payable by employers for their employees so as to be tax deductible to the business:

Quarter Ended	Paid no later than
30th September	28th October
31st December	28th January
31st March	28th April
30th June	28th July

However please take note that in relation to the June quarter if the superannuation contributions for your staff are paid by 28th July it will be tax deductible, but in the next financial year.

If you wish the superannuation contributions for June to be a tax deduction in that financial year you need to make sure they actually reach the superannuation fund no later than 30th June.

Some clients pay their superannuation monthly but again the last month of the quarter should be paid no later than the 28th of the following month in any case as per the above table.

More Interest Rate Cuts—Is It Time To Lock In a Fixed Rate?

3 months ago, with official interest rates at a 14 year high, no-one could have predicted that the Reserve bank would drop rates to a 7 year low in just 3 months. Reserve Bank Governor, Glenn Stevens, announced yesterday that the official rate will be slashed by 1 whole percent effective from today. Whilst this is painful news for those relying on interest bearing investments, it could not get better for those tied down by debt.

Commonwealth Bank and NAB have been quick to pass on the full benefit of this rate cut, whilst Westpac has passed on only 0.8% and ANZ 0.83%.

So should you consider fixing your rate?

The low rates currently on offer make it very tempting to consider fixing your mortgage and fixed rate can provide you with certainty about your interest costs and mortgage repayments over the fixed period. However, according to their media release the Reserve Bank's intention is to stimulate the economy back to 'an expansionary setting' and some players in finance markets are predicting further cuts in the new year.

So how can you make the most of the lower interest rates?

It is important, regardless of the state of the economy, to make sure that you are getting the best rate, the right product and the best service from your mortgage provider. Whether you are a professional, a first home buyer or an investor there are a multitude of loan products and packages to suit every need. Some of the banks are also introducing special offers on refinancing or for first homebuyers. Now is an ideal time to look closely at the deal you are getting from your bank and consider refinancing or negotiating a better deal.

Greg Meyers of Royal Cornell Financial Services is a qualified and experienced finance broker who can provide a home loan review to ensure you are getting the best from your mortgage. To find out more, contact Greg on (08) 9325 4255 or by email greg@royalcornell.com.au.

Christmas Break

Please note that on Wednesday 24th December 2008 our office will be closing at 12 noon. We will be returning from our Christmas Break on Monday 5th January 2009.

We thank you for your support of our Business over the past twelve months. We take this opportunity to wish you and your families a safe and Happy Christmas.

Best wishes from Garry, Russell, David, Greg, Ken, Lily, Lisa, Zhong, Loretta,

Ainslie, Louise and Natalie.

See you in 2009!