footprint

an occasional newsletter

footes limited chartered accountants 30 church street timaru new zealand

March 2012

Donations

If a company makes a donation to a donee organisation it can claim a deduction. The maximum deduction it can claim is limited to the amount of its net income, calculated before taking into account the deduction.

All close companies (including ones that are not listed on the official list of a recognised exchange) qualify for this deduction. The donation amount needs to be shown in the company IR4 tax return.

GST cannot be claimed as input tax on donations as the donation does not purchase any supplies or services.

Individuals can also claim a rebate for donations up to the amount of their taxable income.

CHANGES TO GST

There have been significant legislative changes to GST that became effective from 1 April 2011. These are discussed briefly below.

Compulsory zero-rating

Any transaction involving the sale of land by a GST-registered person will be zero-rated provided the purchaser is:

- ✓ GST registered;
- ✓ Intending to use the land in making taxable supplies; and
- ✓ Not intending to use the land as a principal place of residence (this also applies to any person associated with the purchaser).

The above conditions must apply at the time of settlement of the transaction. If the purchaser does not satisfy these conditions, the vendor has to return output tax on the sale price.

Nominations

Often, the vendor enters into a sale and purchase agreement with a purchaser or “nominee” who is not a party to the contract before the settlement date.

Where such a transaction involves the supply of land, the supply is always treated as a supply from the vendor to the nominee.

Where the contract is for a supply of goods other than land, then the following rules operate:

- If the purchaser pays the full consideration, then the supply is to the purchaser.
- If the nominee pays the full consideration, then the supply is to the nominee.
- If both the purchaser and nominee pay part of the consideration, then the supply is treated as being made to the purchaser unless the purchaser and nominee agree otherwise in writing. This will not apply if the purchaser has already claimed an input tax.
- If the purchaser and nominee differ in their GST registration status, then the supply is treated as being made to the nominee.

These rules are intended to provide greater certainty and do not intend to apply to assignments, novations, or agency transactions.

Dwellings

A “dwelling” now means the principal place of abode of a person and the definition of “commercial dwelling” includes farmstays, homestays, B&B’s and serviced apartments.

CHANGES TO GST CONT ....

New Apportionment Rules

Under the new rules, purchasers are now required to claim GST input tax only to the extent to which the goods or services are used in making taxable supplies as opposed to the old rule of claiming 100% or nothing based on the "principal purpose" test.

This requires the purchaser to make a fair and reasonable estimate (based on business plans or experience) of the intended taxable use of the goods and services at the time of acquisition. **For example, if a motor vehicle is purchased, which will be used 60% for taxable activities (based on a valid logbook), then the purchaser can claim 60% of the GST on the purchase price.**

The new apportionment rules also apply equally to land transactions between two GST-registered parties. For example, if the sale and purchase of land is zero-rated then the purchaser will have to account for output tax on the expected non-taxable use of the land purchased.

If at the end of the year the actual use of the goods and services differ from the estimated use at acquisition by more than 10% or $1000, the purchaser is required to make an adjustment. There are no limits to the number of subsequent adjustments required for land but there is a limit to change-in-use to all the other goods and services.

ACC

Clients need to check their ACC invoices that they have received as these could be incorrect. Some instances where this may happen would be:

- part time or full time status has changed
- change of business circumstances e.g. reduction in employees earnings

If you have any concerns, please contact us and we will be able to help you.

Capital or Taxable Distributions?

Often, when a company sells its business, there's a goodwill component in its sale price which is generally treated as a capital gain and therefore tax-free on distribution if the company is wound up.

If some of the technicalities are not observed in winding up, the distribution of this capital gain may not be regarded as exempt dividends for tax purposes.

There are two ways of liquidating a company. One way is to appoint a liquidator by way of a formal resolution after which the distribution may be made any time tax-free. The other way is to write to the Companies Office and seek removal of the company from the Companies Register.

Removing the company from the register is by far the easier and low cost method. However, the Income Tax Act exempts distributions of capital gains from being taxed only if they are made in the course of liquidation. Where a removal is being requested it is important to ensure that the proper procedures and steps are followed in order to qualify as a liquidation.

The premise is that "liquidation" commences only when the company makes its election to be removed i.e. a resolution is passed first to distribute the assets in order to remove the company from the Companies Office Register.

One also has to watch out if the business, along with its assets, is sold to an "associated person" as defined in the Income Tax Act. The transaction may be at market value but if the two parties are associated, any capital gain on the transaction will not be tax-free even if the company is placed in liquidation. There are exemptions for Qualifying Companies.

This area, like many other areas of tax law, is not straight forward and you should seek professional advice if you are thinking of selling your business and winding up your company.

footes limited chartered accountants

30 Church Street, Timaru.
Ph: (03) 687 2036
Fax (03) 684 8032
Email: admin@footes.co.nz
Web: www.footes.co.nz