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GST dips into Charity tickets

The ATO has released a Fact Sheet "GST and Fundraising Dinners". If an organisation holds a fundraising dinner and are registered for GST then GST is paid on the ticket sales. However, a gift is not subject to GST and must be: "made voluntarily, not provide a material benefit to the donor, essentially arise from benefaction and proceed from detached and disinterested generosity. "

If the ticket price to a dinner function costs \$1,000 and contains a 'gift' component of \$900, so that \$100 is the actual dinner cost, then the whole \$1,000 will incur GST. This is because no part of the purchase price can be treated as a gift since the full purchase price must be paid in order to receive the dinner. Source: ATO

ATO has lost gist on gifts

One of the three characteristics of a 'gift' is that it arises "from detached and disinterested generosity".

Got a GST refund from Ford lately?

Ford Credit Australia Limited will refund GST and reduce rental payments on certain car leases for 256 non-business consumers.

This will be for leases entered into after 2 December 1998. Under the GST transition rules, GST was payable on the monthly rental amounts by Ford Credit. The terms

of the lease agreements did not allow the company to pass on the GST to its lessees and that by doing so the company was likely to breach the consumer protection provisions of the Trade Practices Act 1974.

The refunds are for GST paid on the monthly rental amounts under the leases and not for GST paid by consumers on the purchase price of vehicles on termination of their leases.

Ford Credit is to contact relevant lessees by letter over the next few weeks and has set up a toll-free number, 1300 552264, to deal with queries.

Source: ACCC media release No MR187/02, 8 August 2002

No negotiation on GST for Barter & Trade exchanges

The ATO has issued a draft ruling and guidelines to explain whether the supplies provided by barter or trade exchanges are financial supplies and whether they are entitled to input tax credits for acquisitions relating to these supplies.

The ATO states that a barter scheme falls within the exclusions to a "managed investment scheme" as defined in s 9 of the Corporations Act 2001. However, item 10(c) of reg 40-5.09(3) of the GST Regulations 1999 specifically includes such excluded schemes as a security. Accordingly, the ATO states that the provision, acquisition or disposal of an

interest in a Trade Exchange is a financial supply (and so input taxed).

Source: ATO GSTR 2002/D3

Reasonable Benefits Limits – Which RBL applies ?

When a person receives a benefit the Tax Office needs to determine which reasonable benefit limit (RBL) applies in order to determine whether the benefit exceeds the RBL.

It is important to note that the lump sum RBL does not necessarily apply to lump sums or the pension RBL to pensions. The same calculations are used whether transitional RBLs, special transitional RBLs or flat dollar RBLs apply. The flat dollar RBLs applies to most people. Many people only ever take eligible termination payments (ETPs) and/or allocated pensions. In this case the lump sum RBL will always apply. Source : ATO

Super Surcharge for Members of Unfunded Defined Benefits Providers

The superannuation surcharge is levied on the surchargeable superannuation contributions of higher income individuals.

If your superannuation provider has been sent a surcharge assessment in relation to your surchargeable contributions. You will be issued an advice, which will set out how the Australian Taxation Office (ATO) has

calculated your superannuation provider's liability in respect of your surchargeable contributions.

You do not have to pay the surcharge assessment to the ATO. The surcharge assessment will be paid by your superannuation provider when your benefit becomes payable. Your superannuation provider may reduce your benefit by the amount of your accumulated surcharge debt. However, you may choose to pay the surcharge assessment amount at any time to your superannuation provider. Source : ATO

ATO takes compliance approach for SMSFs

Self Managed Super Funds (SMSF's) are superannuation funds with fewer than 5 members and that now have the opportunity to be truly self managing. All members of the fund:

- ◆ Will be trustees of the fund
- ◆ Will be expected to show a commitment to the growth of their retirement income
- ◆ Will be responsible, as trustees, for the compliance of their fund and
- ◆ Should be in a better position to protect their interests in the fund.

SMSFs will not be subject to prudential regulation. Instead, all trustees of SMSFs must comply with the rules and take on the responsibility of protecting their retirement income

Source: ATO

GST Audits Likely for Property Sector

GST Transition rules have been affecting the Property Sector with disputes being regarding the

timing and responsibility for payments given that property developments often have several parties involved with complex ownership and funding arrangements.

The convoluted rules for GST valuation including the various stages of application for the property development process have been interpreted different ways with different outcomes. Since property transactions are expensive and attract larger GST, the ATO is considering the sector a target for more audits.

Fix for family tax benefit overpayments

The Prime Minister has indicated review of the way the Family Tax Benefit system operates.

The reduction of tax refunds to offset overpayments of the Benefit has created problems. Currently those eligible are required to take Family Tax Benefit A and Family Tax Benefit B either both fortnightly or both annually. Some merit is seen in allowing people to take one fortnightly and the other annually. Source: Hansard, House of Reps, 27 August 2002 p 5495

No deduction for establishment of Sale and Leaseback agreements

The establishment costs incurred by a taxpayer in entering into a sale and leaseback of a capital asset are NOT deductible because they are of a capital nature.

The Draft claims that the costs of selling and leasing back capital assets are capital transactions and that the establishment costs take their character from the advantages obtained by these capital transactions, individually or collectively. it does not apply to

banks and taxpayers in the business of lending money. Source: TD 2002/D10

Deduction upheld for stolen Drug money

The Federal Court has upheld a decision to allow a heroin dealer a \$220,000 tax deduction for money stolen during a drug purchase.

The cash, which represented the accumulated proceeds from other drug deals, was dug up from its hiding place in the dealer's back yard. The stolen amount represented a loss or outgoing directly connected with the carrying on of a drug dealing business. Source: FCT v La Rosa v FCT [2002] FCA 1036, Federal Court, Nicholson J, 21 August 2002.

Refund for Tobacco Fees up in smoke

The NSW Supreme Court dismissed an application by a person who sought a range of equitable remedies against tobacco companies and supermarket chains in connection with her claim that they had wrongfully retained tobacco franchise fees. Her claim, said to be made on behalf of all consumers of tobacco products in Australia, was centered on the High Court's decision in Ha v New South Wales (1997) 36 ATR 319 in which it was held that the fees had been invalidly imposed under various State legislation.

The court in effect found that the plaintiff's action was doomed to fail and, therefore, should not be allowed to proceed. Source: Cauvin v Philip Morris Limited [2002] NSWSC 736