Q1 2016

BUSINESS MATTERS

Strategies for managing your business

INSIDE:

- Cancelling or transferring a business name
- Selling your business GST-free
- Meeting your superannuation obligations
- Making environmental claims
- And more

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Employment termination payments

Employees who cease work with your business may be entitled to an employment termination payment (ETP).

An ETP is a lump sum payment that must be made within 12 months of an employee's termination to receive concessional tax rates. If the payment is made outside the 12 month period, it is included in the employee's assessable income and taxed at marginal rates.

It is the responsibility of employers to work out the tax on the ETP and issue a separate PAYG Payment Summary where an ETP has been made. The ETP Payment Summary must be supplied to the employee within 14 days of making the payment and lodged with their income tax return.

An ETP may include payment in lieu of notice, a gratuity or 'golden handshake', compensation for the loss of a job, unused rostered days off or unused sick leave, or certain payments after the death of an employee.

An ETP is subject to two caps to qualify for the concessional rates of tax: the ETP cap and the whole-of-income cap.

ETP cap

The ETP cap applies to all ETP and has a threshold that is indexed annually. The ETP cap applies only to excluded payments, such as:

- genuine redundancy payments and payments that would have been genuine redundancy had the employee not reached the retirement age
- early retirement scheme payments
- invalidity payments
- compensation payments principally for personal injury, unfair dismissal, harassment or discrimination
- payments that do not meet the ETP rules

The ETP tax rate is dependent on whether the employee is under or over the preservation age. Employees who have reached the preservation age or over are taxed at a maximum rate of 15 per cent plus 2 per cent Medicare levy. Employees under the preservation age are taxed at a maximum rate of 30 per cent plus 2 per cent Medicare levy.

Both employees under or over preservation age may be taxed up to 47 per cent plus 2 per cent Medicare levy, if amounts exceed the ETP cap.

Whole-of-income cap

The whole of income cap is a non-indexed cap that applies to some ETPs and works in conjunction with the ETP cap. The cap has $180,000 limit that can only be applied to non-excluded ETPs, which include:

- non-genuine redundancy payments
- golden handshakes
- payments for rostered days off
- payment for unused sick leave
- gratuities

With the whole-of-income cap other income received during the year is deducted from the cap before applying the cap to the ETP, and will reduce the component of the ETP subject to concessional tax rates.

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Cancelling or transferring a business name

Those who sell their business or transfer part or all of their ownership are required to cancel or transfer their business name.

Some instances where you may need to transfer your business name include:

- if you are selling your business name or it has been sold
- you are passing your business name onto a friend or family member
- you are forming a partnership with an existing business name holder and another party
- one of the partners in a partnership or joint venture has left and there is only one partner remaining
- one of the partners has left and is being replaced (does not include joint ventures)

Your business name should be cancelled if you have stopped carrying on business under your business name and do not intend to continue carrying on business again and if you are not required to transfer your business name.

Business name holders wishing to transfer or cancel a business name need to lodge an application with the Australian Securities and Investments Commission (ASIC).

Selling your business GST-free

Business owners preparing for the sale of their business can take advantage of the "going concern" exemption which allows a business to be sold GST-free.

The supply of a going concern requires the seller to provide all things necessary for the continued trading of the enterprise in the foreseeable future. Once a business is considered to be a going concern, the sale of the business becomes exempt from GST.

The reason a buyer of a going concern business would apply for the exemption is to avoid paying additional funds to cover the GST involved in the sale, therefore paying less up front for the purchase. Applying the going concern will also reduce the stamp duty payable on the sale.

However, the seller faces an increased risk if the ATO does not view the sale to be a supply of a going concern for GST purposes. To prevent this some sellers may choose to include a clause in the sale contract, which requires the buyer to compensate the seller for any GST payable if the ATO does not allow the exemption.

The "going concern" exemption is applicable to businesses where the following requirements are met:

- the previous business owner supplies everything required for the continued operation of the business
- the previous owner continues managing the business until the day of the new owner taking over supply
- the purchaser is registered or required to be registered for GST
- payment is made for the sale
- the buyer and seller agree before the sale, in writing, that the sale is of a going concern

Meeting your superannuation obligations

At first glance, an employer's responsibilities and obligations under superannuation law can seem complex.

However, Australia's superannuation rules are fairly straightforward once employers become accustomed to the rules and concepts.

All employers must choose a default super fund for an employee's Super Guarantee (SG) contributions. A default fund is a fund where employers pay, on an employee's behalf if they haven't nominated a super fund, an employee's super contributions. SG contributions are the minimum amount employers must pay to their employees.

Unless a specific enterprise agreement or award states otherwise, all employers must pay a set rate of SG contributions into each eligible employee's super fund.

For the 2015-16 financial year, the SG rate is 9.5 per cent of an employee's ordinary time earnings. This rate is set to increase gradually over the next few years.

Employers must pay SG at least four times per year by the quarterly due dates into a complying super fund and report this to the ATO.

For superannuation purposes, an employee's income includes regular wages, as well as commissions, shift loadings and some allowances. Overtime payments are excluded from an employee's income.

Some employees may ask their employer to deduct extra super from their pre-tax income, and pay it into their super fund. This activity, known as salary sacrificing, is a popular way for employees to boost their retirement income while also providing taxation benefits.

Employers must notify the ATO of all such payments in the PAYG Payment Summary.

Australia's superannuation laws and regulations are often changing and employers need to stay up to date with any new rules and obligations introduced. Luckily, most default funds send members regular updates on changes to employer responsibilities and procedures.

Making environmental claims

Businesses wishing to use environmental claims in their marketing strategy need to make sure their claims are honest, accurate and can be substantiated.

Many customers will use environmental claims as a factor when evaluating a product. To avoid misleading or deceiving a customer, claims need to be scientifically sound and explicitly identify and convey any 'green' characteristics.

Special care must be taken when formulating 'green' claims to ensure your business is providing customers with a truthful overall impression of your products. Businesses must comply with the Australian Consumer Law to ensure environmental claims are not false or misleading representations.

Here are some principles to consider:

Claims must be accurate

Any claim made must be accurate and not mislead customers in any way. You must be able to substantiate any claim made, for example, what scientific authority can justify the basis of your claim.

Be specific

Broad or unqualified statements can mislead customers as the audience can draw many meanings. A claim needs to be specific in how it links to a part of a product or its production process, such as packaging, manufacture or transportation.

Avoid using vague claims such as "environmentally friendly", "safe", "green", "energy efficient", "recyclable", "carbon neutral" or "renewable" as they can be misrepresented and mislead customers into drawing incorrect conclusions.

Use plain language

Avoid using technical terms or jargon that may confuse the customer. The customer needs to be able to understand what exactly is beneficial about a product so assumptions are not made.

Claims must have genuine benefit

Environmental claims must provide a real benefit and should only be applied where they are relevant. Be aware that claims can lose relevance over time, therefore, they might not be appropriate to use as they can mislead customers. Claims must also not overstate the benefit or level of scientific acceptance.

Use an appropriate context

When making claims ensure they are used in an appropriate setting. For example, do not claim that a product is not tested on animals if it was never tested on animals to begin with.

Use endorsement with caution

When using logos, certifications of your product or environmental schemes provide customers with further details of the scheme to prevent misleading impressions.

Be wary with images

If your business uses pictures associated with the environment, such as the earth or forests, customers can infer environmental benefits. To reduce misrepresentation use symbols and images with caution.

Claiming GST credits for employee reimbursements

Employers registered for GST may be able to claim GST credits for payments they make to reimburse employees or partners for work-related expenses.

Individuals who run a business are entitled to a GST credit for an employee-reimbursed expense if:

- the employee expense is directly related to their activities as an employee, or the reimbursement is an 'expense payment benefit'
- the sale of the item bought by the employee was taxable
- the employee is not directly entitled to a GST credit for the expense

The ATO states that businesses can claim GST credits when they can provide relevant documents, such as receipts or tax invoices, to substantiate claims for reimbursement. Once this documentation has been provided, businesses can claim a GST credit in their Business Activity Statement.

According to the tax office, an 'expense payment benefit' is made when a business makes a payment to, or reimburses, another person 'in whole or in part, for an amount of money spent by the person as part of their employment.

A business is not entitled to receive GST credits if it has reimbursed non-deductible expenses, expenses relating to input taxed sales that are made through running of the business and exceed the special threshold for financial purchases or paid the employee an allowance.

The tax office also states that businesses cannot claim to have made a reimbursement for payments made to employees based on a "notional" expense e.g. making a cents-per-kilometre payment to cover the work-related use of an employee's private car.

A business is considered to make a reimbursement when it pays an employee for the price, or part of the price, of a purchase the employee made e.g. if an employee incurs an expense of $200 and is paid the whole or half of the $220 amount, either payment will be a reimbursement.

A business is also considered to have made a reimbursement when it:

- pays an employee for a particular expense they haven't yet paid, but are soon to be liable for
- pays an employee in advance for an expense they have not yet incurred, provided that the employee pays back any unspent amount of the advance to the business
- pays an expense on behalf of the employee

When any personal use of a purchased item is involved or the expense relates to non-cash employee benefits, a business's liability for FBT should be considered.

Hiring the right employee

Hiring a new employee is an important decision with the potential to make or break your business.

Hiring the wrong employee can cost your business a lot of time, money and productivity. Employers can benefit from spending more time on the recruitment process to ensure the candidate suitably matches the culture and position you want to fill.

Here are a few ways to hire the right staff:

Plan your hiring strategy

To attract the right candidates, it is important to develop a clear job description for the advertised role. The job description should identify the tasks involved, skills, qualifications and experience necessary to fulfill the position. A well defined job description can help to screen applicants and assist with the development of interview questions.

Employers need to assess whether candidates are appropriate for the position by assessing if they have the necessary skills. Employers should shortlist candidates based on how well their skills and experience best match the role.

Consider your organisational culture

Candidates should be assessed on their compatibility with your business's core values, attributes and behaviours. Employers need to understand their own culture and decide on what personality and character traits they are looking for in a potential employee.

A candidate's cultural fit can be determined through interview questions aimed at revealing the personality and character of the applicant.

Review credentials

Before making a job offer, it is important to check references and verify the credentials claimed are accurate. If the position requires qualifications, make sure you have relevant documents and certificates.

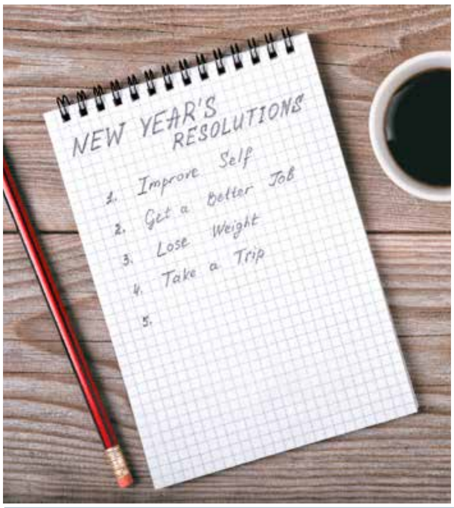
Conducting reference checks is a vital step in the recruitment process. References provide valuable insight into the applicant's past behaviour, providing employers with a better indication of fit for the position. Performing a background check can help you to make more informed hiring decisions.

Make cash flow your 2016 resolution

The start of the new year provides small businesses with the perfect opportunity to improve their credit management and cash flow conversion cycle.

Cash flow was one of the biggest causes of small business failures last year, with around 90 per cent of enterprise insolvencies due to businesses putting their tax debts last to supplement their working capital.

Managing cash flow is more than just good practice for business; it is key to survival. Here are five tips for improving your credit management and cash flow in 2016:



Implement a clear credit policy

Routinely review your business's credit policy to ensure it remains appropriate for the business's risk profile.

Document your terms of trade

Terms of trade need to be documented and include aspects like prepayments, deposits, guarantees, security and payment terms.

Understand your customers

Routinely carry out credit checks for new and existing customers to identify any issues that can influence credit terms and limits.

Develop a clear debt recovery process

A business's process for collections should be clearly mapped out, understood and strictly followed by all staff. Businesses who are disciplined in their collections process are more likely to see this kind of behaviour in clients who will follow the same practice after seeing the importance of paying on time.

Make provisions for bad debts

Good credit management is about safeguarding profitability. Provisions for bad debts should be made in the budgeting process to minimise the risk of impacting on profitability.

Important tax dates

February 21

January monthly business activity statement and PAYG Withholding - due date for lodging and paying.

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Quarterly activity statement, quarter 2, 2015-2016 - due date for lodging and paying.

Due date for lodging Superannuation guarantee charge (SGC) statement - quarterly and paying the super guarantee charge for quarter 2, 2015-16 if the employer did not pay enough contributions on time.

March 21

February 2016 monthly activity statement - due date for lodging and paying.

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Tax return for individuals and trusts whose latest return resulted in a tax liability of $20,000 or more, excluding large/medium trusts.