Q4 2019

BUSINESS MATTERS

Strategies for managing your business

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INSIDE:

Deduction rules for small businesses

Spending on capital assets usually cannot be deducted immediately. Instead, small businesses claim the costs over time in accordance with the assets' depreciation.

There are many different processes that businesses can employ to make claims on their assets. For small businesses with lower-cost assets, methods such as simplified depreciation or the threshold rule can help to make more effective claims.

Simplified depreciation:

Under simplified depreciation rules, business owners can immediately deduct the business portion of each depreciating asset that was first used or installed ready for use up to:

- $30,000 from 7.30pm (AEDT) on 2 April 2019 until 30 June 2020.
- $25,000 from 20 January 2019 until 7.30pm (AEDT) on 2 April 2019.
- $20,000 before 29 January 2019.

Owners can also pool the business portion of most other depreciating assets that cost more than the relevant threshold in a small business asset pool. Then they can claim a 15% deduction in the first year, regardless of whether they were purchased/acquired during the year, and then a 30% deduction each year after. When less than the relevant threshold, the balance of the small business pool can then be written off at the end of an income year. This is calculated before applying any other depreciation deductions.

The threshold rule:

The threshold rule allows owners to claim an immediate deduction for most expenditure of $100 or less, including any GST, to buy physical assets for the business. The rule is designed to help save time as purchases don't have to be specified if they are of revenue or capital nature. The threshold rule doesn't apply separately to expenditure on an element of a composite asset. This means items that are not functional on their own wouldn't normally be classified as a separate asset. Some examples of items costing $100 or less that fall within the threshold rule are:

- Office equipment – staplers, pens, books, etc.
- Catering items – cutlery, glasses, table linen, etc.
- Tradesperson small hand tools – pliers, screwdrivers, hammers, etc.

The threshold rule doesn't apply to expenditure on:

- Establishing a business, business venture, building-up a significant store or stockpile of assets.
- Assets held under a lease, hire purchase or similar arrangement.
- Assets acquired for lease or hire to (or that will otherwise be used by) another entity.
- Any part of a collection of assets that are dealt with commercially as a collection.
- Trading stock or spare parts.

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Considerations when implementing surveillance in the workplace

In an age where surveillance is becoming increasingly normalised, it is not uncommon for the modern workplace to monitor employees with surveillance technology.

Many employers want to monitor their staff for transparency and the prevention of things like internal theft, lack of productivity, security and safety issues. While workplace surveillance may provide better employee insights, there are a number of rights and responsibilities that should be considered when thinking about implementing a monitoring system.

When using surveillance cameras to monitor employees, employers should have a legitimate business reason to do so and ensure that they adhere to the lawful regulations specified by the state. There are limits to the extent of how much video surveillance can monitor, for example, employers are generally not allowed to track union activity or private spaces such as breakrooms, bathrooms or locker rooms. A surveillance policy can be put in place so that staff understand their surveillance rights and obligations.

Using surveillance devices that record audio is generally not permitted as this would be a breach of federal wiretapping laws. For this reason, surveillance cameras usually don't have a function that records sound.

Employers are required to inform employees before installing surveillance technology. The Workplace Surveillance Act 2005 (NSW) states that written notice must be given to employees at least 14 days before monitoring activities are implemented. Employees should be aware of any specific rooms that are being monitored. The illegal surveillance of employees can result in corporate fines of up to $55,000 per breach, imprisonment, and reputational damage.

The wellbeing of employees should also be considered when thinking about installing surveillance technologies. There have been worker reports of increased stress due to being constantly monitored, and a perceived lack of trust and privacy between the employer and employee. For this reason, many workplaces decide against workplace surveillance.

With there being both benefits and disadvantages to having surveillance technologies, it is up to the employer to decide whether they would be appropriate for the workplace. The most important thing is that employees are informed of any monitoring devices, and any legal regulations are understood.

A deed or an agreement?

The decision on whether to use a deed or an agreement can make a significant difference to the success of a transaction or project.

Both document types are used to prepare contractual arrangements, with each having its own benefits. Understanding the differences and making an informed decision can significantly impact the success of a transaction.

An agreement (or contract) must meet the following pre-conditions to be valid and enforceable:

- Each party must have the intention to be legally bound.
- There must be an offer from one party that is accepted by the other party.
- Consideration must flow between the parties.

For a deed to be considered valid and enforceable, it must:

- Be signed, in writing and witnessed by a person who is not a party to the deed.
- Use wording that indicates that the document is a deed i.e. 'this deed' or 'executed as a deed' and 'signed, sealed and delivered' should be used in the execution clauses. The wording in the document must be consistent.
- Be provided to the other party or parties.
- Having supporting evidence that the parties intended the document to be a deed and are bound by it.

The main difference between an agreement and a deed is that there is no requirement for consideration to make a deed binding. This is because of the idea that a deed is intended, by the executing party, to be a solemn indication to others that they truly mean to do what they are planning to do or are doing. A deed is considered to be binding on a party when they have signed, sealed and delivered the deed to the other parties, even if the other parties have not yet executed the deed document.

Each state in Australia has specific legislation regarding the period of time in which a claim or action can be lodged, following the breach of an agreement or deed. A claim following a breach of an agreement must be submitted within 6 years of the breach occurring. The period is longer for those who make a claim following a breach of the terms of a deed. Since the length of time usually depends on the law of each state, it is important to have a jurisdiction clause in your deed or agreement.

We are here to help

Make use of us! This guide is merely a starting point, designed to help you identify areas that might have a significant impact on your personal and business planning.

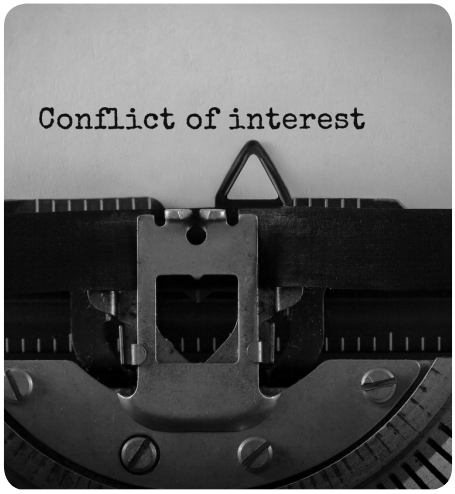
We are always pleased to discuss matters with you and advise in any way we can.

Recognising and avoiding conflicts of interest

Conflicts of interest are often a trigger for workplace tension and gossip, reducing productivity and damaging employee relations.

Common examples of conflicts of interest in business include:

- Recommending a friend or family member for a job position.
- Employers not disclosing that a candidate being considered for a job is a friend or family member.



- An employee starting their own business that provides similar products or services, especially if a non-compete agreement has been signed.
- Working for a competing company.
- Posting to social media about the business' failures.
- Romantic relationships between an employee and their supervisor.
- Accepting a favour or gift beyond the agreed amount from a client.

The best way to avoid conflicts of interest in the workplace is to establish a code of conduct that clearly outlines the standards and expectations of the business. It should cover details of business policies and list everyone it applies to, including employers and employees, board members, management, officers, and contractors. This code of conduct should be communicated to employees verbally and re-enforced through discussions.

A good code of conduct will reflect the culture and values of the business, provide information on how workers can expect to be treated and how they are expected to behave. It should be accessible to all employees, be well organised and comprehensive but also easy to understand. This can be achieved by providing situational examples, answering common questions workers may have, and avoiding technical or legal jargon that may be confusing.

Reestablishing lost or damaged records

Taxpayers are responsible for safely storing a written backup copy of their tax record in case the original electronic form becomes inaccessible or unreadable.

In the event that your records have been damaged or destroyed, there are a number of ways you can reconstruct them. Where the tax records are accidentally lost or destroyed from a burglary or fire, the ATO will allow a taxpayer to claim a deduction for certain expenses, provided that:

- The taxpayer has a complete copy of a lost or destroyed document.
- The ATO is satisfied that the taxpayer took reasonable precautions to avoid the loss or destruction of the form. If the tax record was a written document, it is not reasonably possible to attain a substitute document.
- Taxpayers keep a record of these circumstances and inform the ATO in writing to back up the claim.

The ATO holds and can re-issue or supply copies of tax documents, such as:

- Income tax returns.
- Activity statements.
- Notices of assessment.

If you have lost your TFN, you can still access your tax information by phoning the ATO. They will allow for other information to verify identity, such as an individual's date of birth, address or bank account details.

Employers should have copies of individuals PAYG payment summaries and banks should be able to provide bank records that have been destroyed. Registered agents may also have copies of individual records. In the event your bank charges a fee for replacing bank records and other services to help reconstruct records or provide information due to a disaster, individuals can claim a deduction in the income year that those fees are charged.

If you are unable to substantiate claims made in your tax returns or activity statements because records have been lost or destroyed, the ATO can accept the claim without substantiation, where it is not reasonably possible to obtain the original documents.

New industries included under TPAR

The taxable payment reporting system (TPRS) has extended to further businesses that provide particular services or pay contractors to do so. The extension was approved on 1 July 2019.

Road freight services, information technology services and security, surveillance and investigation services will now have to lodge a taxable payments annual report (TPAR), even if those services only make up part of the business. Contractors can include subcontractors, consultants and independent contractors.

For these businesses, the first TPAR will be due on 28 August 2020. This will be for payments that have been made to contractors in the 2019–20 financial year for providing the relevant services. Business owners will now need to keep records of contractor payments made from 1 July 2019.

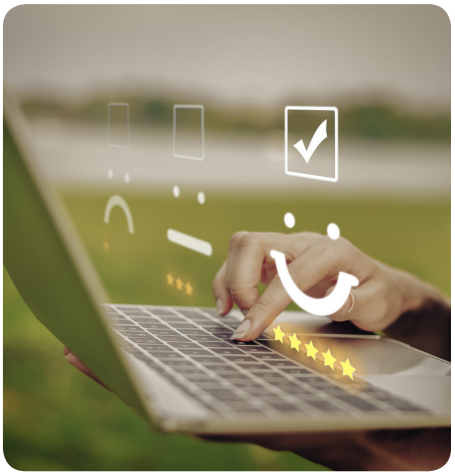
Exemptions from TPRS reporting obligations apply if payments received are from:

- Courier services and road freight services (combined) that are less than 10% of the entity's GST turnover.
- Cleaning services that are less than 10% of the entity's GST turnover.
- Security, investigation or surveillance services (combined) that are less than 10% of the entity's GST turnover.
- IT services that are less than 10% of the entity's GST turnover.

Dealing with negative customer reviews online

With consumers becoming more dependent on online reviews to inform their decisions, it is increasingly important for businesses to manage negative feedback with consideration and tact.

Online reviews are often the first impression a consumer has on a company, with almost 90% of consumers saying that they check reviews for local businesses. Investing in online reputation management means that you are also boosting your customer service, public relations, and marketing.



A negative customer review doesn't necessarily have to be a bad thing, as you can use it to demonstrate your business' care and dedication and learn from your mistakes to improve the future of your business. Feedback management tactics to consider are to:

Be responsive:

Aim to respond to negative feedback promptly, as leaving customers without resolution can worsen their attitude towards your company. Replying to the review quickly can prevent the problem from escalating and spreading to other people.

Apologise wisely:

Avoid defensiveness and aggression, and ensure that the customer feels heard. Apologise for the customer's negative feelings, but not necessarily the thing they are complaining about if it was not your fault. For example, if they have a pricing complaint, offer an explanation over an apology.

Offer solutions:

Making an effort to discuss the issue and provide a satisfying resolution with the customer demonstrates commitment to fixing the problem.

Follow up:

Following up on the situation after a resolution is offered promotes customer satisfaction and lets them know they are valued.

Have a dedicated staff member:

Having to explain the issue to multiple people can be frustrating for the customer, so assigning one employee to manage feedback can keep the process smooth and consistent. Having roles dedicated to customer service can ensure that feedback is handled with skill and expertise.

Learn from the feedback:

Negative comments can be a great way to investigate any issues that you may not have recognised before. Learn from the problem to prevent it from happening again, and evaluate what parts were handled well and what parts could have been improved.

Are you meeting the Active Asset Test?

To qualify for small business CGT concessions, an asset must meet the conditions of the Active Asset Test.

An asset is considered active when you own it and it is used or held ready for use in relation to a business. You can also have an intangible active asset if it is inherently connected with a business you carry on.

An active asset of yours has been held for a certain amount of time, based on how long you have owned the asset and the test period to meet the requirements of the Active Asset Test. The test period begins when you acquired the asset, and ends at the earlier of

- the CGT event, or;
- when the business ceased, if the business in question ceased in the 12 months before the CGT event.

Assets owned for over 15 years need to have been held for at least 7.5 years within the test period and assets owned for 15 years or less need to have been held for at least half of the test period to satisfy requirements.

Passing the basic active asset test is not enough to qualify for CGT concessions for assets such as shares or trusts. In addition, the asset will need to pass a further test, called the 90% test, to determine whether it is to be counted as an active asset or not. The test is satisfied if CGT concession stakeholders in the company or trust in which the shares or interest are held have a total small business percentage in the entity claiming the concession of at least 90%.

The periods in which the asset is active does not have to be continuous, however, they must total the minimum periods specified. An asset does not need to be active just before the CGT event.