KP BULLETIN

KAIAS PHILLIPS

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Accountants &
Business Advisors

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TAX DEVELOPMENTS UPDATE

Crackdown On SMSF Non-Compliance

The ATO is cracking down on SMSF trustees who have breached the *Superannuation Industry (Supervision) Act.*

In a clear indication that the ATO is now taking SMSF compliance more seriously the ATO has disqualified 585 SMSF trustees in 2014 with a higher number expected for 2015.

The crackdown is the result of a number of SMSF trustees prematurely accessing their superannuation funds. Non-compliance with the SIS Act can have serious consequences for SMSF trustees. Outcomes include fines imposed by the Federal Court and, potentially, the SMSF being wound up.

In a recent action by the ATO, The Federal Court has approved civil penalties for the trustees of a self-managed superannuation fund (SMSF) totalling $50,000 in relation to breaches of the SIS Act involving loans to members.

SMSF trustees should be mindful of the options available to the ATO to act against trustees who breach the SIS Act and the importance of ensuring their SMSF is a compliant fund.

ATO Data Matching of eBay Sellers

The ATO has advised that it will be collecting selling data from eBay Australia and New Zealand Pty Ltd to ensure that taxpayers are correctly meeting their tax obligations.

The data requested will include information relating to registrants that sold goods and services of $10,000 or more during the 2014/15 financial year, including name, address, contact information, and the number and value of transactions processed for each online selling account.

Introducing the Kaias Philips Portal

As many of you would have already experienced, we have adopted cloud technology (the “Portal”) a revolutionary new way to share documents and request information in real time.

The Portal which is hosted by MYOB, is an online, secure way of sharing documents and information electronically, so that we are able to send documents to you online in a secure fashion.

Once we send you an email notification of delivery of the documents, you will be able to access your own private secure portal which will contain a list of your posted documents (current and archived). You will then be able to view the documents and if satisfied as to the contents, *you will be able to digitally sign the documents by simply clicking on the “approve” button.*

Digitally signing a document on our Portal is an alternative means to physically signing a document, and is an approved method of signing by the Australian Taxation Office.

You no longer have to wait to receive and return your documents by mail, as the electronic signature feature of the Portal means that documents no longer require a physical signature.

In addition, once you opt in, you will have your own private secure portal which only you can access. Further, you will be able to have access to documents posted to the portal at anytime without reference to us. If you are involved in a venture with other people/entities, you will also have additional portal which can be accessed by yourself as well as your joint venture partners.

The ATO expects to match this data with its records relating to between 15,000 and 25,000 individuals to identify non-compliance with registration, lodgement, reporting and payment obligations under tax laws.

THE IMPORTANCE OF POSITIONING YOUR BUSINESS

The success of a business depends on a large number of variables. However, few are as important as the positioning of the business. In a nutshell, the positioning of the business will drive the way it conducts its business.

The 2 key determinants of the positioning of a business are price and differentiation.

The positioning of your business will be in most part a function of the price it charges relative to the value (or perceived value) of the products/services that it provides (differentiation). Businesses will fall somewhere in one of the 4 Quadrants as illustrated below:-:

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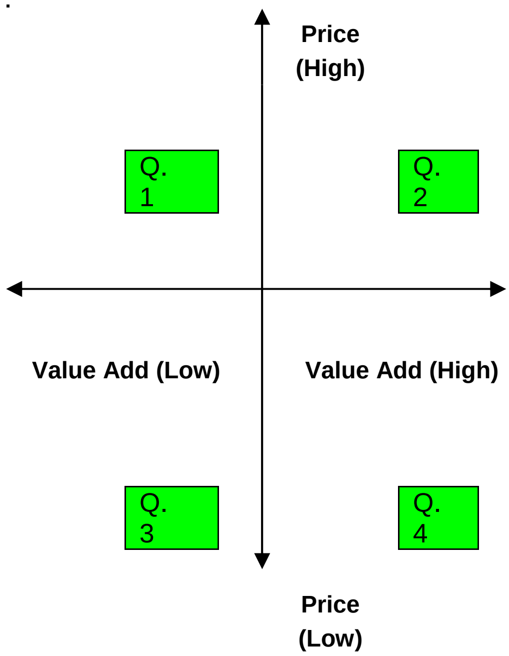


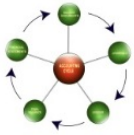
The Quadrants (see Figure above) can be summarised as follows:-

Quadrant 1
Your business sells low value products/services at high prices, or

Quadrant 2
Your business sells high value products/services at high prices, or

Quadrant 3
Your business sells low value products/services at low prices, or

Quadrant 4
Your business sells low value products/services at high prices.



Positioning a business in Quadrant 1, selling low value products/services at high prices, will not exactly entice prospective customers to flock in to purchase its products or services. No one likes to pay high prices for low value products or services. Clearly such a business will find it difficult to generate sufficient sales to operate successfully.

Positioning a business in Quadrant 4, selling high value products/services at low prices, is simply unsustainable. Such a business will inevitably go out the back door.

In order that your business operates profitable and is sustainable it must really belong in either Quadrants 2 or 3.

Positioning a business in Quadrant 2, selling high value products/services at high prices is a good space to be in, provided it can differentiate itself from other providers/competitors in the market place. For a business to succeed in this quadrant, it has to create a (perceived) value add (differentiation) in the customers mind. A business in this quadrant can survive on smaller volumes.

Differentiation is an effective marketing strategy whereby the product or service of the business stands out from that of its competitors due to the existence of some difference (perceived or actual) in the features, physical attributes, or other substantive differences of its products/services and all other alternatives.

Differentiation does not always have to be substantive. What is important is that there is a perception in the market place that the product or service is different from those of its competitors. The ability to differentiate the product or service (perceived or real) is particularly important in gaining an edge in industries where multiple competitors produce similar products.

A good example of a company that has positioned itself in quadrant 2 by offering substantive value add/differentiation in vehicles is Mercedes Benz.

On the other hand, companies selling (for example) cereals differentiate their product through packaging (creating a perception of differentiation). Visiting some supermarkets to buy bran flakes, you'll likely have two options - generic bran flakes, probably packaged in fairly plain packaging, or Wheaties, the 'breakfast of champions.' What is the difference between the generic brand flakes and Wheaties? Very little. But Wheaties is differentiated by its packaging.

Positioning a business in Quadrant 3, selling low value products/services at low prices can be sustainable provided it has a low cost structure and high volume of sales.

A key to such a business would be to generate sufficient sales to compensate for low margins. Therefore a business pursuing a low cost strategy would generally require that it invests in advertising its products or services.

A good example of company's in this quadrant in the Motor Vehicle space is Hyandai.

TAX IMPLICATIONS IN PROVIDING CHRISTMAS BENEFITS

With Christmas being almost upon us, many businesses will be planning their annual Christmas party as well as considering what gifts, if any, they will provide to clients and employees.

However, in providing such Christmas benefits, employers need to consider the possible FBT and Income Tax implications.

This can be a very complex area, and should be examined in detail by employers providing such benefits.

Christmas parties

Christmas parties constitute "entertainment benefits" and as such are subject to FBT unless specifically exempted, or the "minor benefits" exemption apples.

A **minor benefit** is one that is provided to an employee or their associate (e.g. spouse) on an "infrequent" or "irregular" basis, is not a reward for services, and the cost is **less than $300** "per benefit" inclusive of GST.

The ATO now accepts that different benefits provided at (or about) the same time are not added together when applying this threshold. Basically, this means that a Christmas party and gift may be exempt from FBT, even if provided at the same time, as long as each costs less than $300!

For example, a Christmas party is held at a restaurant costing $220 per head, and at the same time employees are provided with a Christmas hamper (considered to be a non entertainment gift), costing $85. Although the total cost is more than $300, the provision of both benefits will usually be exempt from FBT under the minor benefits exemption.

Holding the Christmas party **on the business premises** on a **working day** is usually the most tax effective. Expenses such as food and drink (including alcohol), are exempt from FBT for employees with no dollar limit, but no tax deduction or GST credit can be claimed.

The cost of clients attending the party are not subject to FBT, but no income tax deduction or GST credit can be claimed on their portion of the cost.

Gifts

Providing gifts to employees or clients can have differing tax implications depending on whether the gifts are classified as entertainment gifts or non-entertainment gifts.

Non-entertainment gifts:-

Employees – are usually exempt from FBT where the total value is less than $300 inclusive of GST. A tax deduction and GST credit can also be claimed. These include skincare & beauty products, flowers, wine, perfumes, gift vouchers and hampers.

Clients – do not fall within the FBT rules as they are not provided to employees. Generally a tax deduction and GST credit can be claimed for these gifts, provided they are not excessive or overly valuable.

Gifts which are not considered to be entertainment include a Christmas hamper, a bottle of whisky, wine, a bottle of perfume, flowers, pen sets, etc

Entertainment gifts:-

Employees – Where the cost for the employee and to family members and their associate is each less than $300 GST inclusive, FBT is not payable, and no tax deduction or GST credit can be claimed.

However, if the cost for the employee and to family members is each $300.00 or more GST inclusive, a tax deduction and GST credit can be claimed, but FBT is payable.

Clients – The cost of any entertainment gifts is not subject to FBT, and no tax deduction or GST credit can be claimed.

Gifts which are considered to be entertainment include:-

- tickets to attend a theatre, live play, sporting event, movie or the like; and
- holiday airline ticket or admission ticket to an amusement centre

DIRECTOR PENALTY REGIME - WHAT YOU NEED TO KNOW

The Director Penalty regime was enacted to ensure that directors cause the company to comply with certain taxation and superannuation obligations by imposing a legal responsibility to ensure the company meets its PAYG withholding and SGC obligations.

It does this by making company Directors personally liable for the outstanding company PAYG withholding or SGC amounts.

It is therefore critical that if you are a director or about to become a director of a company, you make immediate enquiries to ascertain if there are any unpaid and unreported Pay As You Go (PAYG) withholding or Superannuation Guarantee Charge (SGC) amounts.

The directors of a company that fail to meet a PAYG withholding or SGC liability in full by the due date each become personally liable for a penalty equal to the unpaid amount. These penalties are reduced by any amounts paid towards the original liability and are sometimes referred to as parallel liabilities.

Director Penalty Notices

To recover a director penalty from a director, the Commissioner will issue a director penalty notice (DPN) and wait until the 22nd day after issuing that notice before commencing proceedings.

A DPN will be sent to the director at the address listed with the Australian Securities and Investment Commission (ASIC) and will describe the options that are available to a director in order to achieve remission of the director penalties. Usually the company representative or tax agent will have been made aware of the liability to director penalties. The DPN will only be posted to the director of the company.

A DPN will list the *following options* available to a director for discharging a penalty within 21 days of the notice being issued:-

For unpaid amounts that **were reported within three months of the due date**:

- payment of the debt
- appointment of an administrator
- appoint a liquidator to wind up the company
- payment of the debt

If the above actions are not taken before the 22nd day after the DPN is given to the director, the penalty is not remitted and the director is liable for the penalty amount until it is paid in full.

For unpaid amounts that **were not reported within three months of the due date**, the only option available to have the associated penalty remitted is payment of the debt.

The penalty cannot be remitted by placing the company into voluntary administration or liquidation.

In the case of PAYG withholding amounts, the limited remission rule will apply to any director penalty for a PAYG withholding debt that remained unreported three months after the due date.

As a new director, if, after three months from your appointment, there are unpaid and unreported liabilities due before your appointment, the only option available to have the penalty remitted is to pay the debt. The penalty cannot be remitted by placing the company into voluntary administration or liquidation.

SEASONS GREETINGS!

We would like to take this opportunity to wish all of our clients the very best for the festive season and for a happy, safe and prosperous New Year.

We wish to thank you for your continued support over the past year, and we look forward to continuing our association in 2016.

Please note that our Offices will be closed for the festive season from Thursday the 24th of December, 2015 and will re-open on Monday the 18th of January, 2016.