

health adviser

Grant Thornton 

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GST offset arrangements

High-value transactions such as the sale and purchase of a property or business are usually accompanied by a higher level of complexity and risk from a tax perspective. There are many traps for the unwary, particularly with GST where the issues and risks are not always fully understood by the parties and their advisers.

Often there is a tendency to try and remove GST as an issue by zero-rating the transaction as the sale of a going concern. However, unless the circumstances are appropriate, this may not be the best option for one or both parties. Sometimes a better option is to manage the cash-flow by arranging a GST offset with the Inland Revenue.

Zero-rating sale of going concern

Zero-rating is attractive as it eliminates the GST cost from the transaction; the vendor avoids having to collect GST from the purchaser and the purchaser avoids having to fund the GST and claim it back from the Inland Revenue.

Where a business is being sold "lock, stock and barrel" then zero-rating the sale for GST purposes as a supply of a going concern will normally be the preferred option. However, in order for zero-rating to apply, all of the following legislative criteria must be met:

- The supply must be of a taxable activity, or part of a taxable activity that is capable of separate operation;
- All of the goods and services that are necessary for the continued operation of that taxable activity must be supplied;
- The supplier must carry on the taxable activity up to the time of its transfer;
- The vendor and purchaser must both be registered at the time of supply;
- The parties must agree in writing that the sale is the supply of a going concern.

In some instances zero-rating is not an option as not all criteria are met - for example, a key element of a business is not supplied such as access to premises. In other instances the ability to zero-rate may only be arguable or is only supported by one of the parties. In these cases a GST offset should be considered.

A purchaser is understandably keen to minimise the cash cost of GST and, for this reason, zero-rating is appealing. However, if the zero-rating later falls over and the Inland Revenue assesses the vendor with GST then, depending on the terms of the contract between the parties, the vendor will usually be able to recover the GST from the purchaser (together with any interest and penalties!). A GST offset arrangement can sometimes be a lower-risk alternative to manage the cash-flow cost of GST.

GST offset arrangements (Cont.)

GST offsets - A GST offset arrangement is simply an arrangement where the parties agree with the Inland Revenue that the GST refund due to the purchaser from the transaction will be transferred directly to the GST account of the vendor to settle their output tax obligation. The Inland Revenue are happy to do a GST offset as no cash refund is required and they have certainty over the payment of the output tax.

A GST offset is beneficial to both vendor and purchaser. Specific benefits include:

- Removing the funding cost of the GST for the purchaser. This is often a key issue for a purchaser, so offering a GST offset arrangement could help a vendor close a deal where funding is a concern;
- Providing an alternative to zero-rating where there are issues over whether a going concern exists;
- Reducing risk to the vendor regarding the payment of GST by the purchaser.

If the vendor and purchaser agree to a GST offset then this should be incorporated in the sale and purchase agreement. Clauses should cover such matters as the parties' agreement to the offset, the fall-back position regarding payment of the GST should the offset not be approved within a specified timeframe, and the circumstance of the GST refund not being sufficient to cover the vendor's liability. Any standard clauses in the agreement relating to sale as a going concern or the GST date may also require amendment.

GST offset procedure - A GST offset can be arranged through a Taxpayer Assistance Officer at the Inland Revenue. However, Grant Thornton can arrange this more efficiently and effectively through our assigned Agent Account Manager.

One pre-requisite to a GST offset is that the purchaser must have a GST period ending on or before that of the vendor. A GST refund becomes available on the day after the end of the period for which a return is prepared, and this must obviously precede the due date for the vendor's output tax obligation.

The GST offset procedure is not too dissimilar from a normal large GST refund claim by a purchaser. The Inland Revenue will need to satisfy themselves as to the availability of the input tax claim and therefore the full sale and purchase documentation will almost invariably need to be supplied for review. This will usually include:

- A copy of the sale and purchase agreement;
- A copy of the tax invoice;
- A copy of any deed of nomination (where applicable);
- Evidence of payments made (where the purchaser is on a payments basis);
- A letter between the parties agreeing to the GST offset arrangement.

It is generally preferable to start the GST offset procedure as early as possible.

Where time and circumstance permits, the sale and purchase documents should be sent to the Inland Revenue for an in-principle approval of the offset before the filing of the GST returns. The Inland Revenue prefers that both parties file their GST returns electronically to facilitate the process.

If you are contemplating a large transaction and wish to consider using a GST offset, please contact your local Grant Thornton office.

Promoting your web address

Encourage people to visit your website

Make sure your web address appears on every possible link with your business. This includes

- stationery
- signage
- invoices
- business cards
- collateral
- clothing
- vehicles
- packaging
- and all forms of advertising.

Increase hits from search engines

Search engines need to know your website exists so your business can feature on searches.

- Create a list of key words that describe
 - your business,
 - what you do,
 - your industry or sector,
 - your product/service lines/ speciality areas
 and use them frequently throughout the site where possible near the top of a page.
- Make sure every page has a meaningful title.
- Freshen up your website content frequently as search engines recognise updated or new content.
- Search engines read words not pictures so make sure as well as using graphics, you include words linked to the pictures. This is especially important on your home page where the images will hold your visitors attention once the words have brought them to your site.

Holiday Act 2003 - Reality bites

The changes to annual holidays under the Holidays Act 2003 are fast becoming a reality and as mentioned in previous newsletters, consideration needs to be given to the accrual of the liability and the cost of the increased employee entitlements.

We remind you below of the main aspects of the changes and also refresh you on the rules relating to sick and bereavement leave.

Annual holidays - Entitlement

- All employees are eligible for 4 weeks paid annual holidays from 1 April 2007.
- The 4 weeks entitlement is due on an employee's anniversary after 1 April 2007 (this anniversary date could be either the employee's commencement date or a qualifying firm-wide close-down date) as shown in the example: 14 October (start date = anniversary date).

Scenario 1 - Existing employee works through to anniversary date which is after 1 April 2007 (new rules apply) e.g. 14 October 2007 (anniversary date = 4 weeks due now)

8% (4 weeks) applies for period 14 October 2006 to 14 October 2007.

Scenario 2 - Employee resigns before anniversary date and before 1 April 2007 e.g. Resigns 12 February 2007

6% (3 weeks) applies for period 14 October 2006 to 12 February 2007.

Scenario 3 - Employee resigns before anniversary date but after 1 April 2007 (new rules apply) e.g. Resigns 12 April 2007

8% (4 weeks) applies for period 14 October 2006 to 12 April 2007.

Calculating annual holidays:

Annual leave is the greater of:

- Employee's ordinary weekly pay at the beginning of the holiday, or
- Employee's average weekly earnings for the last 12 months.

Accrual of entitlement - Care needs to be taken if you accrue annual holidays on a regular basis for your management accounts (or your payroll software makes an accrual calculation).

Scenario (anniversary date 14 October)	Effective date (2007)	6% (3 weeks)	8% (4 weeks)
1. Employee works through to anniversary date	14 October		X
2. Employee resigns before anniversary date and before 1 April 2007	12 February	X	
3. Employee resigns before anniversary date but after 1 April 2007	12 April		X

Management accounts - The new rules start on 1 April 2007 and an accrual based on 6% (3 weeks) would normally need to be made to 31 March 2007. However if you are anticipating that an employee will be employed after 1 April 2007 then that accrual should be at 8% (4 weeks).

Payroll system - If you are operating a payroll system and your pay-slips disclose unpaid and accrued leave you must be sure to differentiate between that leave which is accrued at 6% (3 weeks) and that accrued at 8% (4 weeks).

This is to ensure that employees do not think they are eligible to the additional leave before 1 April 2007.

Employment contracts - It is advisable for you to review your employment contracts, especially in relation to additional weeks already provided to employees for long service leave etc. It may be that the contract refers to a specific number of weeks in addition to the statutory requirement, that is - if the statutory requirement is 4 weeks then their entitlement may be 5 weeks. These clauses will also affect your annual holiday liability.

Sick leave

- All employees are eligible for 5 days sick leave after completing 6 months current continuous employment.
- The new Act allows for this to be accrued to a maximum of 20 days.
- Sick leave is not paid out on termination.
- Employers have the right to request a medical certificate for absences of 3 or more consecutive days. A medical certificate can also be required for absences less than this if the employer believes the sick leave is not genuine. The employer must bear the cost in this instance.

- Sick leave is calculated on the relevant daily pay. This is the amount an employee would have received had they worked on the day of their absence. This includes incentives, commissions, overtime and allowances.
- Special rules apply if sickness occurs while an employee is on annual leave.

Bereavement leave

- All employees are eligible for bereavement leave after completing 6 months current continuous employment.
- 3 days for a close family member.
- 1 day for a non family member (subject to the employer being satisfied as to the closeness of association of the employee).
- Bereavement leave is calculated on the relevant daily pay (see sick leave above).
- There is no accrual of bereavement leave.
- Bereavement leave is not paid out on termination.
- It is important to note that these days need not be taken at one time, for example if 2 days are taken for the period following the bereavement then, if for example the employee needs to visit the family lawyer the final day can be taken at a later date.
- The entitlement to bereavement leave is an unlimited entitlement. That is, if more than one bereavement occurs in a year then the maximum entitlement is available for each bereavement.
- If a bereavement occurs while an employee is on holiday, bereavement leave must be used instead of annual leave.

The above examples are generalised and you should seek further advice from your employment consultant, legal adviser or employers' association.

Penalty Regime Review

The Government has recently released a discussion document outlining proposed changes to the tax penalty rules. There have been complaints in the past that the rules are too rigid and unfairly penalise those taxpayers who try to comply with their tax obligations.

The proposed changes include:

- Not applying the 20% lack of reasonable care penalty when the taxpayer has used a tax agent. The penalty will apply if inadequate information or instructions were provided to the tax agent, or where a shortfall penalty has been imposed on the same error or action in the past.
- Limiting the scope of the 20% unacceptable tax position penalty so that it applies only to income tax and not to GST and withholding-type taxes.
- Increasing the threshold for imposing the unacceptable tax position penalty to situations where a shortfall is more than both \$50,000 and 1% of the taxpayer's total tax figure for the relevant return period.
- The lack of reasonable care and unacceptable tax position penalties will not be imposed if a taxpayer voluntarily discloses a shortfall before notification of an audit or investigation. This will apply only if the taxpayer makes the disclosure within two years of the end of the period to which the disclosure relates.
- The Inland Revenue will notify taxpayers when a tax payment is overdue, and a late payment penalty will not be imposed provided payment is received by a certain date. Interest will remain payable from the date that the payment was originally due.
- GST returns will be subject to a late filing penalty of \$250 if the returns are not filed on time.

Grant Thornton views these proposed changes as a positive step forward in promoting voluntary compliance, especially the removal of the lack of reasonable care and unacceptable tax position penalties where a voluntary disclosure is made.

If you have any queries regarding the proposed changes please contact your local Grant Thornton office.

Charities & Charitable Donations

Charities - Under the new Charities Act 2005, charitable organisations are required to register with the Charities Commission between 1 February 2007 and 1 July 2008 in order to retain their charitable status and their income tax and gift duty concessions.

This is an opportune time for Charities to review their structure, consider whether their governing documents are still appropriate and decide whether to seek registration.

One would expect it is likely that charities that are registered are likely to attract greater support than those that are not registered. Refer to www.charities.govt.nz for more details.

Charitable Donations - On 18 October 2006, a Government discussion document was released to canvas views on possible tax incentives to encourage charitable giving of money, skills and time.

The document looks at increasing current rebates and deductions for donations, introducing a rebate in recognition of the value of volunteers time and the desirability of adopting tax incentives offered in the UK and Australia. Refer to www.taxpolicy.ird.govt.nz for more details.

If you require further information on any of these topics or would like details on other accounting matters, contact your local Grant Thornton firm:

Grant Thornton Auckland Ltd
Grant Thornton Building
97-101 Hobson Street, Auckland
T 09 308 2570
F 09 309 4892

Grant Thornton Christchurch Ltd
Level 9, Anthony Harper Building
47 Cathedral Square, Christchurch
T 03 379 9580
F 03 366 3720

Grant Thornton Dunedin Ltd
Level 7, Radio Otago House
248 Cumberland Street, Dunedin
T 03 474 0475
F 03 474 0477

Grant Thornton Wellington
Level 13, AXA Centre
80 The Terrace, Wellington
T 04 474 8500
F 04 474 8509

Grant Thornton Whangarei Ltd
Grant Thornton House, Level 1
35 Robert Street, Whangarei
T 09 470 0444
F 09 438 7274

www.grantthornton.co.nz

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