client alert | explanatory memorandum

March 2025

CURRENCY:

This issue of **Client Alert** takes into account developments up to and including 21 February 2025.

Keeping you informed about the Federal Budget

This being an election year, we expect an early Federal Budget; delivery is currently listed by the Department of the Prime Minister and Cabinet for Tuesday 25 March.

The Client Alert team will, as usual, work to bring you a special **Budget Extra** edition that outlines the key announcements to assist you in dealing with your clients' queries. You can expect to receive it by the morning of Wednesday 26 March, after the Treasurer hands down the Budget to Parliament on Tuesday evening.

ASIC warns of scammers impersonating Bunnings with fake investment bonds

If you've spotted what looks like an amazing investment opportunity from Bunnings recently, beware! The Australian Securities and Investments Commission (ASIC) has issued an urgent warning about scammers impersonating the retailer to promote fake "sustainability investment bonds". These scammers claim that the investments will have suspiciously high returns (up to 9%) and are protected by the government, but this is entirely false.

The scam works by targeting people through fake websites and direct spam emails, posing as a responsible entity or broker. The website features Bunnings branding and hyperlinks that direct back to the retailer's genuine webpage, making it appear legitimate. However, Bunnings does not offer bonds or any other investment products. Legitimate bonds are traded through licensed financial institutions, not retailers.

To avoid falling victim to scams like this one, remember the three key steps: *stop*, *check* and *protect*. When considering an investment opportunity:

- *Stop* and think before acting.
- *Check* if the investment is legitimate and if the person or entity offering it is licensed or authorised to do so.
- *Protect* yourself by acting quickly if something feels wrong: contact your bank to stop any transactions and report any suspicious activity to Scamwatch.

Investment basics: bonds

Broadly speaking, bonds are generally considered a safer investment compared to stocks, offering regular interest payments. They are issued by governments or corporations, and when held to maturity, they return the face value of the bond. However, it's important to be cautious of imposters offering fake bonds, as these scams are prevalent. Always research the investment thoroughly, and never give money or personal information to anyone if you're unsure.

If you're interested in investing in bonds, visit the Moneysmart website to learn more about the different types, including government bonds and corporate bonds. You can also check the investor alert list there to see if the company or entity offering the investment is legitimate.

Key takeaways

- Scammers are becoming increasingly sophisticated, exploiting trusted brands to deceive potential investors. Remember, if an investment opportunity seems too good to be true, it probably is.
- Always research the investment and the person or entity offering it.
- Remember the three key steps: *stop*, *check* and *protect*.
- Visit ASIC's Moneysmart website to learn more about investing.

- Report any suspicious activity to Scamwatch.

Always prioritise your financial safety and security by being vigilant and taking the necessary steps to protect yourself from scams. To report a scam or find more information about scams, visit the National Anti-Scam Centre's Scamwatch website at www.scamwatch.gov.au.

Source: https://asic.gov.au/about-asic/news-centre/news-items/scam-alert-asic-warns-consumers-about-investment-bond-scam-impersonating-bunnings/

Claiming tax deductions for vacant land

Tax deductions on vacant land. What could be complicated about that? But as with all things tax, it's not straightforward. Your bit of dirt needs to meet a number of stringent conditions to qualify as "vacant land" for tax purposes to allow you to claim for costs associated with it. When it was purchased, what kind of structures it includes, whether it's farmland, whether there are or were plans to build a home or a rental property all come into play when it comes time to assess vacant land for a tax deduction.

Vacant land defined

So, what is vacant land? To satisfy the ATO, there are two basic tests:

- the land doesn't contain a substantial and permanent structure; or
- if it does, then the structure needs to be a residence that was constructed or substantially renovated while the owner held the land, but that residence either can't lawfully be occupied, or hasn't yet been rented or made available for rent.

Examples of a substantial and permanent structure include a homestead on a farm, a commercial garage, fencing, a silo or a woolshed. Conversely, a residential garage or shed, pipes and powerlines, residential landscaping or a letterbox are not seen as substantial and permanent structures.

Before or after 2019?

A big shift in the tax approach to vacant land came with new rules introduced on 1 July 2019. These rules deny tax deductions claimed for costs incurred while owning vacant land, except in quite specific cases. Before the change of rules, owners of vacant land could claim a deduction for the costs of holding the land, if it were held for income-producing purposes or for carrying on a business to produce income. Deductible holding costs included interest on loans to buy the land, maintenance costs and council rates.

When you can claim

The good news is there are three situations that will allow you to claim deductions on vacant land. You will be able to claim if:

- you are a particular type of entity (eg a corporate tax entity, a superannuation plan or a managed investment trust);
- the land is used in business or leased to another entity for their business – but in this case the land must not contain an existing residence or one under construction; or
- the land is used by you, an affiliated entity or your spouse in the business of primary production, as long as there's no residence in existence or being constructed on the land.

If your land is considered vacant land but these particular situations don't apply, then you will not have the opportunity to claim any deductions.

If one of these situations do apply, a number of costs involved in holding vacant land can be claimed. These include ongoing borrowing costs, interest payments on money borrowed to buy the land, council rates, land taxes and maintenance costs.

However, the costs of or any interest or borrowings associated with repairing, renovating or constructing a structure on the land are excluded.

Exemption for exceptional circumstances

Importantly, the ATO recognises that exceptional circumstances outside your control may occur (eg a natural disaster, major building fire, or substantial building defects) resulting in the loss of the substantial/permanent structure on your land or the structure being disregarded. Under those circumstances, an exemption may apply, allowing deductions for holding costs of vacant land to be claimed for a limited 3-year period.

Source: www.ato.gov.au/individuals-and-families/investments-and-assets/land-vacant-land-and-subdividing/deductions-for-vacant-land

Made a mistake charging GST? Don’t panic

As a small business owner, you know how important it is to get your GST right. But mistakes can happen, even to the most diligent among us. If you’ve realised you’ve incorrectly charged GST on a sale, don’t panic – there are steps you can take to rectify the situation.

First, let’s look at how this might have occurred:

- You treated something that’s not actually a sale as a taxable sale.
- You treated a GST-free or input taxed sale as a taxable sale.
- You miscalculated your GST liability, resulting in a higher amount reported on your business activity statement (BAS).

So what happens now? The key factor is whether you’ve passed on the excess GST to your customer.

If you’ve passed on the GST

In most cases, if you’ve charged GST and issued a tax invoice, it’s considered to have been passed on to the customer. In this situation, the excess GST is treated as correctly payable under the law, and the ATO cannot refund it to you directly.

Your options are to:

- *Reimburse your customer:* If you choose to reimburse the customer for the excess GST, you can make a decreasing adjustment on your next BAS to recover the amount. Your customer, if GST-registered, will need to make a corresponding increasing adjustment.
- *Request a discretionary refund:* In limited circumstances, you can apply to the ATO for a discretionary refund of excess GST that hasn’t been reimbursed to the customer. However, this is only granted in very specific situations where it wouldn’t result in a “windfall gain” for your business.

If you haven’t passed on the GST

If you have clear evidence that you didn’t pass on the excess GST to your customer (which is rare), you can treat this as a GST error. You have two options:

- correct it on a later BAS; or
- revise the earlier BAS where the error was made.

Correcting on a later BAS

The ATO allows you to correct GST errors on a later BAS, which is often simpler than revising an earlier period. However, this option’s only available if the later BAS is lodged within the review period for the earlier period when the error was made. For most small businesses (GST turnover under $20 million), you can correct debit errors up to $12,500 within 18 months of the due date of the original BAS. Remember too that you can’t correct an error to claim additional GST credits if the four-year time limit for claiming those credits has expired.

Key takeaways

In summary, if you find you’ve incorrectly charged GST on a sale:

- Don’t ignore the error – address it promptly.
- Determine whether you’ve passed on the GST to your customer.
- Consider reimbursing your customer, if possible.
- Keep detailed records of the error and your actions to correct it.
- Seek professional advice if you’re unsure about the best course of action.

By staying proactive and addressing GST errors correctly, you can maintain compliance and avoid potential issues down the track. Remember, if you’re ever in doubt about your GST obligations or how to handle a specific situation, it’s best to consult a qualified tax professional or contact the ATO directly for guidance.

Source: www.ato.gov.au/businesses-and-organisations/small-business-newsroom/have-you-incorrectly-charged-gst-on-a-sale

Making smart super investment choices

Choosing the right investment option for your superannuation is important for your retirement savings. It's essential to understand the different types of investment options and their associated risks to ensure you choose the one that's right for you.

Premixed, choice and lifecycle options

Super funds typically offer a range of premixed investment options that usually have different asset allocations:

- *Growth:* These options primarily invest in shares or property and aim for high returns over the long term. They come with higher probability of short-term losses, so they're generally suited to people with a longer investment horizon.
- *Balanced:* With about 70% in shares and property, balanced options strive for moderate returns with less risk than growth options. They offer a middle ground for investors who seek growth but prefer less volatility.
- *Conservative:* Investing primarily in fixed interest and cash, these options focus on preserving capital with lower returns.
- *Cash:* With 100% investment in cash or equivalent, these options offer stability and capital preservation, suitable for very risk-averse individuals or those close to accessing their funds.
- *Ethical:* These investments exclude companies that don't meet certain ethical standards and vary in market risk, allowing you to align your investments with your personal values.

In addition to premixed options, some super funds offer single asset class investments (eg Australian shares fund or international shares fund) and you can choose what percentage you invest in each asset class yourself. Some "platform" style funds also let you pick direct investments. This can include investing in individual shares, exchange-traded funds (ETFs) or term deposits. Direct investing such as this is not restricted to just self-managed superannuation funds.

Many super funds also offer lifecycle investment options, which automatically reduce your exposure to higher-risk growth assets as you age. These can be a good choice if you want to take a hands-off approach to your investments.

Your risk profile

When selecting your super investments, it's important to consider your risk profile. Your risk profile is essentially your comfort level with potential investment losses in pursuit of returns. Here are some considerations:

- *Risk tolerance:* Determine how much market risk you're willing to take. Are you comfortable with the possibility of short-term losses for higher long-term gains, or do you prefer stability?
- *Investment horizon:* The amount of time before you access your super can influence your risk tolerance. Longer horizons may allow for more aggressive investments, while shorter ones might necessitate a conservative approach.
- *Standard market risk measure:* Super funds provide a standardised risk rating that predicts how often an investment might deliver a negative return over 20 years. This measure helps compare the risk levels of different investment options.

For example, if you're 30 years old and have a long-term investment horizon, you may have the time horizon to ride out the ups and downs of a growth investment option. However, if you're 55 and nearing retirement, you may want to switch to a more conservative option that will have smaller fluctuations in value. However, inflation risk means that the return on overly conservative investments may fall short of the rate of inflation – reducing the purchasing power of your investment over time. So there are several types of risk to consider other than just market risk.

Overall, choosing the right investment option for your super requires careful consideration of your individual circumstances and goals. Online resources such as ASIC's Moneysmart website can help you make an informed decision, and many super funds offer free guidance. It's also a good idea to consider getting professional advice, for example by consulting a financial adviser.

Source: https://moneysmart.gov.au/grow-your-super/super-investment-options

General transfer balance cap increases to $2.0 million

The December 2024 Consumer Price Index (CPI) number has been released, confirming that the superannuation general transfer balance cap will increase by $100,000 to $2.0 million for the 2025–2026 income year. The cap was previously $1.9 million for both the 2023–2024 and 2024–2025 income years.

What is the general transfer balance cap?

The transfer balance cap was introduced in 2017, and is a lifetime limit on the amount of superannuation that you can transfer into one or more retirement phase income streams. Earnings on superannuation in the retirement phase are currently tax-free and income or withdrawals after age 60 are also generally tax-free. The cap was introduced to more equitably distribute superannuation tax concessions and ensure that the superannuation system is sustainable over the long term.

Unlike other superannuation caps, such as contribution caps, the general transfer balance cap is not indexed in line with Average Weekly Ordinary Time Earnings (AWOTE), but is annually adjusted based on the Consumer Price Index (CPI) in $100,00 increments.

The general transfer balance cap was originally set at $1.6 million. CPI increases triggered increases in the cap from 1 July 2021, 1 July 2023 and 1 July 2025. This meant the cap was $1.6 million from 2017–2021; $1.7 million from 2021–2023; $1.9 million from 2023–2024 and $2.0 million from 2025–2026.

How does it work?

A personal transfer balance cap applies to you as an individual when you start a retirement phase income stream *for the first time*. Your personal transfer balance cap will equal the general transfer balance cap at that point in time. So, if you start your retirement phase income stream on or after 1 July 2025, your personal transfer balance cap will be set at $2.0 million. If you have more than $2 million in super and you are looking to retire soon, you may want to consider waiting until 1 July to get more into a tax-free income stream. Speak to your financial adviser to see what the right timing is for you.

If you started an income stream before 1 July 2025, depending on the date, you would have a personal transfer balance cap of between $1.6 million and $1.9 million. If you didn't use the full amount of your personal transfer balance cap at the time, a proportional increase may potentially apply to your personal transfer balance cap on 1 July 2025. Consult your adviser to assist in the calculation of any proportional increase and how this may impact how much you can still transfer into a retirement income stream.

If you exceed your personal transfer balance cap, the excess must be withdrawn from the income stream and taken in cash or transferred back into your superannuation account, and an excess transfer balance tax would need to be paid. The ATO will generally notify you and send you an excess transfer balance determination to let you know you've exceeded your personal transfer balance cap.

Using ATO online services via your MyGov account can help you keep track of your personal transfer balance cap and your transfer balance account (including any excess over your cap), recording all the debits and credits that make up your balance.

Source: www.ato.gov.au/individuals-and-families/super-for-individuals-and-families/super/withdrawing-and-using-your-super/retirement-withdrawal-lump-sum-or-income-stream/transfer-balance-account

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