



WINE GIFTS MADE TO YOUR CLIENTS

Of interest to those who own or operate a business is the situation that the Australian Tax Office Ruling on the deductibility of gifts made to clients, is income tax effective in the right circumstances, and to this end, below is a summary of that ruling. **Wine is recognised as one of the most effective gifts** you can use for 'customer retention' or to reward your clients & staff for their loyalty to your business. Therefore, on this basis there may be a further benefit where you are able to not only get a Tax Deduction, but also claim back the GST Input Credits

2004 ATO Tax Ruling – Gifts to a Client

CAN A DEDUCTION BE CLAIMED FOR GIFTS MADE TO CLIENTS?

In ATO ID 2004/427, the ATO considers whether a taxpayer, who is carrying on a renovation business, is entitled to a deduction under sec 8-1 for a gift made to a client after the provision of their services to that client have ceased.

Conclusion

The ATO decides that yes the taxpayer, who is carrying on a renovation business, is entitled to a deduction under sec 8-1 for a gift made to a client after the provision of their services to that client have ceased.

Facts

The taxpayer operates a renovation business that involves the provision of their services to clients. On a date (for example a festive occasion) after the provision of services to a client have ceased, the taxpayer gifts a celebratory bottle of champagne to the client. The gift is provided within 12 months of the provision of the services to the client. The taxpayer expects the gift will either generate future business from the client or motivate them to refer the taxpayer's services to others. The taxpayer had no other reason for providing the gift. The expenditure is not deductible as a gift under Div 30 of the ITAA 97.

Analysis

Section 8-1 allows a deduction for all losses or outgoings to the extent that they are incurred in gaining or producing assessable income or are necessarily incurred in carrying on a business for that purpose. However where the outgoings are of a capital, private or domestic nature, or relate to the earning of exempt income they will not be deductible. In addition, losses or outgoings will be not deductible under sec 8-1 where another provision prevents it (sec 8-1(2)(d)). Losses or outgoings are incurred in gaining or producing assessable income where they are 'incidental and relevant to that end' (*Ronpibon Tin NL and Tongkah Compound NL v FCT* (1949) 78 CLR 47 (the Ronpibon Case)). Where a taxpayer is carrying on a business for the purpose of gaining or producing assessable income, the commercial and practical implications of the term "necessarily incurred" imply that voluntary expenditure incurred for business needs may be deductible. It is the taxpayer who decides whether the expenditure "is dictated by the business ends to which it is directed" (*FCT v*

Snowden & Willson Pty Ltd (1958) 99 CLR 431 (Snowden & Willson's Case)). This was further supported in *Magna Alloys & Research Pty Ltd v FCT* (1980) ATC 4542 when the Court stated:

For practical purposes and within the limits of reasonable human conduct, it is for the person who is carrying on the business to be the judge of what outgoings are necessarily incurred." In this case, the taxpayer provided a gift on the expectation that the gift would either generate future business from the client or motivate them to refer the taxpayer's services to others. The taxpayer had no other purpose in providing the gift. Thus, the expenditure on the gift was in the nature of business promotion. Although the gift is provided to a client up to 12 months after the cessation of the services, there is a prospect that the expenditure may produce assessable income in the future. Further, the taxpayer's expenditure can be regarded as necessarily incurred because it is dictated by 'the business ends to which it is directed'. In other words, the taxpayer has decided to voluntarily incur the expenditure in the practical conduct or administration of their business (Snowden & Willson's case). Consequently, the expenditure was necessarily incurred in carrying on a business for the purpose of gaining or producing assessable income. Therefore, the taxpayer, who was carrying on a renovation business that involved providing services to clients, was entitled to a deduction under sec 8-1 for a gift made to a client after the provision of services to that particular client had ceased.

It should also be noted that as the gift does not constitute the provision of entertainment (Taxation Determination TD 94/55), the expenditure is not excluded from deductibility by sec 32-5 of the ITAA 97.

Tips on how your business can comply with the ATO Ruling.

1. Make sure you get your own independent Tax advice in this regard.
2. Ensure your Accounting System can track the purchase of your Gift including the GST on the purchase.
3. Keep a record of the wine gift made with the date given - you have to make the gift within 12 months of the purchase of your wine.