



# The Square Orange

March 2005

## Starting up your teams

Teik Oh, Director of OTS Management, has launched a new workshop designed to start up a newly-formed team.

Called "Ignition!" it is a one-day workshop suitable for small businesses that has newly created a team for a special purpose.

A business may have started a team to explore a new opportunity, or to create a marketing plan, to open a new store, or simply to start a self-managed team in the workplace. This needs carefully worked out steps - a group of people thrown together is not a team, just like a group of good football players do not make a pennant win-

ning team.

The "Ignition!" workshop starts with providing the team with a "charter" - a



Teik Oh

set of rules and expectations, and authorities.

A team Mission Statement is created and training in Consensus Decision-Making is provided.

The workshop also brings out the team's agreed group interests and contrasts these with individual's interests allowing both to co-exist within ground rules established by the team.

At this stage the team has a chance to brainstorm ideas, as well as the difficulties they foresee.

Finally, with all the analysis, a draft work plan is formulated to set up the team's targets and measures, compared to the charter.

If you would like to know more, contact Teik on 08 9242 2220 or by emailing [teik@otsmanagement.com.au](mailto:teik@otsmanagement.com.au)

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### Special points of interest:

- ◆ This month's "The Juice" has a tip about effective communication
- ◆ We thank our clients for referrals - see this page
- ◆ Starting up a team at work? See the lead article
- ◆ Another twist regarding GST on property (page 2)

## OTS Management starts cropping

Our business is based on satisfied customers who have constantly referred clients to us.

To reward our loyal clients who refer others to us we have started our Client Referral to the Orange Program or CROP.

Our clients are small-

medium businesses with a growth attitude.

If you successfully refer such a business to us, leading to a new client, we will thank you by sending you a credit worth 10% of the new client's first fee, which can be used in payment of your own fees.

### Do you want to receive this by Email?

Many of our clients already receive this newsletter by Email.

If you want to do so, please send your Email address to

[ots@otsmanagement.com.au](mailto:ots@otsmanagement.com.au) and put NEWSLETTER in the subject line.

## Tax Deductible Gifts

The Tax Office has released a draft tax ruling explaining when a gift to a Deductible Gift Recipient will be an allowable deduction.

The draft ruling describes a gift as having the following characteristics:

- the gift results in a transfer of beneficial interest in property;
- the transfer is actually made (i.e. it is not an anticipated or planned gift);

- the transfer is made voluntarily;
- the transfer arises by way of benefaction (i.e. the recipient is advantaged in a material sense as a result of the transfer); and
- no material benefit or advantage is received by the giver by way of return.

Special anti-avoidance rules may

also deny a deduction. For example, no deduction is available where the gift recipient bears responsibility as a result of the transfer, so that the recipient ultimately receives a benefit that is considerably less than the nominal value for which the giver seeks a tax deduction.

A deduction may also be denied where the giver or an associate of the giver retains the right to use the donated property.

## CGT Main Residence exemption

The Tax Office has released an Interpretative Decision considering the application of the capital gains tax main residence exemption, where a taxpayer has converted their main residence into business premises.

A capital gain or loss arising on the disposal of an individual's main residence is typically ignored for income tax purposes.

Where a taxpayer has been absent from their



main residence and has used it for the purpose of producing assessable income, a partial or full exemption from capital gains tax may be available. This rule is broadly referred to as the 'absence rule'.

In the case under review, the taxpayer vacated their main residence and immediately began a process of converting it into business premises. At the end of the conversion, the taxpayer rented the property out and

subsequently sold the property for a capital gain.

At the time the taxpayer disposed of the property, he wished to take advantage of the 'absence rule'.

The Tax Office denied the taxpayer's application of the 'absence rule' on the basis that the property could no longer be considered a dwelling as it was no longer suitable as residential accommodation. Consequently, the taxpayer was only entitled to a partial exemption for the period preceding the conversion into commercial premises.

## Small Business CGT concessions - trusts

The Tax Office has recently released an Interpretative Decision that focuses on what a *connected entity* is in the context of applying the capital gains tax (CGT) small business concessions for a discretionary trust.

The CGT small business concessions operate to reduce or disregard a capital gain if certain conditions are met.

Broadly, one of these conditions is that the CGT asset must have been an *active asset* used in the taxpayer's business or in the business of a *connected entity*.

An entity will be a *connected entity*

if either entity controls the other entity or both entities are controlled by the same third party.

Control of an entity is determined by reference to specific tests contained within the law.

Broadly, in the case of a discretionary trust, an entity controls the trust if it receives at least 40% of the trust's income or capital distributions.

In the case where the trust has made no distributions of income and capital, the trustee can nominate up to four beneficiaries as being controllers of the trust.

## Tax Diary

### 31 March 2005

Lodge & pay tax return - all entities other than large/medium business taxpayers, where 1 prior year outstanding.

Lodge & pay tax return - companies & superfunds with total income more than \$2 million in latest year lodged (excluding large/medium business taxpayers).

Lodge (pay per assessment) tax return - individuals and trusts that were tax level 6 per latest year lodged (excluding large/medium business trusts).

## GST Treatment of residential premises

The Federal Court has dismissed a taxpayer's appeal that the sale of a strata-titled unit was an input taxed supply for GST purposes.

Broadly, the sale of premises used for residential accommodation is input taxed. However, the sale of residential premises that are 'commercial residential premises' such as hotels, motels, etc. are subject to GST. Likewise, new residential premises will be subject to GST where the vendor is registered for GST.

In the case under review, the taxpayer was a member of a GST-registered partnership. A motel was purchased by the partnership with a view to using it as residential apartments. Following the conversion of the motel, one of the newly fitted apartments was sold at a price excluding GST.

The taxpayer argued that the sale

was input taxed as the apartment was not 'new residential premises',



In GST issues, careful planning is required

as it had been previously sold as residential premises.

The Tax Office disagreed and argued that the original sale of the motel was not a sale of residential premises and accordingly, the sale was not input taxed. GST was therefore to be applied on the sale of the apartment on the basis that it was 'new residential premises' when the apartment was sold.

On appeal, the Federal Court held that the prior use of the premises as a motel did not meet the definition of 'residential premises' as the term 'residence' requires a degree of permanent or long-term commitment which are not characteristics of a motel.

**TIP:** This case highlights the complexities with property development and the availability of input tax credits. Some careful planning and advice may save businesses thousands of dollars.

## Interest on compensation is assessable

The Administrative Appeals Tribunal (AAT) recently held that an amount of interest received by a taxpayer was assessable income even though it was calculated on a capital compensation payment which was not taxable.

In the case under review, the taxpayer was a landholder whose land had been compulsorily acquired by a state government department.

Pursuant to a court order, the state government department was to pay the taxpayer \$4,300,400 for the land compulsorily acquired, as well as interest at the rate of 9.75% per annum.

Payments were made by the state government department over a number of years. A dispute arose between the parties concerning an amount which was to represent full and final settlement of the matter.

By the time the matter was finally settled, the taxpayer had ultimately received over \$5.3 million in both cash and property.

**"Interest received is assessable income even though it was calculated on a non-taxable capital compensation pay-out"**

The taxpayer disclosed what he thought to be the interest component as income in his income tax return but included a notation that

he did not accept that any portion of the compensation proceeds constituted income, and he reserved the right to object. The Tax Office assessed the taxpayer liable to pay tax on the interest, and the taxpayer objected.

The taxpayer put forward an argument that has been successful in prior cases. That is, because the compensation sum could not be precisely dissected between capital and interest, the entire sum should be deemed to be capital and therefore not subject to tax.

The AAT rejected the taxpayer's argument and agreed with the Tax Commissioner that the amounts could be dissected with precision.

Accordingly, the AAT held that the interest component was assessable income.



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*OTS Management is a quality and value driven boutique consulting and accounting company that provides organisational development services to commercial, growth-oriented Small and Medium Enterprises who require business services, advice and coaching.*

*We give our clients comfort in their decision-making by providing them with our experience and independent advice that saves them time and helps them grow. Unlike other accounting services companies, our clients have significant contact with our senior people.*

*We meet our own high expectations in order to exceed the expectations of clients.*

*Our services include:*

- *Change Management consulting*
- *The Zest Factor - find the zest in your organisation*
- *Strategic & Business Planning*
- *SMART Marketing workshops*
- *Team Development workshops*
- *Performance Management Systems*
- *Zest Tests - Business Diagnostics on your organisation*

## The Juice

### Tip of the Month

Do you find that you have communications issues in your team?

Perhaps instructions seem to get turned around and the results are not what was wanted? Misunderstandings occur because person A

*thought* person B meant one thing when another was intended?

Get your team to practice LACE.

LACE stands for

- Listen Actively
- Acknowledge the message
- Check for

understanding, and

- Explore options.

To listen actively, ensure the listener is taking notes, paying attention and not distracted, and not interrupting.



*In a conversation a person switches from listener to speaker actively*

Then, the listener should acknowledge the message - nod, affirm (not necessarily agree!) and take on board.

The listener should then check by repeating in their own words: "so if I understand you correctly, you mean that..."

Finally the listener and the speaker can then explore options, different ways of interpreting the message or performing the task - disagree and explore the disagreements.

LACE is a dynamic process - in one conversation a person switches from listener to speaker actively.

In your team situations, start the ball rolling by saying "Let's LACE", which should be taken as a signal to use this process actively during the upcoming conversation.

Always diagnose miscommunication without pointing the finger - ask how LACE was used/not used and how the misunderstanding occurred, using the LACE steps for the diagnosis.