GFM Gruchy Accounting

THE PRACTITIONER

Tax News and Commentary for you and your business

Edition #20 - 2023

Business Advisory | SMSF Administration | Accounting & Taxation | Taxation Planning | Estate Planning

IN THIS ISSUE

THANK YOU

By Andrew Goldman

On behalf of everyone at GFM Gruchy, I extend our warmest regards to you and yours this Christmas period.

We would all like to express our gratitude to all our clients for your trust and support. You are the driving force behind our successes, and as we reflect on 2023, we are filled with appreciation for the relationships we have built.

Our office will close at 11am on the 22nd of December and reopen on the 8th of January at 8:30am.

We trust you will find our last newsletter for the year informative and beneficial.

"WHAT ARE YOU DOING OVER THE BREAK ?"

A question much asked this time of year! Below you can see how the GFM Gruchy team will be spending their Christmas break!

- **Andrew** – The family Christmas Day lunch is at our home this year, so lots of cooking and organising. Apart from that, relaxing and doing some jobs around the house I've been putting off all year!
- **Ivan** – Lots of planning and organising - completing a renovation and getting married in 2024, so plenty to keep me occupied over Christmas!
- **Philip** – Heading up to Yarrawonga for a few weeks to relax and recharge.
- **Kerry** – Travelling to Robinvale to camp by the river with family.
- **Kushal** – Visiting family over the break.
- **Miryam** – Relaxing and enjoying the company of family.

TRUSTS – ARE THEY STILL WORTH IT?

By Andrew Goldman

The recent ATO crackdown on trusts will no doubt have some business owners (and even some advisors) asking themselves the question: Is this structure for business purposes still worth it?

To recap, trust distributions have been under the ATO microscope in recent years. The latest ATO crackdown was in February 2022 when it updated its guidance around trust distributions especially those made to adult children, corporate beneficiaries and entities that are carrying losses.

Depending on the structure of these arrangements, the ATO may potentially take an unfavourable view on what were previously understood to be legitimate distribution arrangements. The ATO is chiefly targeting arrangements under section 100A of the Tax Act; specifically, where trust distributions are made to a low-rate tax beneficiary, but the real benefit of the distribution is transferred or paid to another beneficiary usually with a higher tax rate. In this regard, the ATO's Taxpayer Alert (TA 2022/1) illustrates how section 100A can apply to the quite common scenario where a parent benefits from a trust distribution to their adult children.

Despite this new ATO interpretation and the wider crackdown on trusts in recent years, the choice of a trust as a business structure still has a range of benefits including:

- **Asset protection** – limited liability is possible if a corporate trustee is appointed. Usually, when a person owes money and cannot meet the repayment requirements, the creditor can access the person's personal assets to recoup the debt payable. However, if a trust is in place, there is no access to beneficiary assets.

GFM Gruchy Accounting Pty Ltd
190 Through Road, Camberwell VIC 3124
T: (03) 8809 0700 F: (03) 9830 1308
enquiry@gfmgruchy.com.au
www.gfmgruchy.com.au

Tax agent 24703131

Partner
Andrew Goldman

Associate
Philip Gruchy

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ACN 166 797 306
ABN 57 166 797 306

- **50% CGT discount** – A family trust receives a 50% discount on capital gains tax for profits made from selling any assets the trust has held for more than 12 months. This contrasts with a company structure. Companies cannot access the 50% CGT discount.
- **Tax planning** – Income that sits in the family trust that is not distributed by year-end is taxed at the highest income tax rate. However, any trust income distributed to the beneficiaries is taxed at the income tax rate of the beneficiary who receives the distribution. The way to definitely get around the ATO's aforementioned section 100A crackdown is to ensure the distributed money actually goes to the nominated beneficiary and is enjoyed by the beneficiary rather than another taxpayer.
- **Carry-forward losses** – A trust does not distribute losses to beneficiaries. This means the beneficiaries will not be called upon to contribute money to the trust to meet any loss. Instead, losses from each year can be carried forward to the following year, subject to certain conditions being met.

If you have questions around your trust structure, or your business structure more generally, touch base with us.

SELF-EDUCATION – WHEN IS IT DEDUCTIBLE?

By Philip Gruchy

There is no specific provision in the income tax legislation that allows a deduction for self-education expenses. Rather the expenditure falls for consideration under the general deductibility provision of Tax Act. In broad terms this allows for, but also limits, deductible expenses to those incurred in the course of earning assessable income. This requires a close nexus between the outgoing and assessable income: the outgoing must be incidental and relevant to the gaining of the assessable income.

Principle 1 - the self-education maintains or improves current skills or knowledge

Where a taxpayer's income-earning activities are based on the exercise of a skill or some specific knowledge, a deduction for self-education expenses incurred will be allowable where the subject of self-education enables the taxpayer to maintain or improve that skill or knowledge. The High Court decision of FC of T v Finn [1961] HCA 61; 106 CLR 60 is a leading authority for this principle. In this case, Finn, a senior government architect, was allowed deductions for expenses incurred on an overseas tour focused on the study of architecture.

This principle requires an assessment of a taxpayer's current skills and knowledge compared against the subject of self-education, and a consideration of how close the subject is to those current (not future) income-earning activities. (The ATO advises the relevant employment activities are the duties and tasks expected of an employee to perform their job and are usually set out in an employee's duty statement / contract of employment.)

Principle 2 – the self-education leads to, or is likely to lead to, an increase in income from current income-earning activities

If the subject of self-education leads to, or is likely to lead to, an increase in the taxpayer's income from current (but not new) income-earning activities, a deduction for self-education expenses incurred will be allowable.

It is not necessary for the expected increase in income or promotion to be realised for self-education expenses to be deductible, for example, if the taxpayer's employment was terminated before gaining the promotion or increase. However, the expenses should be incurred whilst the taxpayer was employed (even if on leave without pay), and generally with a real prospect or likelihood of leading to such an increase or promotion.

The important thing for taxpayers is to retain their receipts in relation to their self-education. If you have any questions around what expenses are claimable, contact us.

AVOID SCHEMES TARGETING SMSFs

By Kushal Sharma

Sometimes promoters of schemes target self-managed super funds (SMSFs). Schemes can include tax avoidance arrangements that inappropriately channel money or assets into your SMSF so you pay less tax. They may also include arrangements promoting the illegal early release of benefits from your fund for personal use.

To assist you with identifying schemes that may jeopardise your SMSF's compliance, the ATO recently updated its web content to provide more information:

- Schemes targeting SMSFs
- Residential property purchased through illegal schemes.

Remember, if:

- You've been approached by a someone who recommends you set up an SMSF or use your existing SMSF to participate in one of these schemes or a similar arrangement, you should check the ASIC Financial Register to make sure they have a financial licence. If you're in doubt, you should seek a second opinion from a licenced adviser who is independent from the scheme.
- You're already dealing with a suspected promoter of an SMSF scheme, then you should contact the ATO immediately so they can help.

Don't be tempted by 'too good to be true' schemes. You may risk losing some or all of your retirement savings and receive significant penalties if you enter into one of these schemes. You could also be disqualified as a trustee of your SMSF and may be required to wind up your fund.

DISCOUNTING YOUR CAPITAL GAIN

By Ivan Yeung

The capital gains tax (CGT) discount can reduce by 50% a capital gain that you make when you dispose of (sell) a CGT asset that you have owned for 12 months or more. However, the discount is only available to:

- individuals (but not foreign or temporary residents)
- complying superannuation funds (33% discount applies, not 50%)
- trusts, and
- life insurance companies in respect of a discount capital gain from a CGT event in respect of a CGT asset that is a complying superannuation asset.

The most notable omission from this list is companies. They are not eligible for the general discount. This should be factored in when assessing which entity is chosen to acquire a CGT asset.

12-month requirement

The tax legislation requires that to qualify for the general discount, the asset must have been acquired at least 12-months before the time of the CGT event (sale).

The 12-month period requires that 365 days (or 366 in a leap year) must pass between the day the CGT asset was acquired and the day on which the CGT event happens...effectively 12-months and two days! If a taxpayer is nearing the 12-month mark, they should consider delaying the sale where possible until this timeframe is satisfied and therefore become eligible for the discount.

For the purposes of satisfying the 12-month holding period, beneficiaries can treat an inherited asset as though they have owned it since:

- the deceased acquired the asset, if they acquired it on or after 20 September 1985
- the deceased died, if they acquired the asset before 20 September 1985.

As a general note, CGT assets that are acquired before 20 September 1985, are exempt from CGT.

Foreign residents

The CGT discount no longer applies to discount capital gains of foreign or temporary residents or Australian residents who have a period of foreign residency after the below date. However, the CGT discount will still apply to the portion of the discount capital gain of a foreign resident individual that accrued up until 8 May 2012 (the date of announcement).

This measure applies where:

- an individual has a discount capital gain, including a discount capital gain as a result of being a beneficiary of a trust, from a CGT event that occurred after 8 May 2012, and
- the individual was a foreign resident or a temporary resident at any time on or after 8 May 2012.

The effect of the measure is to:

- retain the full CGT discount for discount capital gains of foreign resident individuals to the extent the increase in value of the CGT asset occurred prior to 9 May 2012
- remove the CGT discount for discount capital gains of foreign and temporary resident individuals accrued after 8 May 2012, and
- apportion the CGT discount for discount capital gains where an individual has been an Australian resident, and a foreign or temporary resident, during the period after 8 May 2012. The discount percentage is apportioned to ensure the full 50% discount percentage is applied to periods where the individual was an Australian resident.

If you have any questions about any CGT issue, contact us.

HOW TO REDUCE YOUR INCOME TAX BILL USING SUPERANNUATION

By Kerry Taylor

Did you know you can reduce your income tax by making a large personal tax-deductible contribution from your take-home pay to your super? This strategy may be particularly useful if you will be earning more income this financial year or if you have sold an asset this year and made a large capital gain.

What is a personal deductible contribution?

A personal deductible contribution is a type of concessional contribution that you make with your own money and claim as a personal tax deduction in your tax return, subject to meeting certain eligibility criteria. See a later article for more detail later in the newsletter.

Other types of concessional contributions include superannuation guarantee (SG) contributions from your employer and amounts you salary sacrifice to superannuation.

The cap on concessional contributions is currently $27,500 per year in 2023/24. However certain individuals may be eligible to use the "catch-up" concessional contribution rules to make a larger contribution.

What are catch-up concessional contributions?

You can carry forward any unused concessional contribution cap amounts that have accrued since 2018/19 for up to five financial years and use them to make concessional contributions in excess of the annual concessional contribution cap.

You can make a concessional contribution using the unused carry forward amounts provided your total superannuation balance at the end of the previous financial year (ie, 30 June 2023) is below $500,000.

Once you start to use some of your unused cap amounts, the rules operate on a first-in first-out basis. That is, any unused cap amounts are applied to increase your concessional contribution cap in order from the earliest year to the most recent year. So, when you use some of your unused cap from prior years (by making additional superannuation contributions), the unused cap from the earliest of the five-year period is used first.

And remember, if you don't use your accrued carry forward amounts after five years, your unused cap amounts will expire. So it's best to use it before you lose it!

Carry forward contributions may provide strategic opportunities to make larger personal deductible contributions in financial years where you may have a higher level of taxable income, for example, due to assessable capital gains.

Example – reducing income tax

Joe earns $90,000 and only receives SG contributions from his employer (ie, 9.5% for 2018/19 – 2020/21, 10% in 2021/22, 10.5% in 2022/23 and 11% in 2023/24).

He sold some shares in 2023/24 realising a net (discounted) capital gain of $30,000.

After factoring in his SG contributions, Joe's cumulative unused concessional contribution (CC) cap amount in 2023/24 is $103,500.

This can be seen as follows:

	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24
CC cap	$25,000	$25,000	$25,000	$27,500	$27,500	$27,500
CCs made / received (SG only)	$8,550	$8,550	$8,550	$9,000	$9,450	$9,900
Unused CC cap	$16,450	$16,450	$16,450	$18,500	$18,050	$17,600
Unused CC cap amount used	N/A	N/A	N/A	N/A	N/A	N/A
Cumulative unused CC cap amount remaining at year end	$16,450	$32,900	$49,350	$67,850	$85,900	$103,500

Having an unused concessional contribution cap amount of $103,500 will allow Joe to make a personal deductible contribution of $30,000 to fully offset the amount of the capital gain and still remain well within his concessional contribution cap.

As a result, by contributing $30,000 as a personal deductible contribution, Joe will have boosted his superannuation while also saving $5,850 in tax being the difference between the tax payable on the capital gain of $10,350 (ie, $30,000 x 34.5% marginal tax rate) and 15% contributions tax of $4,500 ($30,000 x 15%).

Seek advice

It's important to seek advice before you make any superannuation contribution. Getting it wrong could mean a loss of all or part of your deduction and may also cause you to exceed the contribution caps which can lead to paying excess contributions tax.

PROPERTY DEVELOPERS – AND WOULD-BE ONES – BEWARE!

By Ivan Yeung

For property developers - or would-be property developers – a recent decision of the Federal Court may be of interest.

In Makrylos v FCT [2023] FCA 971, land acquired by a property developer was treated as trading stock from the date of its original acquisition, and not a later date proposed by the taxpayer. This meant, among other things, that his profit was calculated on the original purchase price of the land and not the later (and larger) market value at the time it had been "ventured" into the relevant property development activity, as claimed by the taxpayer. It also had an influence on what costs he could claim as a deduction and when he could claim them.

The Federal Court came to its decision notwithstanding that the taxpayer lived on the property at various times. However, the taxpayer was also an experienced property developer who subdivided the land, albeit this was not required for the construction of a family home and caretaker's residence, which is what the taxpayer claimed was his original intention for the land.

The fact that the taxpayer periodically lived in the dwelling on the land but left it vacant for significant periods did not assist him as the Court found that his intention from the time when he purchased it was to treat it as trading stock of his business.

The Federal Court said that it would have come to the same result even if he was not a property developer, but had "merely" acquired it for profit making purposes in a one-off transaction.

So, if you buy property for property development purpose for which documentary evidence exists, it may not matter if you rent it and/or live in it first, especially if you are a property developer.

And one thing for sure, it won't help if you staked out the property for subdivision purposes soon after you acquire it!

Suffice to say, if you are thinking of acquiring land for property development purposes, you should seek professional advice from your taxation and legal advisers.

SMALL BUSINESS SKILLS AND TRAINING BOOST

By Andrew Goldman

Looking to boost your employees' skills and your tax deductions at the same time ? Then keep reading to see if you could be eligible for the small business skills and training boost!

If you run a small or medium business and are planning on investing in, or recently invested in, training your employees, taking care to ensure the training is provided by a registered training provider could mean you can claim an additional 20% bonus tax deduction at tax time.

Which training expenses are eligible for the bonus?

Eligible expenditure must be:

- for training your employees, in-person in Australia, or online
- for training provided by registered training providers (for example see training.gov.au and National Register of Higher Education Providers)
- charged by the registered training provider for course fees and related items such as books and equipment (for deductions claimed over time such as depreciation, the bonus deduction will be calculated as 20% of the full amount and claimed upfront)
- incurred between 29 March 2022 and 30 June 2023 (the bonus is claimed in your 2022-23 tax return) or between 1 July 2023 and 30 June 2024 (the bonus is claimed in your 2023-24 tax return).

Which training expenses are not eligible for the bonus?

- Training you provide to your employees yourself (eg on-the-job training)
- Training for yourself if you are self-employed or in a partnership
- Training provided to independent contractors
- Training provided by non-registered providers
- Training provided by registered providers that are associates of yours
- Expenses not charged by the registered training provider eg if an intermediary has charged a commission on top of the training course.

To avoid a costly unexpected FBT liability come 31 March, make sure the training relates to an employee's current duties or helps them get a promotion or pay-rise in their current role – see our September 2023 Newsletter. (Paying an employee's HECs or other study-loan repayment will usually attract FBT.)

If you are uncertain whether your training expenditure is deductible, eligible for the bonus, or concerned it may attract FBT, reach out to us – we'd love to help.

ARE YOU ELIGIBLE TO MAKE A PERSONAL DEDUCTIBLE CONTRIBUTION?

By Kerry Taylor

Personal deductible contributions can allow individuals to claim a tax deduction for contributions they have made to superannuation provided they meet certain requirements. So what are these requirements and what should you look out for?

Eligibility requirements

You will be eligible to claim a deduction for your personal superannuation contributions if:

- You meet the aged based rules
- Your taxable income is more than the amount you want to claim as a deduction (ie, your deduction can't give you a tax loss)
- You make the contribution to a complying superannuation fund
- You give a special notice to your fund telling the trustee how much you want to claim
- You give your fund that notice within strict timeframes
- Your fund sends you an acknowledgement confirming your notice has been received and is valid

You must meet all of the above criteria otherwise you won't be eligible to claim a deduction for your contributions.

Meeting the age-based rules

If you are between age 18 and 66 when you make your contribution, there are no age-based rules for you to meet. This means there are no age restrictions in order to make a deductible contribution.

If you are aged 67 to 74 when you make your contribution, you can only claim a deduction if you meet the "work test" or the "work test exemption" in that year.

To meet the work test, you need to work for at least 40 hours in a 30-day consecutive period during the financial year and be paid for that work.

Alternatively, the work test exemption can be used if you satisfy all of the following rules:

- You are aged between 67 to 74
- You satisfied the work test in the previous financial year
- Your total superannuation balance was below $300,000 the previous 30 June (ie, 30 June 2023)
- You have not made use of the work test exemption in a previous financial year (ie, it can only be used once).

If you are aged 75 or older at the time you make your contribution, you can only claim a deduction if your contribution was made before the 28th day of the month after your 75th birthday and you met the work test above. For example, if you turn 75 in September 2023, your contribution must be received by your superannuation fund by 28 October 2023. This is a special rule that applies around an individual's 75th birthday.

Unfortunately, once a person reaches age 75, you can no longer make any deductible superannuation contributions. The only contributions that can be made are downsizer contributions, superannuation guarantee contributions or contributions your employer is obliged to make for you under an award.

Timeframes to adhere to

You must give your fund the notice form before the earlier of:

- The day you lodge your personal income tax return for the year in which you made your contribution, or
- 30 June of the following year.

However, certain events may occur which mean you must submit your notice and receive acknowledgement from your fund prior to the above timeframes. For example, you must submit and receive acknowledgement from your fund prior to:

- Withdrawing any funds
- Rolling over to another fund
- Splitting contributions with your spouse, or
- Commencing a pension.

If you do not give your notice to your fund before these events occur, you will lose some or all of the deduction amount.

What happens next?

Once you have told your fund that you want to claim a deduction for your personal contribution, it will count towards your concessional contributions cap. Your fund will then deduct contributions tax of 15% from your contribution.

If you change your mind and no longer want to claim the entire amount as a tax deduction, you can vary your notice to reduce the amount you are claiming, provided you are still within the timeframes mentioned above.

It is also important to claim the deduction in your personal income tax return for the year the contribution was made. If you forget to claim the deduction, your contribution will count towards your non-concessional contributions cap and could cause you to exceed that cap.

As you can see, the contribution rules are complex so if you're thinking about making a personal deductible contribution and not sure if you meet the eligibility requirements, contact us today for a chat.

WHO CAN I NOMINATE AS MY SUPER BENEFICIARY?

By Kerry Taylor

Your superannuation death benefits must be paid to someone when you die. That somebody will usually be your estate or your nominated beneficiary (also known as your dependants).

Paying death benefits to your estate

Unlike other assets such as shares and property, your superannuation and any insurance benefits you have in superannuation do not form part of your estate. That's because your superannuation is not held by you personally, rather it is held in trust for you by the trustee of your superannuation fund.

However, you can direct your superannuation death benefit to your estate by nominating your "legal personal representative" (LPR), who will usually be the executor of your estate.

If you nominate your estate or LPR, you must also specify in your Will who you want to distribute your superannuation money to. This can include eligible beneficiaries (see below) as well as anyone else you wish to leave your death benefits to.

As such, it's important that the directions stated in your Will are up to date so your LPR pays out your death benefits (as well as your other estate assets) as per your wishes.

Paying death benefits to a beneficiary/dependant

If you want your superannuation death benefits to be paid to a person, that person must be a "dependant" for superannuation purposes.

The meaning of dependant is important as it determines who can receive a death benefit, whether the death benefit will be taxed and what form your death benefit can be paid out (ie, lump sum, income stream, etc). In particular, superannuation law determines who can receive your superannuation directly from your superannuation fund without having to go through your estate. These people are your superannuation dependants. Tax law on the other hand determines who pays tax on your superannuation death benefit. These people are considered tax dependants.

The following table summarises the difference between:

- A superannuation dependant and tax law dependant, and
- The types of death benefit that can be paid to each category of dependants.

	Super dependant?	Tax dependant?	Can death benefits be received directly as a lump sum?	Can death benefits be received as an income stream?
Spouse (includes de facto and same sex)	Yes	Yes	Yes	Yes
Former spouse	No	Yes	No	No
Child under age 18	Yes	Yes	Yes	Yes[1]
Child aged 18 or over	Yes	No	Yes	No
Interdependent relationship	Yes	Yes	Yes	Yes
Financial dependant	Yes	Yes	Yes	Yes
Individual who receives a super lump sum because the deceased died in the line of duty[2]	No	Yes	Yes	No

1. Income stream must be commuted by the time the child turns 25, unless the child has a prescribed disability
2. Deceased died in the line of duty as a member of the Defence Force, Australian Federal Police, the police force of a state or territory, or as a protective service officer.

As can be seen, the key differences between the superannuation and tax dependant definitions are:

- a tax dependant does not include an adult child (whereas a superannuation dependant does), and
- a tax dependant includes a former spouse (whereas a superannuation dependant does not).

Although your financially-independent adult children are your superannuation dependants and can receive a death benefit directly from your superannuation fund, they are not tax dependants. This means they will not receive more favourable tax treatment than a tax dependant would receive unless they qualify under an 'interdependency relationship' or are financially dependent on you.

A tax dependant will generally not pay any tax on superannuation death benefits. In contrast, a non-tax dependant is taxed on any taxable components of a superannuation death benefit. This could be up to 15% tax plus Medicare levy on any taxable component and potentially up to 30% plus Medicare levy for any taxable untaxed elements within your fund.

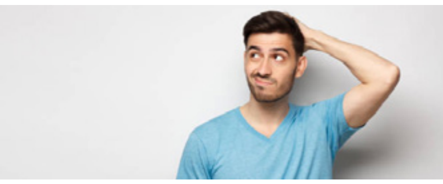
Tip

If you would like to leave your superannuation to someone who is not a dependant under superannuation law, you could consider nominating your LPR and then use your Will to determine how you would like superannuation death benefits to be paid.

For example, if you wish to nominate your parent or financially-independent sibling, or a cousin or friend, you could make a binding nomination to your LPR and then instruct them on how to divide your superannuation through your Will.

Need help?

Please contact us if you would like further information about who you can nominate to receive your superannuation death benefits.



WHO IS A RESIDENT FOR TAX PURPOSES?

By Andrew Goldman

A person's residency for tax purposes can be one of the most difficult issues to determine in Australian tax law. And it is not just a question of whether a person is a "citizen" of Australia.

Moreover, it is highly relevant from a tax point of view, as a person who is a resident of Australia for tax purposes is liable for tax in Australia on their income from "all sources" (ie both from Australia and overseas) – including capital gains. On the other hand, a person who is not a resident of Australia for tax purposes, is only liable for tax in Australia on income and capital gains that are considered 'sourced' in Australia.

A recent decision of the Administrative Appeals Tribunal (AAT) illustrates some of the issues involved in determining this complex matter (see *PQBZ v FCT* [2023] AATA 2984).

In that case, the AAT found that the taxpayer was a resident of Australia for tax purposes under the 'ordinarily resides' test or principle – without having to consider the 'subsidiary' tests which involve, for example, questions of the person's 'domicile' and whether they intended to take up residency in Australia.

Significant to the AAT's decision was that, apart from his business interests in an overseas country and the unit he lived in there to carry on that business, all of the taxpayer's personal (and other) 'connections' were otherwise clearly with Australia.

These Australian connections included his family home, his personal and other business assets, where his wife and children lived, Australian bank accounts and his Australian health insurance.

It was also relevant that for the several years in question, the majority of the time he had spent living in Australia.

As a result the taxpayer, as a resident of Australia for tax purposes, was liable to tax in Australia on his overseas business income.

But not all residency issues are apparently as clear cut as this.

In other cases, it is necessary to consider issues such as whether the taxpayer has been in Australia for half the income year or more and whether they intend to take up residency in Australia.

It may also be necessary to consider the complexities of any 'double tax agreement' with the country in question.

And suffice to say, if the issue is relevant to you, not only is the advice of your professional adviser invaluable, it is also essential.

REDUCING THE RISK OF CRYPTO SCAMS

By Miryam Schejtman

ASIC has released fresh and timely information around crypto scams.

Scammers use cryptocurrencies, like bitcoin or ether, because they are not easily recovered. Crypto can be sent overseas quickly with limited oversight. If you lose your money to a crypto scam, your money is likely gone. If you buy crypto, only invest what you can afford to lose as it's a somewhat volatile investment.

How to spot a crypto scam

If you're investing in crypto, watch out for these potential red flags:

1. Unexpected contact

Someone you don't know contacts you with investment advice or offers:

- through phone, email, social media or text message
- claiming to be an investment manager or broker
- through an online forum discussing crypto.

2. Recommendations from someone familiar

You may hear about it through:

- an advertisement or fake celebrity endorsement on social media
- an online influencer promoting a token and claiming to have made huge, quick profits
- family and friends who have unknowingly been scammed themselves
- an online romantic partner who asks for money paid in crypto or suggests an investment opportunity.

3. Pressure to take action

You are being pushed to:

- transfer crypto off your current exchange and invest through their site
- use crypto to pay an individual or for a financial service
- download an investment app not listed on Google Play Store or Apple Store
- deposit money to invest into different bank accounts
- pay tax or invest more in order to access your funds.

4. Something just doesn't feel right

You're not sure about:

- the crypto investment offers 'guaranteed' high returns or 'free' money
- crypto service providers that withhold investment earnings for 'tax purposes'
- strange tokens appear in your digital wallet that you did not trade yourself
- there is little paper trail for crypto investments you make
- the document describing the crypto investment (sometimes called a 'whitepaper') is poorly written or non-existent
- online searches indicate that an entity may be a scam or has bad reviews
- a work from home job offer that requires you to purchase cryptocurrency.

How crypto scams work

There are three main types of crypto scams:

1. Investing in a fake crypto exchange, website or app

Scammers create fake crypto trading apps to steal your money. The giveaway is usually that they ask you to download the app from their website. They may appear on legitimate platforms like Google Play and Apple, but are usually promptly removed. If you find one on an app store, check for overly positive reviews and be cautious.

2. Fake crypto tokens, investments or jobs trading crypto

- Scam tokens in crypto wallets – A mystery token appears in your crypto wallet, seemingly worth thousands. If you sell it, a 'smart contract' is activated. This transfers your legitimate crypto tokens and private keys to the scammer.
- Crypto ponzi scheme – You are promised large 'returns' by investing in crypto. But the promoter uses money from other investors to pay your 'earnings'.
- Jobs 'trading crypto' – You apply for a job ad for 'crypto traders', for a fake or impersonated financial services firm. You are told to set up multiple bank and crypto accounts, and are paid well for a few hours of work a week. You think you're trading crypto for the entity's 'investors' or 'clients', but you're actually money laundering for the scammers. You could be charged by state or federal police.

3. Using crypto to pay scammers

- Requests for payment in crypto – An online romantic partner, job recruiters, work from home job, or fake financial services firm asks for payment in crypto only.
- Giveaway scams – Fraudulent posts on social media offer to match or multiply crypto invested with them in a crypto giveaway scam. Often, this uses fake celebrity endorsement.
- Blackmail/extortion – You're told by a scammer they have your internet browsing history, compromising photos or videos. They demand payment in crypto.

Take-home message

If you're uncertain whether you're being scammed by an unsolicited contact, keep your powder dry and abstain from acting. Contact your advisors before acting.

CHANGES TO UNFAIR CONTRACT TERMS LAWS: WHAT BUSINESSES NEED TO KNOW

By Andrew Goldman

Soon to be implemented changes to the Australian Consumer Law will provide additional protection to consumers and small businesses prohibiting the proposal, use or reliance on unfair contract terms in standard form contracts.

The ACCC recognises that "standard form contracts provide a cost-effective way for many businesses to contract with significant volumes of consumer or small business customers. However, these contracts are largely imposed on a 'take it or leave it' basis and are usually drafted to the advantage of the party offering them".

Currently under the laws protecting consumers and small businesses from unfair terms in standard for contracts, where particular terms of a contract are found to be unfair, a Court can only declare those terms void. This provides little motivation to ensure the terms of standard form contracts are, in fact, fair.

From 9 November 2023, in addition to expanding the coverage of the unfair contract term laws to a wider range of small businesses, Courts will now be able to impose substantial penalties where unfair terms have been included in a standard form contract, and a party to the contract is a small business (that is, small businesses with an annual turnover of less than $10m or fewer than 100 employees).

With the maximum penalties increasing to $2.5m for individuals, and for businesses to the greater of $50 million or three times the value of the "reasonably attributable" benefit obtained from the conduct, the ACCC is encouraging businesses to review their standard form contracts.

You can view more information about changes to the unfair contract terms laws on the ACCC's website.

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