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PRICE ALLOCATION RULES

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If you are buying or selling a business or property from 1st July 2021 the new purchase price allocation rules may apply to you.

What is the purchase price allocation rules?
Prior to 1st July 2021 there was no requirement for vendors and purchasers to agree on each individual asset value when assets were purchased or sold. This could mean that the vendor or purchaser could set the sale price for their best interests to minimise tax. Business asset sales can involve a mixture of:

- taxable assets such as trading stock, accounts receivable, patents
- depreciable assets such as plant or machinery
- non-taxable assets such as business goodwill

A Sale and Purchase agreement could have a universal sale price and no breakdown of the individual assets making up the total price, meaning the vendors and purchasers chose how to split the sale price up between taxable assets, depreciable assets and non-taxable assets.

Purchasers may have had more taxable expenses to claim if higher values were placed on taxable assets and depreciable assets. Whereas vendors may have had less tax to pay if high values were placed on capital non-taxable assets such as goodwill or depreciable assets.

When do the rules apply and what is the criteria?
From 1st July 2021 the rules will apply to transactions with a total purchase price of more than $1 million where there is a mix of taxable and non-taxable assets of $7.5million or more relating to a sale of residential property.

Why are there new rules?
The purpose of the new rules is to eliminate “mis-matched” purchase price allocations. In the past the IRD may have missed out on tax revenue due to purchasers and vendors treating the breakdown of the sale price differently i.e. the purchaser may have been able to claim depreciation expense on assets and on the same transaction the vendor did not return deprecation recovery on asset sales as taxable revenue.

How are the new rules implemented?

1. If the vendor and purchaser agree on the breakdown of the asset amounts, then these values will be recorded in the sale and purchase agreement. This will mean the parties agree on how the sale price is allocated between taxable, depreciable and non-taxable assets and then these values will be used for tax purposes. The agreement should be made and documented before either the vendor or purchaser submits their income tax return that includes the tax position for the sale. Neither party needs to notify IRD about the agreement unless requested.

It is important to note, if the IRD consider the agreed amounts do not reflect the asset’s market value, they can still re-allocate amounts.

2. If the vendor and purchaser do not agree and the total purchase price is $1 million or more, or for residential property with a purchase price of $7.5 million or more, the following rules apply:

- **The vendor** within 3 months of settlement of the transaction may determine the amounts allocated and must notify both the purchaser and IRD of the amounts. The amounts cannot be less than the greater of the market value or the vendors tax book value for the assets. The amounts must be used by both the purchaser and vendor for income tax purposes.

- In the event the vendor does not notify the IRD and the purchaser within the 3-month timeframe, then within a further 3 months (within 6 months of settlement) the **purchaser is then entitled** to set the allocation and is obligated to notify the IRD and the vendor. The amounts cannot be less than market value for the assets. The amounts must be used by both the purchaser and vendor for income tax purposes.

3. If the purchaser does not make a notification within the further 3-month timeframe, then IRD may allocate amounts to each asset. Any tax deduction that the purchaser is entitled to may be denied until the following year’s tax return.

To Do: Set asset values in all Sale and Purchase Agreements - Don’t get caught out.

It has always been good practice to reach an agreement of the values for the asset amounts in the Sale and Purchase agreement. Now more than ever though it is vital this is agreed to at the time of the agreement so you can make a decision to purchase or sell based on all the relevant tax implications.

We recommend seeking our advice at the beginning of the sale or purchase process to ensure we can work with you to obtain the best tax outcome for the sale or purchase.