BusinessPlus+ Newsletter

CMA Collins Mellody

INDEX

Issue 209 - April 2022

Early Stage Innovation Company – Part 2 (Continuing from Issue 207)

The company can then elect to undertake the "Principles Test" or the "Gateway Test".

If the company undertakes the "Gateway Test" which requires the company to qualify for 100 points or more based on the answers to a series of questions there is no need to answer the "Principles Test".

However, if the company does not accumulate 100 points in answers to the questions contained within the "Gateway Test" it may then move on to the "Principles Test" and answer the five questions that are contained within that test.

This means that some companies have to answer questions in the three parts whilst others only have to answer questions in two parts.

Gateway Test

The "Gateway Test" is conducted on a self-assessment basis. However full documentation should be retained because the Australian Taxation Office can ask for that substantiation documentation when the company's income tax return is being lodged.

The Australian Taxation Office treat the "Gateway Test" as having established a "black-and-white answer" – either the company has the documentation to support the answers given or it hasn't.

This process is all about substantiating that the company qualifies for the status of being an Early Stage Innovation Company so that an indication can be given to investors that the company qualifies under that status which means that the investor potentially receives a benefit if they invest in the company. If it is subsequently found that the company did not qualify under the "Gateway Test" and is unable to answer the questions under the "Principles Test" satisfactorily the investor will not receive their taxation benefits and undoubtedly will not be very happy which could cause problems for the company and for the company's advisors.

The company earns points if it can substantiate that certain activities have occurred including:

- At least 50% or more of the company's total expenses for the previous income year was expenditure relating to research and development that the company was able to successfully claim as research and development expenditure in its income tax return – earns 75 points.
- At least 15%, but less than 50% of the company's total expenses for the previous income year was expenditure relating to research and development that the company was able to successfully claim as research and development expenditure in its income tax return – earns 50 points.
- If the company has received an Accelerating Commercialisation Grant since the company was incorporated – earns 75 points.
- If the company has completed or is undertaking an approved Accelerator Program – earns 50 points.
- If the company has received at least $50,000 which has been paid for ordinary shares in the company by one or more entities that were not associates of the company immediately before the issue of those shares in the company and the company issued those shares at least one day before the "test time calculation" – earns 50 points.
- The company has rights as an owner of a "Standard Patent" or the owner of a "Plant Breeder's Right" granted in Australia within the last five years – earns 50 points.
- The company has rights as the owner of an "Innovation Patent" granted and certified in Australia or the company is the owner or licensee of a "Registered Design" registered in Australia within the last five years – potentially earns 25 points

If the total of the points earned is 100 points or more the company has self-assessed as an Early Stage Innovation Company.

It is important that full documentation is retained to be able to substantiate this self-assessment if called upon the do so by the Australian Taxation Office or AusIndustry.

This documentation could now be shown to potential investors to satisfy them that the company has self-assessed as an Early Stage Innovation Company.

Next month we will discuss the "Principles Test".

eInvoices Overview

In the Federal Budget the Treasurer indicated that the government intends to require government agencies to pay einvoices within five days or pay interest to the SME business.

The following is a summary of information relating to eInvoices.

Xero accounting software explains eInvoices as follows:

eInvoicing is a quick, easy and secure way to send and receive eInvoices directly into a business' accounting software.

eInvoices are sent by the global public network, Peppol, rather than by email.

Businesses will have to register to receive eInvoices from other businesses in Xero or whatever accounting software the business is using. The set-up is explained as being in a few clicks and is a free service on Xero.

The benefit for your business is that you receive eInvoices automatically from suppliers so there is no need for manual data entry. You can view the eInvoices as draft bills ready for approval on your laptop, App or desktop computer.

The promoters of the eInvoices concept believe that eInvoicing improves cash flow by making it easier for your suppliers to approve and pay invoices. eInvoices automatically appear in the accounting software so no risk of misdirected emails or lost letters.

eInvoicing is part of a government initiative to help businesses be paid on time by improving the way they interact with each other.

The federal government has indicated in the budget speech the government agencies are required to pay eInvoices within five days and pay other invoices within twenty days or pay interest to the SME business.

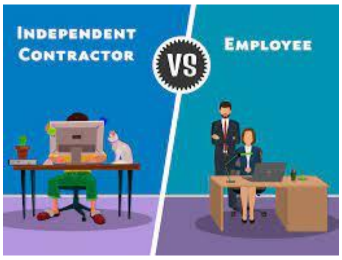
If you would like to have government agencies pay you fifteen days faster you need to register for eInvoicing which should enable you to reduce your debtors days outstanding or at least receive interest from the government agency.

If you have any questions on eInvoices please do not hesitate to contact the accountant in our organisation that you normally deal with.

Independent Contractors –v- Employees

Jordan Lowry, Managing Director, Blackstone Business Group has provided the following update:

The High Court has recently clarified the distinction between independent contractors and employees, confirming that where there is a written contract, rights and obligations set out in the contract define what type of relationship exists between a worker and business.



We have prepared the table (taken from Fair Work Fact Sheet) that you can use to assess if your contractors may actually be deemed to be employees.

Independent contractors can be individuals, partnerships, trusts, companies, or other entities that provide services to others for a fee.

Where independent contractors are individuals who carry out work for a business, there can sometimes be uncertainty about whether the contractor is, in fact, an employee of that business.

To avoid this uncertainty and future disputes when engaging a worker, it is important to:

- consider whether employment or contracting is most suitable to your business' needs;
- accurately record the agreed arrangement in a written contract;
- be transparent with the worker about the nature of their engagement; and
- ensure that you and the worker perform your obligations in accordance with the contract, to avoid changing the terms of your contract by accepting a different way of performing it in practice.

What is the difference between an employee and independent contractor?

The table below includes common indicators of employment and independent contracting to help you decide which arrangement best suits your business's needs.

Indicator	Employee	Independent Contractor
Degree of control over how work is performed	Performs work under the direction and control of their employer on an ongoing basis.	Has a high level of control in how the work is done.
Hours of work	Generally works standard or set hours (note: a casual employee's hours may vary from week to week).	An independent contractor decides what hours to work to complete the specific task.
Expectation of work	Usually has an ongoing expectation of work (note: some employees may be engaged for a specific task or specific period).	Usually engaged for a specific project or task.
Risk	Bears no financial risk (this is the responsibility of their employer).	Bears the risk for making a profit or loss on each task. Usually bears responsibility and liability for poor work or injury sustained while performing the task. As such, contractors generally have their own insurance policy.
Superannuation	Entitled to have superannuation contributions paid into a nominated superannuation fund by their employer.	Pays their own superannuation (note: in some circumstances independent contractors may be entitled to be paid superannuation contributions).
Tax	Has income tax deducted by their employer.	Pays their own tax and GST to the Australian Taxation Office.
Tools and equipment	Tools and equipment are generally provided by the employer or a tool allowance is provided.	Uses their own tools and equipment (note: alternative arrangements may be made within a contract for services).
Method of Payment	Paid regularly (for example, weekly/fortnightly/monthly).	Submits an invoice for work completed or is paid at the end of the contract or project.
Leave	Entitled to receive paid leave (for example, annual leave, personal/carers' leave, long service leave) or receive a loading in lieu of leave entitlements in the case of casual employees.	Does not receive paid leave.

Grants Update

Disaster Recovery Payment (special supplement) Grants – available for eligible people who have been affected by the recent floods in south-east Queensland and New South Wales. This grant is ongoing at this stage.

Indian Ocean Territories Marine Parks Grant – the grant categories include:

- Small grants – between $10,000 – $50,000
- Large grants – between $50,001 – $500,000

This grant is currently open

COVID-19 Consumer Travel Support Program – provides a payment for travel agents and inbound tour operators and tour wholesalers if their businesses were severely impacted by the COVID-19 pandemic.

- The minimum grant amount is $7,500 per grantee.
- The maximum grant amount is $90,000 per grantee,
- Applications close on 20 April 2022,

Entities to Operate a Small Business – Part 1

If you are intending to start or acquire a small business you have a significant amount of choice as to what type of entity you could utilise to operate the business.

Some entities are more appropriate than others depending on a number of factors including:

- How many people are involved in the business?
- What are the business risks?
- Is there any specific government support that you might be seeking? In which case you will probably find it is best to operate as a company because companies receive more government grants than any other type of entity.
- Traditionally Discretionary Trusts were seen as a suitable entity for a family to be involved within a business but some recent discussions about Tax Office rulings have cast some doubt on the utilisation of Discretionary Trusts. We suggest you discuss your plans with us before proceeding with the establishment of a Discretionary Trust.

Comments on the alternatives available are as follows:

- **Sole trader**
  Anyone can establish a business in their own name. This is the structure that you are most vulnerable because there is no protection available to you relating to anyone being able to take action against you if they believe they have a legitimate claim against you. A sole trader has no legal protection.
- **Partnership**
  A partnership is literally a linking of two or more sole traders.

  In the normal partnership the liability of partners is unlimited and extends to their private property as well as to the partnership assets.

  It is highly desirable that if you are contemplating conducting business as a partnership that you have a written Partnership Agreement that has been reviewed by a commercial solicitor to ensure that all of the important decisions relating to operation of the business have been recorded within the Partnership Agreement.
- **Discretionary Trusts**
  Traditionally Discretionary Trusts are a very popular way of operating small businesses in Australia. However, as indicated earlier we recommend that you have a discussion with the accountant in our organisation that you normally deal with before proceeding with the establishment of a Discretionary Trust. We can supply you with an article on the operation of a Discretionary Trust if you wish.
- **Unit Trust**
  A Unit Trust is a popular way of conducting business operations normally when two or more groups or families are involved in the operation of a business.

  Each member of the Unit Trust would have a set allocation of units in the Unit Trust, which is reflected in the control percentage of each unit holder in the trust.

Next month we will discuss Companies.

Unlisted Public Companies

As the name suggests these companies are public companies but they are not listed on a stock exchange. Therefore, there is no continuous information available about the current value of shares in the company that is provided throughout the day for a listed public company.

An Unlisted Public Company is able to raise capital as a Crowd Sourced Funding Equity Raising Company subject to the same capital raising limit that applies to a private company and that is $5,000,000 from all capital raising sources in a twelve month period.

There is no limit to the number of shareholders in an unlisted public company can have.

An Unlisted Public Company is required to have three directors, two of which must be Australian residents.

An Unlisted Public Company is unable to satisfy the requirements to be deemed to be a "Early Stage Innovation Company".

An Unlisted Public Company is a popular entity to facilitate the raising of capital that has been sourced by venture capitalists. This method of capital raising can be quite expensive and some boards of directors of Unlisted Public Companies will be considering the alternatives of raising capital as a Crowd Sourced Funding Equity Raising Company because the company can raise up to $5,000,000 each year and continue that capital raising on year after year if the market continues to support the company.

If you are interested in the concept of forming an "Unlisted Public Company" for your business operations, please discuss this with the accountant in our organisation that you normally deal with.

Contact us:
CMA Collins Mellody
P: 03 9836 1533
E: admin@colmel.com.au
W: http://www.cmagroup.com.au
Ground Floor 1 Chapel Street, Blackburn, VIC, 3130