

## **Draft Indigenous Australian Art Commercial Code of Conduct**

### ***Payment to artists in forms other than cash***

The draft Code was released for comment on 18 December 2008. Part 2, section 10 provides for payment in forms other than cash as set out in the extract below.

#### **10 Payment for artists**

(1) A dealer must agree within 7 days of delivery of the artwork to the dealer

The following matters relate to the artist's payment, which must be consistent with other provisions of this Code:

- (a) the amount of the payment to the artist
- (b) the dealer's commission, if the dealer is acting as an agent
- (c) the means by which the artist will be paid
- (d) if the payment is to be provided in the form other than cash then a reasonable market value of the remuneration must be stated

The information below is intended to be read in conjunction with the draft Code and is based on information from the Australian Taxation Office.

- Please note that this general information is not legal advice. Individuals and organisations should seek professional legal or tax advice in relation to their particular circumstances.

#### **What is a non-cash benefit?**

A non-cash benefit includes property or services in any form except money.

#### **Are non-cash payments permissible under taxation law?**

The same tax consequences apply to an artist that receives a non-cash benefit as to an artist that receives cash for their works of art. Specific provisions in the income tax laws ensure this outcome.

- ❖ If an Indigenous artist is engaged in business, the non-cash benefits provided to the artist for works of art are likely to represent business income and should be included in the artist's assessable income.
- ❖ The amount to include is the arm's length money value of the non-cash item reduced by the artist's contribution (if any) towards the value of the item.
  - The arm's length money value is the amount that the artist would have been required to pay to obtain the non-cash item in an arm's length transaction. Generally, an arm's length value is the fair market value of the item.
  - In very general terms, the ATO accepts that people are dealing with each other on an arm's length basis when they are each acting truly independently and in their own commercial interest. The ATO also accepts "fair market value" as being the cash price which the taxpayer would normally have charged a stranger for the services or for the sale of the goods or property.

#### **What other taxation obligations should be considered?**

- ❖ It is prudent that artists and art dealers keep adequate business records to assist them with their taxation obligations.
- ❖ Artists may have other obligations under the tax laws; for example, obtaining an Australian Business Number and registering for goods and services tax if their turnover exceeds \$75,000.

- ❖ In some circumstances art dealers may also have a withholding obligation including where non-cash benefits are provided.
  - 'Withholding' means deducting amounts from payments made to others. These amounts are required to be sent to the ATO.
  - Information about withholding obligations for payers is available [www.ato.gov.au](http://www.ato.gov.au) and typing 'PAYG withholding non-cash benefit' in the search field.
- ❖ Further information on tax implications for Indigenous artists can also be obtained from the ATO website at [www.ato.gov.au](http://www.ato.gov.au) 'How tax applies to Indigenous artwork' (NAT 12066).

**In summary**

- Get independent advice about your tax obligations.
- Non-cash payments are provided for under tax law.
- All parties need to keep records of non-cash transactions for tax purposes. Records include a record of the agreed 'market value' of goods exchanged, preferably determined by a third party.
- Other obligations under tax law need to be considered including whether an artist needs to obtain an ABN, register for GST or whether there is a withholding obligation.