**Subject:** **SUBMISSION TO CONSUMER PROPERTY LAW - REVIEW**

Question 60- What is your experience with the small business statement? Is it still required? Please give reasons for your view.

My experience with the “small business statement” (sec.52) is frequent. Due to being a business broker, I sell businesses of varying sizes, including small ones.

There are two aspects of sec. 52 – the small business statement, that concern me:

1. It refers to “small business.” Usually the big range of “small business” also involves businesses with a strong cash component (payment made by notes and no usage of cheque, credit card or electronic bank transfer).
2. The industries that most commonly are within this range of “small and cash” businesses are those groups in food (cafes, restaurants, kebabs, souvlaki, pizza, ethnic food, convenience stores etc.) as well as those other companies who offer professional services such as electricians ,plumbers, cleaners etc.

There exists a very important difference between the numbers presented “in the books”, and this is the base for the accountant to prepare section 52. The REALITY of the business is, they have more sales (received in cash) and (not so rare) payments to employees, sub-contractors and other expenses, which are also made by “cash” and are all out-side of the accountant’s knowledge.

This document (addressed as sec. 52) was created looking to protect the buyer from “inaccurate” information or “poor” information.

In that sense, the current sec 52, as it is, does not fulfil the purpose it was created for.(designed to protect inexperienced or gullible buyers)

In order to adjust such differences, it is very common practice (mainly in the food industry) to offer to the buyer a “TRIAL”. This usually goes for 2-4 weeks, and it is where the Seller shows the “real” sales in relation to those of the “book sales.”

This practice is highly dangerous because it opens room for the Seller to produce “heat” sales (offering friends and family to come in and consume in the weeks when the trial is on).

In that sense, the mechanism to “solve the weakness of sec 52” in reality can actually create even more damage to an inexperienced buyer.

My proposal is the following:

That section 52 will be presented to the prospective buyers at least **14 days before the settlement date (or 28 days if there exists a 4-week trial).**

If the seller proposes a trial to the buyer, **he or she must inform the accountant, and the trial number (amount of takings targeted) must be nominee in section 52.**

If the trial results in an increase of more than 10% of the previous year “weekly takings”, then the vendor must present clear information (and be placed on sec. 52) providing the reasons for the large increase in their sales over the period.

As soon as the trial finishes, both the buyer and the seller address a letter to the accountant with both signatures expressing the reality of the sales (achieved during the trial period).

A copy of section 52 showing:

1. The previous 2 years of accountancy numbers
2. The trial numbers (takings per week or so)  proposed by the vendor
3. The figures achieved during the trial by the vendor, with the buyer signing as a witness

This all must be sent to the Australian Taxation Office in no more than 10 days after concluding the trial.

We believe the actions that we are proposing can tackle various other issues as well:

1. The problem of tax evasion
2. Additional to that problem of tax evasion, the competition between companies will become more fair.
3. We understand that as soon as the “sale” component of the trial is open and made “public” and submitted to the ATO, the other hidden data will be revealed automatically, such as expenses (wages, purchases etc.). If the sales are not evaded, the real expenses will be a “must” to reveal to avoid paying unnecessary tax.
4. **The problem of “low”, “no” or ”wrong” information provided to the buyer when he or she receives the sec 52 will be solved.**
5. Solves also the issue that the accountant should be the one in charge of providing accurate numbers according to the true experience of the client.
6. Finally, with clear information being provided, the chances that buyer may be misled, misguided and misinformed are much lower than before.

SUMMARY OF CHANGE PROPOSED

1. Section 52 must be presented at least 14 days before the settlement date, or 28 days if it is a 4-week trial period.
2. If there is a trial period, the seller must inform the accountant to place the trial value on the document (sec 52).
3. If the trial value (weekly or monthly) exceeds 10% of the previous financial year book numbers, the seller must provide a clear explanation as to why that occurred, and that will become a part of section 52.
4. As soon as the trial period is finished, the results must be communicated to the accountant in writing, and signed by both the buyer and the vendor.
5. Section 52 will be updated by the accountant, with trial period completed and the numbers achieved, and a copy will be sent to the ATO.

Norberto M. J. Izsak

Central Business Brokers Pty Lt

norberto@centralbrokers.com.au

Mob 0400 18 17 18