

**THE P & G MCPHEE SUPER FUND**  
**Unrealised Capital Gains as at 30 June 2021**

Quantity /Description	Accounting Treatment			Taxation Treatment								
	Market Value	Original Cost	Accounting Gain/(Loss)	Cost Base Calculation				Capital Gains Calculation				
				Tax Free	Tax Deferred	AMIT	Amount	Indexation	Discountable	Other	Deferred	Capital Loss
<b><u>Property Direct Market</u></b>												
<b>Fixtures &amp; Fittings - Brisbane Sheds 1-3</b>												
26/05/2018	Landing and Spiral Staircase - Balustrade	3,136.39	3,136.39	0.00	0.00	0.00	0.00	3,136.39				
25/07/2018	Laminate floor installation	694.93	694.93	0.00	0.00	0.00	0.00	694.93				
		3,831.32	3,831.32	0.00	0.00	0.00	0.00	3,831.32				
<b>Shed 01, Brisbane Markets</b>												
13/10/2014	1.00	105,000.00	3,502.91	101,497.09	0.00	0.00	0.00	3,502.91			101,497.09	
	1.00	105,000.00	3,502.91	101,497.09	0.00	0.00	0.00	3,502.91			101,497.09	
<b>Shed 02, Brisbane Markets</b>												
13/10/2014	1.00	105,000.00	0.00	105,000.00	0.00	0.00	0.00	0.00			105,000.00	
	1.00	105,000.00	0.00	105,000.00	0.00	0.00	0.00	0.00			105,000.00	
<b>Shed 03, Brisbane Markets</b>												
13/10/2014	1.00	105,000.00	0.00	105,000.00	0.00	0.00	0.00	0.00			105,000.00	
	1.00	105,000.00	0.00	105,000.00	0.00	0.00	0.00	0.00			105,000.00	
<b>Property Direct MarketTotal</b>		318,831.32	7,334.23	311,497.09	0.00	0.00	0.00	7,334.23			311,497.09	
<b><u>Unlisted Market</u></b>												
<b>RFX_R (ASX:RFX_R)</b>												
19/06/2014	857.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00			0.00	
24/09/2014	3,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00			0.00	
11/03/2016	460.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00			0.00	
4/04/2016	590.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00			0.00	
14/07/2017	10,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00			0.00	
30/05/2018	2,982.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00			0.00	
3/06/2019	8,945.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00			0.00	
	26,834.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00			0.00	
<b>Unlisted MarketTotal</b>		0.00	0.00	0.00	0.00	0.00	0.00	0.00			0.00	

# SETTLEMENT STATEMENT

**Matter No:** 20140628  
**Re:** GMF MARKETS PTY LTD assignment from G & P McPhee as Trustee  
**Property:** Units S-07, S-08, S-09 and S-10, Brisbane Markets  
**Re:** GMF MARKETS PTY LTD assignment to G & P McPhee as Trustee  
**Property:** Units S-01, S-02 and S-3, Brisbane Markets

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**Settlement Date:** 13.10.14  
**Adjustment Date:** 13.10.14  
**Settlement Place:** TBA  
**Settlement Time:** TBA

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Sale Price	\$55,000.00
Plus rental/outgoings adjustment (Units S-07, S-08, S-09 and S-10) - \$5,072.20 (GST inclusive) x 12 ÷ 365 = \$166.75 per day x 18	\$3,001.50
	<hr/>
	\$58,001.50
<b>##</b> Less rental/outgoings adjustment - (Units S-01, S-02 and S-03) - \$3,701.94 (GST inclusive) x 12 ÷ 365 = \$121.70 per day x 18	\$2,190.60
	<hr/>
<b>BALANCE AT SETTLEMENT</b>	<u><u>\$55,810.90</u></u>

## CHEQUE DIRECTIONS:

Brisbane Markets Limited – rental/outgoings October – Units S-07 to S-10 (including car parks retained by McPhee) <i>TO BE ADVISED</i>	\$5,072.20
	<hr/>
	\$50,738.70
<b>TOTAL:</b>	\$55,810.90

## COMMENT:

**##** *This amount is being adjusted because rental is paid to 31 October 2014 in respect of Units S-01, S-02 and S-03. Our client has made this adjustment and accordingly now seeks reimbursement.*

# PETER & GLENIS MCPHEE ATF THE P & G MCPHEE SUPER FUND

# TAX INVOICE

ABN 98 713 017 183

C/- Virtu Super  
PO Box 83  
MOUNT GRAVATT QLD 4122

INVOICE No 001  
DATE: 14 October 2014

Phone 07 3349 1452 Fax 07 3422 8014

**Billing Address:**

GMF Markets Pty Ltd A.C.N. 601 609 063  
As trustee for the GMF Unit Trust  
PO Box 2  
BRISBANE MARKETS QLD 4106

SENT DATE	SENT VIA	TERMS
16/10/2014		

DESCRIPTION	AMOUNT (ex. GST)
Consideration for lease assignment transfer of Brisbane Market Sheds 7, 8, 9 & 10 in S Block.	\$55,000.00
Sub-total	\$55,000.00
Plus GST	\$5,500.00
Total (Incl. GST)	<b>\$60,500.00</b>

Make all cheques payable to **P & G McPhee Super Fund**

<p align="center"><b>ELECTRONIC PAYMENT OPTION</b></p> <p align="center">Account Name: P &amp; G McPhee Super Fund</p> <p align="center">BSB Number: 084 100</p> <p align="center">Account Number: 558992117</p>
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If you have any questions concerning this invoice, contact Glenis McPhee on 0409 632 058 or [glenisjmcphree@bigpond.com](mailto:glenisjmcphree@bigpond.com)

# Crouch & Lyndon

L A W Y E R S

Our Reference: BJ:cj:20140387

Established 1894

9 March 2015

Mr P & Mrs G J McPhee  
PO Box 579  
SAMFORD QLD 4520

## TAX INVOICE

Invoice No: B3270

DR TO : CROUCH & LYNDON PTY LTD

RE: **ASSIGNMENT OF LEASES TO AND FROM GMF MARKETS PTY LTD - BRISBANE MARKETS**

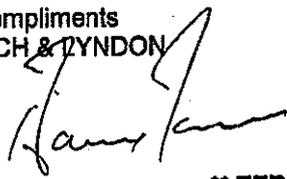
Account period: 16 September 2014 to 14 October 2014.

Professional Costs (Details on Page 3)	\$351.00
Associated Professional Fees	\$25.00
Subtotal	\$376.00
GST	\$37.60
<b>Amount Due &amp; Owing (GST Inclusive)</b>	<b>\$413.60</b>

Tax Invoice Includes total of GST of \$37.60

E & OE

With compliments  
CROUCH & LYNDON

Per: 

**PAID**  
9/3/15

**\*\* TERMS: PAYMENT DUE DATE 24 March 2015\*\***

Note: This bill is delivered conditionally and subject to our reserving the right to withdraw it prior to unconditional payment of the total and to deliver a substitute bill in taxable form. Our file for each matter is destroyed after seven years unless the client requests retention.

Individual liability limited by a scheme approved under professional standards legislation.

### Your rights in relation to legal costs

The following avenues are available to you if you are not happy with this bill:

- Requesting an itemised bill
- Discussing your concerns with us
- Having our costs assessed
- Applying to set aside our costs agreement

There may be other avenues in your State or Territory (such as mediation).

For more information about your rights, please read the fact sheet titled "Your right to challenge legal costs", which is enclosed. You can also obtain from your local Law Society or Law Institute (or download it from their website)

Director: Barry Johnson – Notary Public

Consultant: Phil Scott – Accredited Specialist (Mediation Law)

Associates: Saori Nakayama : Mardee Campbell

Crouch & Lyndon Pty Ltd (ABN 67 143 756 058) An Incorporated Legal Practice

Level 18, Brisbane Club Tower, 241 Adelaide Street Brisbane

Postal Address: GPO Box 3122 Brisbane Qld 4001

Telephone (07) 3221 2527 Facsimile (07) 3221 5996

Email: law@crouch-lyndon.com.au Website: www.crouch-lyndon.com.au



B&B 084-004

ACC: 175216399

Inv: B3270

# Crouch & Lyndon

L A W Y E R S

Established 1894

Our Reference: BJ:JLS:20140387

17 September 2014

Mr P and Mrs G J McPhee  
Post Office Box 579  
SAMFORD QLD 4520

## TAX INVOICE

Invoice No: B2907

DR TO : CROUCH & LYNDON PTY LTD

RE: **ASSIGNMENT OF LEASES TO AND FROM GMF MARKETS PTY LTD -  
BRISBANE MARKETS**

### Professional Costs:

To our professional costs including attendance on clients to receive instructions and perusal of emails, texts and other documents passing between the parties; attendance on clients and other solicitor re terms and drafts; attendance on client by telephone and email and on other solicitor; advice to clients and preparation of proposed amendments to the Deed; attendance on clients and other solicitor re execution and exchange of documents; various emails to and from clients, solicitor for the other party and BML's representative and all telephone attendances

GST	\$1,050.00
<b>Total Professional Costs</b>	<u>\$105.00</u>
	<u><b>\$1,155.00</b></u>

### Associated Professional Fees:

Telephone calls, postage and petties

25.00

GST	\$25.00
<b>Total Associated Professional Fees</b>	<u>\$2.50</u>
	<u><b>\$27.50</b></u>

**Amount Due & Owing (GST Inclusive)**

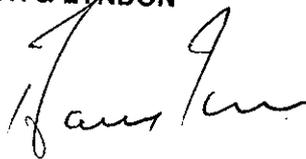
**\$1,182.50**

Tax Invoice Includes total of GST of \$107.50

E & OE

With compliments  
CROUCH & LYNDON

per:



⑦

Paid OKard  
Jan  
9/11/14

**\*\* TERMS: PAYMENT DUE DATE 1 OCTOBER 2014\*\***

Director: Barry Johnson - Notary Public

Consultant: Phil Scott - Accredited Specialist (Mediation Law)

Crouch & Lyndon Pty Ltd (ABN 67 143 756 058) An Incorporated Legal Practice

Level 18, Brisbane Club Tower, 241 Adelaide Street Brisbane

Postal Address: GPO Box 3122 Brisbane Qld 4001

Telephone (07) 3221 2527 Facsimile (07) 3221 5996



## TAX INVOICE

Customer No: C10715

**Glenis McPhee and Peter McPhee as trustees**

PO Box 579  
SAMFORD QLD 4520  
AUSTRALIA

Invoice No: 196538

Date: 09.10.14

Description	AMOUNT
Survey Fees - Survey Plan for Units S-01-S-03 - Building S - Glenis McPhee & Peter McPhee	250.00
TOTAL EX GST	250.00
TOTAL GST	25.00
<b>TOTAL DUE</b>	<b>275.00</b>

## TAX INVOICE

Customer No: C10715

**Glenis McPhee and Peter McPhee as trustees**

PO Box 579  
SAMFORD QLD 4520  
AUSTRALIA

Tel 07 3915 4200

Fax 07 3915 4291

admin@brisbanemarkets.com.au

www.brisbanemarkets.com.au

Invoice No: 196548

Date: 09.10.14

Description	AMOUNT
Legal Fees - Unit S-01-S03, Building S - Lease Renewal - Glenis McPhee & Peter McPhee	1,801.91
TOTAL EX GST	1,801.91
TOTAL GST	180.19
TOTAL DUE	1,982.10

# THE P & G MCPHEE SUPER FUND

## OVERVIEW OF PETER MCPHEE BUSINESS HISTORY AND THE MARKETS IN GENERAL

Peter McPhee has been a client for many years and has been involved in the Fruit & Vegetable Industry, initially as a manager of the Coco's Fruit Barn chain. After leaving that he ventured into retail fruit stores, with limited success, and then decided to look at getting involved in the wholesale market, which is where he saw an opportunity to generate a reasonable return for his efforts.

The only way to be involved in the wholesale fruit market in Brisbane is to obtain space at the Brisbane Markets at Rocklea and then to build up a client base and a good reputation in supplying retailers with a good product at a reasonable price. To build a reputation and client base involves not only attracting clients, being the fruit retailers, but also to form good relationships with the growers, so that not only can you have a customer base to sell to, but also be able to buy at the right price from reputable and trustworthy suppliers.

The wholesale market is a very personal based industry in that customers don't necessarily buy all their product from you, but will buy some that they know you specialise in and be able to obtain at a good price. Suppliers also need to have relationships built, so that they also know you will be able to sell their product on a consistent basis. However, as customers have other suppliers, and suppliers have other customers, it is very easy for either of them to stop dealing with a wholesaler and source and sell their product elsewhere.

The major reasons that both suppliers and customers deal with a wholesaler are:

- consistency in delivery on a timely basis
- quality of product; and
- fair price.

To get into the markets, generally you need to wait for a previous operator to want to leave his shed and move on to other things. In which case, you can approach him to take over the lease of his shed.

Businesses as such do not get sold, as there is technically no goodwill associated with the business. The value is really in the ability to operate from a shed at the markets, and therefore the value resides with the lease.

Historically the sheds at the markets were full (or at least very limited), and as such, it was a one-on-one negotiation with a current occupier if you desperately wanted to take over a shed and generally had to pay the asking price for that particular shed.

There is some brinkmanship in this, in that current operators of sheds generally don't let it be known that they want to close down, as prospective tenants may wait until the operator closes his business and walks out, and then approach the markets to take over the lease. The current tenant would generally act as if they are in no rush to sell, so as to encourage a prospective new tenant to want to pay a higher price to take over their particular shed.

Normally, the business in that particular shed does not continue and the new tenant would simply start establishing their own business from the shed.

Another overriding factor is that the position of the shed, in relation to its location on the markets site and access to it etc, can have a significant impact on the value of the particular lease on that shed, both from the ease of loading and unloading, and for customers' benefit.

The demand is also impacted upon the type of product being wholesaled, again due to the logistics of moving the product in and out.

In this regard there is no rule of thumb that can be applied to a particular lease and is generally a market rate based on an arm's length transaction with a third party at the particular time, to gain access to the lease.

## **HISTORY OF CURRENT LEASEHOLD INTERESTS**

In or about 2006 Peter McPhee wanted to enter into the wholesale business and wanted to test the waters to see whether it was the industry for him. Through his association with the markets, he was aware of someone ('leaseholder') who was willing to allow him to manage their business for a period of time to see whether he was interested. The manner in which this took place was that Peter established an operating trust which acquired the stock and commenced selling from two sheds that the leaseholder operated from. The business paid the leaseholder a rental premium based on the product that was sold. The royalty was based on each box of produce sold.

After managing the business for a period of time, Peter decided he could see potential in operating a wholesale business and approached the leaseholder to take over their leasehold. At this time Peter was known in the markets as the manager of the business and it was also known that the original owner (leaseholder) may return to the business and as such, most customers and suppliers kept dealing with Peter through his role as manager.

However, once Peter took over the business and became the owner, he subsequently discovered he would lose some suppliers and customers and would need to build up the business again.

Peter accepted that the premium he would be paying the leaseholder was to obtain the right to operate from those sheds because of their position within the Brisbane Markets, and it was not possible for Peter to obtain other sheds in a suitable place anywhere else in the markets at that time.

After careful consideration and calculation, it was determined that based on the lease premium asking price, it was still feasible to operate a business from these premises. That is, the Rent including the increase to cover the lease premium, would still allow a business to operate profitably.

Peter saw potential in the value of the leases, as distinct from the business, in that the sheds he had access to would be in demand. As such, Peter approached the leaseholder to take over the leases.

Peter also considered asset protection structures, to ensure that if the business did experience difficulty, the valuable asset, being the access to the sheds via the leases, would not be jeopardised.

Peter also considered many other factors in relation to the markets to determine that the asking price was reasonable and that he could see a good return on investment for such an outlay.

After further consideration, Peter decided to continue operating his business through his Family Trust, but would acquire the leasehold interest in his super fund and then to sub-lease the sheds across to his business.

On 29 March 2007 Peter acquired the interest from the current tenant for the leasehold rights to Sheds 7 & 8 for \$200,000 each.

Peter determined a fair market return on this, being approximately a 9% return for the superannuation fund. He was also of the opinion that the value of the leases would not diminish over time and would hold their value, and even expected them to increase due to the limited ability for others to enter the markets.

The lease was for a 10 year term and although it was already 3 years into the lease period, Peter acknowledged there were only 7 years remaining. He discussed this with other operators of the markets and with the owners of the markets. While there is nothing in writing, it is a soundly accepted practice that the landlord will offer the current leaseholders the opportunity to renew the lease at the end of the term. Peter determined that the first right of refusal to take on a new lease would be offered, and he saw the holding of the current lease as providing value well in excess of the current lease term.

Peter continued to operate his business from the premises for a number of years and then unfortunately in 2011 floods struck the Rocklea area and devastated the Brisbane Markets. This caused great concern for all operators, not only from the point of disruption to the business, but the inability for them to get insurance on their produce, equipment and vehicles etc.

Also, from the time the initial lease was entered into, the markets operators had also opened another site across the road which provided more space for a wholesale business to operate from. This had an impact on the valuation of lease holdings in the markets, as there was now greater supply as well as a reduced interest in operating a wholesale business from the area.

In September 2012 the sheds next door to 7 and 8 became available, at a value of \$46,500 for each shed. While this was a much reduced value compared to the \$200,000 per shed paid 5<sup>1</sup>/<sub>2</sub> years earlier, Peter saw this as an opportunity to buy at a 'low' in the market due to the negativity in the markets at the time, knowing that over time this would improve, and by having four sheds together would provide significant capital growth, which would compensate for the current drop in value which Peter believed would increase again on the initial two sheds he acquired. He was also aware that the Super Fund would be able to secure a tenant easily.

At the time, the operator of the business (i.e. McPhee Family Trust) was also looking to expand due to its increase in business and need for further space, so it was opportune at the time for the super fund to invest further in leasehold premises.

In August 2014 all the current leases expired, however first right of refusal was offered to all the current leaseholders (as expected), to enter into new 15 year leases. That is, a 10 year lease with a 5 year option.

At the same time, Peter was approached by another operator who had three sheds and wanted to expand into four. The location of the current four sheds was in a different area of the markets where access was more difficult and which would impact upon the long-term value of the leasehold of those sheds, whereas the three sheds being offered had a much better position for access and Peter could see the potential for taking on further leases in that particular area to further increase the value, not only in relation to the position of the sheds, but also parking spaces, which is essential in the markets.

It was agreed between the super fund (which held the 4 leases at the markets, being Sheds 7, 8, 9 and 10) and another operator who held Sheds 1, 2 and 3, to agree to assign the rights to each other to enter into the new leases, and for which the McPhee Super Fund would be paid an amount of \$55,000 cash. The new Sheds also had additional fixtures & fittings which add an estimated \$50,000 value above the current Sheds. The additional facilities include a large cold room and an office installation which could represent different values depending on the purchaser's priorities, however the trustees believe that the above is a conservative estimate of the value of these additions. As part of the agreement, the holder of Sheds 1, 2 and 3 agreed to pay certain costs relative to the removal of certain items, power etc.

As such, in September 2014 an agreement was entered into between the McPhee Super Fund and the other lease holder to assign the rights to the sheds and the McPhee Super Fund received the cash payment of \$55,000 plus GST.

On or about that time in September, new leases were entered into by the super fund for Sheds 1, 2 & 3 for a 10 year period with a 5 year option.

The McPhee Super Fund acknowledges that it has invested a net of \$440,000 plus costs in relation to the 3 sheds, being on average \$130,000 per shed. The super fund trustees believe that over time, as the markets revert back to normal operations and the threat of floods diminish, these values will increase again to over the \$200,000 initial payment made for the first two leases.

The Trustees believe that the value of each of the Sheds is fairly represented by the consideration received in the above transaction, namely \$55,000 cash + \$50,000 fixtures & fittings, so can be fairly valued at \$105,000 per Shed.

Therefore, a fair rental return that they would be looking at recouping on this investment, is a 9% return on the current valuation figure. The Trustees operate on the assumption, based on historical actions & market expectations, that they will be offered first right of refusal on these leases by Brisbane Markets in perpetuity, therefore the value of the leases will not need to be amortised or recouped from the lessee over the life of the current leases.

The trustees accept that a capital loss has been made in relation to the initial investment on the leases, however this was due entirely to the impact the floods had on the demand for sheds at the markets, which occurred after their initial investment, and secondly, the increased number of sheds available due to the Brisbane Markets operators building more shed space. The new Markets site hasn't been a great success and many of the operators who moved across have found that it isn't a good operating environment, and are trying to return to the original markets site, which over time will increase the amount people will be willing to pay for the opportunity to operate their businesses from.

Informal advice was sought from Neal Dallas from McInnes Wilson in relation to matters to consider for such an investment. His comments are the bullet points below and our response to each are in red:

- If the investment wasn't returning an overall positive return, then why is the fund investing in it. On the numbers (and I realise this doesn't reflect the actual situation) the return appears positive given the premium available where the lessee doesn't take up the first right of refusal.

*The return on investment was initially based on the actual cost outlay and was based on a 9% return. It was assumed that the value of the leases would remain at the initial value and there would be no need to build an amortisation cost for the capital outlay. It was only due to the market conditions that the initial value of the leasehold decreased.*

- Is there a suggestion that the arrangement is more favourable to the sub-lessee than if it were dealing with the fund on an arms length basis. The absence of a public market helps because it will be more difficult to show the arrangements were more favourable to the sub-lessee, but I suspect that the ATO will be more aggressive in making enquiries of other lessees to see what other sub-lease arrangements look like.

*As mentioned above, it is difficult to obtain a fair market appraisal for the leasehold interests as there are many factors which affect each and every property. It comes back to the vision or expectation of a particular tenant as to the potential and likely increase in value of owning particular sheds due to positioning within the Brisbane Markets, and even these values can fluctuate widely over time subject to many factors in relation to the current tenants who hold the leasehold interests.*

- Is there a suggestion that the arrangement provides financial assistance to a member or a relative of a member (directly or indirectly). If the rent is lower than market, this might be the case (depends who is the sub-lessee, but will be a problem if a member or relative ultimately gets a benefit from the arrangement). Harder for the ATO to argue this if the arrangement is on an arms length basis.

*A fair market return of 9% on the amount invested by the super fund is a reasonable return under the circumstances and does not seem to be providing any member or relative a benefit from the arrangement.*

- Sole purpose could also then be an issue – is the fund being run for another purpose (i.e. to give the member or some associate somewhere to operate their business)

*While this could be a concern, yes the business does operate from those premises, but the main reason for the investment is to provide a return for the members of the super fund and the trustees believe it's a very good investment long term, due to the limited access to the markets and the premiums the operators are willing to pay to take over particular sheds at the markets.*

- At the other extreme, is the rent higher than expected, such that it could be construed as a quasi-contribution. This seems less likely. More likely to be raised if the rent was based on recouping \$16,500 per year plus a 9% return – i.e. if the rent was higher.

*The 9% return does not seem unreasonable in this regard. While the rent that is paid to the markets for the shed is much lower than is on-charged to the tenant, this is due to the premium that the leaseholder can sub-lease the premises for, due to the other markets factors.*

Taking all the above factors into account, the trustees of the super fund believe that it is a good investment for the superannuation fund to hold and will, over time, provide both a good revenue return for the fund, as well as a capital gain ultimately if the leases are assigned to another party at any time in the future.