

## APPLICATION FORM

# Indirect Tax Sharing and Indirect Tax Funding Agreements

Please read the following before completing the application form.

## 1. INDIRECT TAX SHARING AGREEMENTS – PURPOSE

Similar to a tax sharing agreement, an Indirect Tax Sharing Agreement (**ITSA**) allows entities within a GST Group to limit joint and several liabilities in relation to their indirect tax liabilities including Goods and Services Tax (**GST**), wine equalisation tax, luxury car tax and fuel tax. The primary liability for the indirect tax liabilities rests with the Group's representative member (commonly the head entity).

Without a valid ITSA in place, the following consequences can arise:

- a. **Joint and several liability** – the members of the GST Group are exposed to joint and several liabilities. This can result in the ATO being able to recover any unpaid indirect tax liability against any GST group member.
- b. **Debt and banking covenants** – because of joint and several liability risks.

## 2. INDIRECT TAX FUNDING AGREEMENTS – PURPOSE

The Indirect Tax Funding Agreement essentially contains the mechanisms for an internal funding arrangement between the GST group members to ensure that the representative member can fund the GST Group's indirect tax liability payments proportionally based on each members liabilities.

## 3. VALIDITY

Generally, an ITSA will be valid if:

- a. it is entered into between the group representative of the GST group and one or more of the group's contributing members;
- b. it is entered into before the date on which the representative member is required to lodge a BAS for the relevant tax period;
- c. a particular amount (the contribution amount) for the relevant tax period could be determined under the agreement for each ITSA contributing member in relation to the group liability; and
- d. the contribution amount must represent a "reasonable allocation" of each participating member's liability for the group's indirect tax payable for that period. We discuss below the various approaches the ATO has considered on what is a "reasonable allocation" below.

## 4. DRAFTING CONSIDERATIONS

### 4.1 Reasonable allocation

In order for an ITSA to be valid and prevent joint and several liabilities arising, one of the requirements is that the agreement achieves a "reasonable allocation" of the group's indirect tax liability.

There are several methods which the Commissioner of Taxation accepts as a reasonable allocation. The question of what is a reasonable allocation depends on the facts and circumstances of the particular group. There is no prescriptive method as long as each contributing member's contribution

can represent a reasonable allocation of the total indirect tax law liability of the group for that tax period.

#### 4.2 Methodology

The ATO considers the following methodologies for determining the contribution amount represents a 'reasonable allocation' of each participating member's liability of the GST group's indirect tax payable for that period.

**a. Allocation based on the member's contribution to liability**

This methodology involves the allocations of the GST group members to be based on each member's contribution to the indirect tax liability of the GST group.

Under this method, each member is calculated as if that member were not part of a GST group. As most intra-group transactions are treated as if they are not taxable supplies, this methodology ignores intra-group transactions. This methodology may result in some members having a notional credit position (notional refund) and others having a notional liability.

**b. Allocation based on historical proportion of unquantified indirect tax law amounts**

This method involves an allocation of a proportion of unquantified indirect tax law liabilities by using historical information if, at the time the ITSA is put in place, the quantum of the liabilities which it is intended to cover have not been determined.

For example, the amount allocated to a member could be calculated using the average contribution of that entity to the indirect tax law liabilities over the previous 12 months. Changes to the GST group, such as entries and exits or the members' operations may result in adjustments to these contribution amounts. We do not recommend this method as depending on the timing and significance of these changes, a new methodology may need to be entered into.

**c. Allocation based on contributing member's ability to pay liability**

This methodology allocates the contribution amount on the basis of each contributing member's ability to pay that liability.

#### 4.3 Clear exit

An ITSA contributing member is not liable to pay to the ATO its contribution amount if the member left the group clear of the group liability.

A clear exit is achieved if:

- a. the liability for a tax period was covered by the ITSA;
- b. the member leaves before it is required to give the Commissioner a GST return for that tax period; and
- c. the exiting member pays to the representative member a clear exit payment before the day on which the representative member is required to give to the Commissioner a GST return for that period. A clear exit payment will be the reasonable estimate of the exited member's contribution amount in relation to that tax period.

Our ITSA has clear exit provisions to detail with this issue.

## 5. EXCLUSIONS

Our application form does not cover indirect tax sharing agreements for GST joint ventures. In addition, our ITSA is not an Indirect Tax Funding Agreement. Please contact us for more information about these matters.

If you have any questions about completing the application form please contact:

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Principal

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By completing and submitting the form you confirm as follows:

- a. It is the purchaser's responsibility to ensure that the information supplied is correct.
- b. If new documents have to be prepared as a result of errors in the information a further fee will be payable.

Please ensure you complete all details below, and contact us with any questions you have prior to submitting the form.

## PRICE

Indirect tax-sharing agreement (by email delivery only)	\$2,500 plus GST
Indirect tax-sharing agreement with indirect tax funding agreement included (excluding any advice, changes to instructions etc.)	\$3,250 plus GST

## PURCHASER'S DETAIL

Full name

Name of firm (if applicable)

Email address

Telephone number

Fax number

Street Address

Suburb/City

State

Postcode

Postal Address  
(if different from above)

Suburb/City

State

Postcode

## GROUP REPRESENTATIVE

Full name

ACN/ABN/ARBN

Entity type                      Company                      Fixed trust                      Other:

Street

Suburb/City

State

Postcode

## CONTRIBUTING MEMBER 1

Full name

ACN/ABN/ARBN

Entity type                      Company                      Fixed trust                      Other:

## CONTRIBUTING MEMBER 2

Full name

ACN/ABN/ARBN

Entity type                      Company                      Fixed trust                      Other:

### CONTRIBUTING MEMBER 3

Full name

ACN/ABN/ARBN

Entity type                      Company                      Fixed trust                      Other:

### CONTRIBUTING MEMBER 4

Full name

ACN/ABN/ARBN

Entity type                      Company                      Fixed trust                      Other:

### CONTRIBUTING MEMBER 5

Full name

ACN/ABN/ARBN

Entity type                      Company                      Fixed trust                      Other:

### EXTRA QUESTIONS

Has the GST Group already formed?

Yes                      No

If Yes, on what date?

Which methodology do you wish to adopt for the ITSA?

Allocation based on the member's contribution to liability

Allocation based on historical proportion of unquantified indirect tax law amounts

Allocation based on contributing member's ability to pay liability

Other, please specify

Would you like further advice in relation to how your indirect tax sharing agreement will affect your company?

Yes                      No

If Yes, further advice requested.

Would you like to consider a TSA?

Yes                      No

If Yes, we will contact you.

## RETURNING THIS FORM

After completing this form please either:

- print, sign, and fax it to McInnes Wilson Lawyers at (07) 3221 2921; or
- print, sign, scan, and email it to McInnes Wilson Lawyers at mcwonline@mcw.com.au; or

To print this form for signing click here:

To email this form to McInnes Wilson Lawyers, after confirming instructions below, click here:

## CONFIRMATION OF INSTRUCTIONS

The purchaser agrees to purchase the goods and services indicated on this application form and acknowledges that legal or financial advice has not been given by McInnes Wilson Lawyers in relation to the preparation of the relevant document(s).

Signed by purchaser

Date (dd/mm/yy)

OR

Confirmed by purchaser

Date (dd/mm/yy)

Note: This application form will not be processed by McInnes Wilson Lawyers unless this section is completed.

## CREDIT CARD PAYMENTS

Please debit the following credit card for the supply of goods and services indicated on this application form.

Note: Payment by credit card will incur a fee of 1.07% (incl GST) for VISA, and MasterCard, and 3% (incl GST) for AMEX, on the GST inclusive price.

Credit card:

Visa           MasterCard           American Express

Total Remitted \$

Expiry date

    plus credit card fee specified above

Cardholder's Name

Card Number

Cardholder's Signature

Date