

## APPLICATION FORM

# Tax Sharing and Tax Funding Agreements

Please read the following before completing this application form.

## 1. TAX SHARING AGREEMENTS – PURPOSE

### Joint and several liability of contributing member

The head company and each contributing member, in a consolidated group, are jointly and severally liable to pay the group liability.<sup>1</sup>

However this does not apply if the group liability is covered by a tax sharing agreement.<sup>2</sup>

The joint and several liability of the contributing members arises just after the head company's due time.<sup>3</sup>

The joint and several liability of a particular contributing member becomes due and payable by the member 14 days after the Commissioner gives the member written notice of the liability.<sup>4</sup>

### Tax sharing agreements

A group liability is covered by a tax sharing agreement if, just before the head company's due time:

- a. an agreement existed between the head company of the group and one or more of the contributing members (the TSA contributing members);
- b. a particular amount (the contribution amount) could be determined under the agreement for each TSA contributing member in relation to the group liability;
- c. the contribution amounts for each of the TSA contributing members in relation to the group liability, as determined under the agreement, represented a reasonable allocation of the total amount of the group liability among the head company and the TSA contributing members;
- d. the agreement complied with the requirements (if any) set out in the regulations.<sup>5</sup>

If a group liability is covered by a tax sharing agreement each TSA contributing member is liable to pay to the Commonwealth an amount equal to the contribution amount for that member in relation to the group liability.<sup>6</sup>

The liability of a TSA contributing member arises just after the head company's due time.<sup>7</sup>

The liability of a TSA contributing member becomes due and payable by the member 14 days after the Commissioner gives the member written notice of the liability.<sup>8</sup>

A TSA contributing member is not liable to pay to the Commonwealth its contribution amount if the member left the group clear of the group liability.<sup>9</sup> This occurs where the contributing member ceased to be a member of the group at a time before the head company's due time, and before leaving the TSA contributing member had paid the head company that member's contribution amount.

If a TSA contributing member exits the consolidated group, it will be individually liable to the consolidated group for an exit fee, as specified in the TSA.

<sup>1</sup> s 721-15 *Income Tax Assessment Act 1997* (Cth) (ITAA97)

<sup>2</sup> s 721-15(3) ITAA97

<sup>3</sup> s 721-15(4) ITAA97

<sup>4</sup> s 721-15(5) ITAA97

<sup>5</sup> s 721-25(1) ITAA97

<sup>6</sup> s 721-30(2) ITAA97

<sup>7</sup> s 721-30(4) ITAA97

<sup>8</sup> s 721-30(5) ITAA97

<sup>9</sup> s 721-30(3), 721-35 ITAA97

## 2. TAX SHARING AGREEMENTS – DRAFTING CONSIDERATIONS

### Reasonable allocation

In order for a TSA to be valid and prevent joint and several liability arising, one of the requirements is that the agreement achieves a “reasonable allocation” of the group’s income 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.

An allocation could be made on the basis of the actual or expected tax liability of various contributing members.

Another approach involves allocating a fixed percentage of the total group liability towards all members.

Further, it may be reasonable to allocate tax liabilities on the basis of each contributing member’s accounting profit as a percentage of the group’s overall accounting profit.

### Profitable and loss making entities

If an approach based on ‘notional’ contributions to taxable income is taken, consideration should be given to whether entities in the group are in a taxable or loss position. It may be appropriate, depending on the circumstances, to allocate a nil liability to entities in a loss position.

### Anticipation of sale of a subsidiary

In the event that there is to be a sale of a subsidiary of the consolidated group, there is a greater chance that the “reasonable allocation” clause in a TSA may be subject to greater scrutiny.

### Different types of entities within the consolidated group

Where a group consists of entities such as fixed trusts, or entities established for a special purpose, special considerations may be required for a reasonable allocation to be achieved. For instance, there may be strong reasons why a certain entity warrants nil allocation of a tax liability, in a particular group.

### Substituted accounting periods

To the extent that members of a proposed consolidated group are returning income on the basis of different accounting periods, application will need to be made for a substituted accounting period to align the entities year end for income tax purposes.

## 3. TAX FUNDING AGREEMENTS – PURPOSE AND DRAFTING CONSIDERATIONS

### Tax funding agreements

A Tax Funding Agreement essentially enables the head company and contributing members of a consolidated group to record tax accounting entries in their respective financial statements to reflect their tax assets and tax liabilities.

### AASB 112 and UIG Interpretation 1052

Under Australian Accounting Standards Board (AASB) 112 ‘Income Taxes’, the head entity and each contributing member in a tax consolidated group are required to account for the current and future tax consequences of its assets and liabilities.

Further, the Australian Accounting Standards Board released Urgent Issues Group (UIG) Interpretation 1052 ‘Tax Consolidation Accounting’, provides for three methods in which a head entity or contributing member can recognise deferred tax assets and deferred tax liabilities in their accounts.

Thought needs to be given to which of these approaches is most appropriate for the group in question. Some clients wish to advise us of an allocation they prefer which is consistent with an already established accounting policy taken by auditors. The three approaches can be broadly explained as follows:

**a. Stand-alone taxpayer approach**

The 'stand-alone taxpayer approach' involves each entity in a tax consolidated group recording current and deferred taxes as if it continued to be a separate entity in its own right.

**b. Separate taxpayer within a group**

The 'separate taxpayer within group approach' treats the entity as subject to tax on the basis that it is part of a tax consolidated group, which requires adjustments to be made to transaction and events that occur within the tax consolidated group.

**c. Group allocation approach**

The 'group allocation approach' allocates current and deferred tax amounts for the entire tax consolidated group among each entity in the group.

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

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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

Tax sharing agreement and tax funding agreement  
Email delivery only

Starting \$3,500 plus GST, depending on instructions. Upon receipt of instructions we will confirm fee estimate.

Documents in hard copy

Express Post - \$15

Courier - TBC

### PURCHASER'S DETAILS

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:

### METHOD OF SHARING TAX (choose one)

Stand-alone taxpayer approach

Separate taxpayer within a group approach

Group allocation approach

Advice requested

### HEAD ENTITY

Full name

ACN

ABN

Entity type

Company

Fixed trust

Discretionary trust

Other:

Street

Suburb/City:

State:

Postcode:

### CONTRIBUTING MEMBER 1

Full name

ACN/ABN/ARBN

Entity type      Company      Fixed trust      Discretionary trust      Other:

### CONTRIBUTING MEMBER 2

Full name

ACN/ABN/ARBN

Entity type      Company      Fixed trust      Discretionary trust      Other:

### CONTRIBUTING MEMBER 3

Full name

ACN/ABN/ARBN

Entity type      Company      Fixed trust      Discretionary trust      Other:

### CONTRIBUTING MEMBER 4

Full name

ACN/ABN/ARBN

Entity type      Company      Fixed trust      Discretionary trust      Other:

### EXTRA QUESTIONS

Are any members of the proposed consolidated group subject to the *Petroleum Resource Rent Tax Act 1987* (Cth)?

Yes      No  
If Yes, which members?

Has the consolidated group already formed?

Yes      No  
If Yes, which date?

Was there a previous tax sharing agreement or tax funding agreement in place?

Yes      No  
If Yes, could you please attach a copy of the documents in the email with the application?

Would you like further advice in relation to how your tax sharing agreement or tax funding agreement operates and will affect your company, and the differences between each?

Yes      No  
If Yes, further advice requested.

Is the group also interested in indirect tax sharing agreements? Would you like us to contact you about this?

Yes      No

## 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](mailto: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