**DEED OF SETTLEMENT**

**BETWEEN**

*<taxpayer's full name and address>*

(‘the taxpayer’)

**AND**

**THE COMMISSIONER OF TAXATION OF THE COMMONWEALTH OF AUSTRALIA**

**Context**

A. The Commissioner and the taxpayer are in dispute as to <summary of the dispute, for example, alleged income tax liability of the taxpayer for the year(s) of income ended 30 June 20XX to 30 June 20XX inclusive>.

B. In particular, the Commissioner and the taxpayer are in dispute as to:

* <particulars>; for example, the tax deductibility of certain amounts said to have been incurred in respect of <description>
* <particulars>; for example, the assessability as to income tax of certain amounts said to have been derived in respect of <description>.

C. The parties remain in dispute as to the alleged tax related liability or entitlement of <taxpayer>.

D. The Commissioner and the taxpayer nonetheless wish to settle their dispute, making no admissions as to liability, and have agreed on the terms set out in this deed.

**Operative provisions**

In consideration of the mutual promises contained in this document, the parties to this deed agree as follows:

1. Definitions and interpretation

1.1. In this document:

* ‘**Commissioner**’ means the Commissioner of Taxation of the Commonwealth of Australia and as required, any delegate or authorised representative acting on behalf of the Commissioner
* ‘**issues**’ means the issues referred to in paragraph B above and which are the subject matter of the settlement contained in this deed
* ‘**ITAA 1936**’ means the *Income Tax Assessment Act 1936* (as amended) and includes regulations made pursuant to the said Act
* ‘**ITAA 1997**’ means the *Income Tax Assessment Act 1997* (as amended) and includes regulations made pursuant to the said Act
* ‘**relevant year(s)**’ means the financial year(s) ended <30 June 20XX (to 30 June 20XX inclusive)>
* ‘**party**’ or ‘**parties**’ means the taxpayer and/or the Commissioner
* ‘**person**’ means natural person or a firm, corporation, body corporate, unincorporated association or any governmental authority

1.2. In this document, unless the contrary intention appears:

1.2.1 a reference to this document means this deed, and references to clauses and schedules are references to clauses and schedules of this document

1.2.2 any word, term or expression for which a particular or special meaning has been attributed or ascribed by a taxation law, shall be given that particular or special meaning

1.2.3 singular includes the plural and vice versa

1.2.4 a reference to any one gender includes each other gender (as the case may require)

1.2.5 a reference to a person includes a reference to that person's executors, administrators, legal personal representatives, successors and permitted assigns

1.2.6 an agreement on the part of, or in favour of, two or more persons binds them or any one of them jointly and severally.

1.3. All headings in this deed have been inserted for the purpose of ease of reference only. They do not affect the meaning or interpretation of this deed.

1. Obligations of the Commissioner

2.1. The Commissioner will do the following in the order in which they appear below:

2.1.1 issue an assessment/amended assessment for the income year ended 30 June 20XX to <taxpayer> by:

* reducing/increasing the income in respect of <the issue> from $ \_\_\_ to $\_\_\_
* increasing/reducing the deduction allowable in respect of <the issue> from $\_\_\_ to $ \_\_\_
* increasing/reducing an amount of credits or tax offsets in respect to <the issue> from $ \_\_\_ to $ \_\_\_

2.1.2 issue for specific next year [etc]

2.1.3 issue an assessment of penalty in respect of the relevant income years

2.1.4 calculate the general interest charge (GIC), shortfall interest charge (SIC), and any other interest for late payment penalty, etc in relation to the amended assessment(s) referred to in clause 2.1.1 [etc] above

as particularised in Schedule 1.

2.2. The Commissioner will remit so much of the GIC and/or the SIC that has continued to accrue in respect of those amounts set out in Schedule 1 which remain unpaid between the relevant due date specified in Schedule 1 and the date of payment specified in clause 3.1.6 provided that:

2.2.1 the tax-related liabilities as set out in Schedule 1 are paid in accordance with clause 3.1.6; and

2.2.2 the date up to which the GIC and/or the SIC is calculated in Schedule 1 is ***less than*** 30 days before the date of this deed.

2.3. If the date up to which the GIC and/or the SIC is calculated in Schedule 1 is ***more than*** 30 days before the date of this deed:

2.3.1 the Commissioner is at liberty to calculate the additional GIC and/or SIC that has accrued between the date specified in Schedule 1 and the date of payment specified in clause 3.1.6 (the additional GIC);

2.3.2 the Commissioner shall give notice to the taxpayer of the amount of the additional GIC payable by the taxpayer; and

2.3.3 the additional GIC shall be payable within the later of 14 days of the date of notification or within such other time as shall be specified in the notice.

2.4. Provided the taxpayer pays the amount of the additional GIC within the time required under clause 2.3.3, the Commissioner shall accept such payment in full and final satisfaction of the taxpayer’s liability for so much of the GIC and/or the SIC that has continued to accrue under the *Taxation Administration Act 1953* on a compounding basis in respect fo those amounts set out in Schedule 1 which remain unpaid between the relevant date specified in Schedule 1 and the date of payment of the additional GIC.

2.5. The Commissioner agrees to issue amended assessment referred to in clause 2.1 by no later than <date>.

2.6. Any entitlement to interest will be provided to the extent that it is payable in accordance with the Taxation (Interest on Overpayments and Early Payments) Act 1983.

1. Obligations of the taxpayer

3.1. The taxpayer:

3.1.1 will not object to or request an amendment or review of assessment(s) and calculations referred to in clause 2 if raised on the terms set out in this deed

3.1.2 will not appeal against the Commissioner's decision to any relevant objection for the relevant year(s)

3.1.3 will not seek any review of the issues agreed in this settlement, or of related decisions, under the *Administrative Decisions Judicial Review Act 1977* or administrative law generally. However, this does not prevent the taxpayer seeking review by the Tax Ombudsman

3.1.4 will not seek disclosure under the *Freedom of Information Act 1982* of the Commissioner’s documents, documents in relation to issues or decisions relevant to the settlement recorded by this deed

3.1.5 makes no admissions as to liability not withstanding any provision in this deed

3.1.6 will pay to the Commissioner the amount of $ \_\_\_ being the total of the tax-related liabilities set out in Schedule 1 no later than <date>.

or

3.1.7 will pay to the Commissioner the amount of $.......... within six (6) months of the date upon which the duly executed deed is delivered to the taxpayer by the Commissioner, in not less than equal monthly instalments of $.......... to be paid no later than the 15th day of every calendar month, with the GIC payable on the unpaid settlement amount from <date> to be paid with the 6th and final instalment

and

* + 1. However, nothing in this deed prevents the taxpayer, at his/her discretion, paying the amount of $.......... earlier than the dates specified in clause 3.1.6. GIC will only accrue on unpaid amounts.

3.2. In relation to future obligations for returning income or claiming deductions, the taxpayer:

3.2.1 will calculate its taxable income for the <year/s>, on the basis that <obligation>

(and/or)

3.2.2 will claim no <deductions/carried forward losses> in respect of <issue> for the <year/s>.

3.3. In relation to withdrawal of objections, the taxpayer’s objections or other requests for review by the Commissioner that are in relation to the issues for the relevant years and have not yet been decided, are withdrawn by the taxpayer upon signing of this deed.

3.4 In relation to discontinuance of litigation, the taxpayer:

3.4.1 will lodge a <name of notice> with the <Court name> in respect of the proceedings <case name> as soon as practical after the date this deed is signed or executed.

1. Taxpayer's warranty and acknowledgement

4.1. The taxpayer warrants that to the best of its knowledge and belief it has made a true disclosure of all relevant and material facts to the Commissioner which relate to the issue(s) in dispute, prior to entering into this deed.

4.2. The taxpayer acknowledges that, if there has not been a true disclosure of all relevant and material facts to the Commissioner as required by clause 4.1, the Commissioner may in his absolute discretion take whatever further action he considers appropriate, including, without limitation:

4.2.1 electing that this deed be terminated

4.2.2 electing that this deed is void (as if it had never been executed) as against all parties to this deed (except insofar as the warranties or indemnities referred to in this deed are concerned)

4.2.3 rescinding, reversing or amending any of the things referred to in clause 2.

4.3. The taxpayer acknowledges that, if it defaults in performing its obligations under clause 3.1 the Commissioner may take whatever action is necessary to recover the full amount outstanding in respect of the tax related liability for the relevant years, including taking action to:

4.3.1 obtain judgment against the taxpayer

4.3.2 cause a trustee in bankruptcy to be appointed to administer the estate of the taxpayer [if the taxpayer is an individual]

4.3.3 cause the taxpayer to be wound-up [if the taxpayer is a corporation].

1. Authority to sign

5.1. This agreement is to be signed by either a delegate or authorised officer of the Commissioner, as follows:

5.1.1 [If signed by a delegate]
The person signing this deed is *<name of delegate>,* a delegate of the Commissioner of Taxation, who has the power to make, enter into and execute this deed in his/her capacity as a delegate of the Commissioner.

5.1.2 [If signed by an authorised officer]
The person signing this deed on behalf of the Commissioner is <*name of authorised officer who is not a delegate>*, who is authorised by *<name of delegate>,* a delegate of the Commissioner, to make, enter into and execute this deed on the Commissioner's behalf and who shall have no personal liability as a result of signing this deed.

5.1.3 It is acknowledged by the parties to this deed that the authorised officer shall have no personal liability as a result of being the authorised signatory of the Commissioner to sign this deed, and it is further acknowledged that they are the agent of the Commissioner acting within the scope of their authority.

1. General

6.1. The parties mutually covenant and agree that they will each do all the acts and things and execute all the deeds and documents as shall, from time to time, be reasonably required for the purpose of, and to give effect to, this deed.

6.2. This deed is confidential to the parties and shall not be disclosed by any of the parties, except:

6.2.1 as is required or permitted by any law

6.2.2 by the taxpayer to their related entities, auditors, bankers, tax advisers or legal advisers

6.2.3 by the Commissioner to his legal advisers.

6.3. Nothing in the confidentiality obligations is intended to prevent a taxpayer from providing information to a Commonwealth entity for the purposes of that entity undertaking a systemic review of the administration of the tax laws.

6.4. This deed constitutes the entire agreement and undertaking between the parties in relation to the issues in respect of the relevant year(s) and supersedes any previous deeds, agreements, arrangements, and undertakings between them.

6.5. Provided that the tax-related liabilities as set out in Schedule 1 are paid by the dates specified in accordance with clause 3.1.6, the parties agree that this deed constitutes a complete release and extinguishment of the taxpayer’s tax-related liabilities for the relevant year(s) with regard to the amended assessment(s) and related matters.

6.6. This deed shall be construed and governed in accordance with the laws in force in [State or Territory] and shall take effect between the parties from the date this deed is signed or executed by all relevant parties.

6.7. The schedule to this deed sets out the amendments to tax liabilities of the taxpayer pursuant to the terms set out in this deed and as such forms part of the agreement set out by this deed.

6.8. All parties acknowledge that this deed is not to be considered a general precedent but applies only to the parties mentioned to the context of the subject matter of this deed.

1. Default clause

7.1. Any party to this deed who becomes aware of a breach of any of the terms of the settlement contained herein, may serve a written notice on the offending party specifying the breach and requiring that it be rectified.

7.2. Any defaulting party to this deed who has received written notification under clause 7.1 has fourteen (14) days to rectify the breach.

7.3. If the defaulting party fails to rectify the breach within the time required by clause 7.2, the non-defaulting party may, without further notice to the defaulting party, take whatever action is necessary (including injunctive or other relief) to require the defaulting party to rectify the breach.

1. Notices

8.1. Any notice, request or other communication to be given or served pursuant to this deed shall be in writing and dealt with as follows:

8.1.1 if given by the taxpayers (or any of them) to the Commissioner – addressed and forwarded to the Commissioner for the attention of <name> at the address notified by the Commissioner.

8.1.2 if given by the Commissioner to the taxpayers (or any of them) – signed by the Commissioner and forwarded to the taxpayers (or any of them) at the address indicated at the commencement of this deed.

8.2. Any such notice, request or other communication shall be delivered by hand or sent by prepaid security post, facsimile or e-mail, to the address of the party to which it is sent.

8.3. Any notice, request or other communication will be deemed to be received:

8.3.1 if delivered personally, on the date of delivery

8.3.2 if sent by prepaid security post, upon the expiration of 2 business days after the date on which it was sent

8.3.3 if transmitted electronically, upon receipt by the sender of an acknowledgment that the communication has been properly transmitted to the recipient.

1. Counterparts

9.1. This deed may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same document.

<If electronic service>

9.2. The parties agree that:

9.2.1. each party shall sign a copy of the deed (in any number of counterparts)

9.2.2. each party shall, as soon as is practicable, provide the other party with a signed version (or as many signed counterparts as are required) of the deed.

9.2.3. provision of the signed deed to the other party is to occur by tendering it or sending it by facsimile or electronic mail; and

9.2.4. this deed takes effect upon its execution and delivery by the Commissioner.

9.2.5 <details of contact names, email addresses etc should be included here or somewhere. If somewhere else reference that fact here>.

1. Date of operation

10.1. This deed takes effect from the date of the last relevant signature at the end of this deed.

**EXECUTED BY THE PARTIES AS A DEED**

**SIGNED, SEALED AND DELIVERED**

**[If executed by a company]**

Executed by:

.................................................................. ...................................................................

Name of Company Company ACN number

in accordance with section 127 of the Corporations Act 2001 by the authority of its Directors

................................................................. ...................................................................

Signature of Secretary/Director Signature of Director/Sole Director

In the presence of

................................................................. ...................................................................

Signature of witness (not a party to the deed) Print name

on the …….….. day of .….…………….….…………… 20……....

**[If executed by a taxpayer]**

Executed by:

<taxpayer>

<full address>

..................................................................
Signature of taxpayer

in the presence of:

................................................................. ...................................................................

Signature of witness (not a party to the deed) Print name

on the …….….. day of .….…………….….…………… 20……....

**[If executed by a liquidator]**

Executed by:

The Liquidator of

<XYZ LTD> (IN LIQUIDATION)

ACN <number>

Pursuant to his powers under section 477 of the *Corporations Act 2001*

................................................................. ...................................................................

Liquidator Print name

in the presence of:

................................................................. ...................................................................

Signature of witness (not a party to the deed) Print name

on the ..….... day of .….……….…..………… 20……..

**[If signed by a delegate]**

SIGNED by:

.................................................................... ...................................................................

Signature of delegate Print name

a delegate of the Commissioner of Taxation in the presence of:

.................................................................... ...................................................................

Signature of witness (not a party to the deed) Print name

on the …….….. day of .….…………….….…………… 20……....

**[If signed by authorised officer]**

SIGNED for and on behalf of the Commissioner of Taxation by:

.................................................................... ...................................................................

Signature of Authorised Officer Print name

as Authorised by *<name of delegate>*

in the presence of:

.................................................................... ...................................................................

Signature of witness (not a party to the deed) Print name

on the …….….. day of .….…………….….…………… 20……....

Schedule 1

This is the schedule 1 referred to in the deed dated <date> between <taxpayer> and the Commissioner.

*<Below is an example. The schedule will need to be tailored to suit each individual case including GIC/SIC and any specific payment dates.>*

|  |  |  |  |
| --- | --- | --- | --- |
| Income Year | 2010 | 2011 | 2012 |
| Additional assessable income |  |  |  |
| Additional primary tax payable |  |  |  |
| Tax shortfall penalty  |  |  |  |
| Tax shortfall interest/GIC/SIC caluclated to <date> |  |  |  |
| Additional late lodgment penalty calculated to <date> |  |  |  |
| Credits / other |  |  |  |
| Total tax and penalties calculated to <date> |  |  |  |