



Private ruling application

Using this form

Use this form to apply for a private ruling for yourself or on behalf of another person or entity.

- Fill in Sections A, B and C
- Sign and date the declaration at Section D
- Lodge the completed form using instructions in Section E.
- Include supporting documents if appropriate.

This form is also used to apply for administratively binding advice (ABA).

- ① Fields you **MUST COMPLETE** are marked (*)
- ① This form uses JavaScript. If prompted, you will need to enable JavaScript
- ① **Complete** this form on your computer, **before** printing this form. (Your answers help choose which questions will appear)
- Our website has more information about private rulings, applying for a private ruling and administratively binding advice
- Consider an early engagement discussion before you fill in this form if you are seeking advice for a complex transaction
- For help completing this application, use our Reference guide
- For help accessing online services, see Online services

Application date*

Is the taxpayer seriously considering the scheme or circumstance?*

No

Yes

Section A: Taxpayer details

① Include only the individual(s) or entity(ies) relevant to the particular scheme or circumstances set out in this application.

Taxpayer 1

Is this taxpayer an individual or an entity?*

Individual Entity

Entity name*

① It is not compulsory to provide your TFN, but it will help us process your application.

TFN ABN

TFN

Is this taxpayer registered for GST?*

No Yes

Add taxpayer

Section B: Contact person and required information

Contact person*

How would you prefer us to contact you about this application?*

Fax Post Online services Phone Email SMS

You should be aware that the internet is not a secure environment. The ATO does not control the path of inbound or outbound emails/SMS, so the privacy of personal information sent by these unencrypted channels cannot be guaranteed. Marking this box confirms you understand the risks of using unsecure channels to transmit information, including your personal details.

For further information about online security, visit our website at ato.gov.au/onlinesecurity

Email address*

We aim to contact you using your preferred channel. Providing your phone number allows us to get in touch with you quickly and easily. We need your postal address as we may not be able to provide your advice via an alternative channel.

Phone*

Address for advice and related correspondence (street address or PO Box)

Street number and name*

Suburb/town*

State/territory*

Postcode*

I will be lodging using*

Online services
 fax or post

Are you authorised to act for the taxpayer(s) in this matter?*

No

Yes

Are you a tax professional?*

No

Yes

Tax professional

Registered agent number (RAN) (if applicable)

Practice name*

For the issues raised in this application, please indicate any interactions you have had with the ATO. *

An audit (including being notified of a proposed audit)
 Oral or written advice or a ruling has been provided or requested
 No interactions

Oral or written advice or ruling:

ATO reference number (if known)

Date of ruling/advice (or approximation)

 We may choose not to rule if the matter has already been decided in private ruling or audit.

Subject of the advice*

Select all that apply

- | | | |
|---|--|--|
| <input type="checkbox"/> Income tax | <input type="checkbox"/> Fuel tax | <input type="checkbox"/> Small business |
| <input type="checkbox"/> Goods and services tax | <input type="checkbox"/> Wine equalisation tax | <input type="checkbox"/> Not for profit |
| <input type="checkbox"/> Fringe benefits tax | <input type="checkbox"/> Luxury car tax | <input checked="" type="checkbox"/> Capital gains tax |
| <input type="checkbox"/> Excise (tobacco) | <input type="checkbox"/> Market valuation | <input type="checkbox"/> Excise (alcohol) |
| <input type="checkbox"/> International matters | <input type="checkbox"/> Excise (fuel) | <input type="checkbox"/> Interest, dividend or royalty withholding tax |
| <input type="checkbox"/> Superannuation | <input type="checkbox"/> Administratively binding advice (ABA) | |
| <input type="checkbox"/> Other | | |

 Supporting documents are required for many categories of private ruling applications. To check whether your application fits one of these categories, refer to [supporting documents](#).

This application applies for the following period(s)*

Detail the income year(s) or other accounting period(s) covered by this application.

Example: Year ended 30 June 2012 or Quarter ended 30 September 2012.

If you do not know the start and end dates, state which events will determine the start and end dates of the particular scheme or circumstances.

YEAR ENDED 30 JUNE 2022 AND SUBSEQUENT INCOME YEARS

Section C: Your ruling

Select the type of application you would like to submit.*

- I will provide information about the facts and circumstances for the ATO to determine the advice, OR
- I am confident in how the law applies to the facts and circumstances and wish to include detailed reasoning and legislative references to support my application.
-  Refer to the Style Guide and Examples provided in the [Reference Guide](#) for assistance in formatting.

How do you wish to provide the application?

- Input on this form Attach as a separate document

The separate document should include the following:

- **Question**
List and number the question(s) you want the ATO to address. The question(s) should include the relevant provision and be structured to allow a 'yes' or 'no' answer. Note: Advice can only be given on the application of of specific tax laws or on certain topics.
- **Answer**
Record a 'Yes' or 'No' answer for each question.
- **Relevant facts and circumstances**
Give a full description of the scheme or circumstances. Include all facts, transaction dates and the names of other parties actively involved. You should be reasonably certain about these details before you lodge this application.
- **Assumptions**
Explain any assumptions you have made in determining the answer to your question(s).
- **Relevant legislative provisions**
Record the legislative provisions which will be ruled on.
- **Reasons for decision**
For each question provide the reasons for decision using the following headings.
 - **Summary**
Provide a brief statement of the decision.
 - **Detailed reasoning**
Provide detailed reasoning for how the answer for each question was reached.

Example rulings are provided in the [Reference Guide](#) for assistance in formatting.

Section D: Declaration

If you are applying on your own behalf, you are declaring the following by signing this form; the information contained in this document, and any attached documents, is true and correct.

If you are an agent, by signing this form you are declaring that:

- this document and any attached documents have been prepared according to information supplied by the client (or clients) identified in Section A of this form
- you have received a declaration from each client stating that the information provided to you to prepare this application is true and correct
- you are authorised by each client to give this application to the Commissioner of Taxation.

If you are a legal personal representative, you are declaring the following by signing this form; the information contained in this document, and any attached documents, is true and correct.

'You' includes a trustee of a trust, a partner in a partnership, public officer or company director.

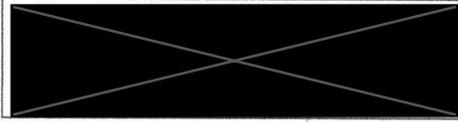
'Legal personal representative' means an executor or administrator of a deceased estate, a person holding a general power of attorney or a trustee of an estate of a person under a legal disability.

'Agent' includes spouse, relative, friend, or another agent, tax agent or other tax professional authorised to give this application to the Commissioner of Taxation.

Privacy

The ATO is a government agency bound by the *Privacy Act 1988* in terms of collection and handling of personal information and tax file numbers. Further information about our [privacy policy](#) is available on our website.

Sign and date below if you are sending by fax or post. Type your name below if submitting via online services.

	
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Date

15/02/22

Section E: How to lodge your application

You can lodge this form by:

- fax to the appropriate number below
- mail to the appropriate address below.

Send copies of any relevant supporting documents with this form. This may speed up processing the application.

 We provide details of supporting documents required for many categories of private ruling applications. To check whether your topic is listed, refer to [supporting documents](#) on our website.

Alternatively, to fax or post, select your advice topic or entity type from the drop down list for the appropriate details.

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Save as draft

Validate

Save final version

Print

ANNEXURE A
Questions and issues for the ruling

1. Whether, in the circumstances described in this private ruling application, the issue of shares pursuant to the Pledge 1% Deed causes a value shift for the purpose of Division 725 of the *Income Tax Assessment Act 1997* (**1997 Act**).

ANNEXURE B
Facts describing the scheme or circumstance

1. [REDACTED] Pty Ltd ([REDACTED]) is an Australian resident taxpayer.
2. GGH's shareholders include:
 - a. [REDACTED] as trustee for [REDACTED] Trust (**the Taxpayer**) as to 64.4%;
 - b. [REDACTED] Pty Ltd as trustee for [REDACTED] Trust as to 20.6%; and
 - c. [REDACTED] Pty Ltd as to 15.0%.
3. [REDACTED] is a member of the "Pledge 1%" movement, which broadly is aimed at inspiring early-stage corporate philanthropy by encouraging companies, entrepreneurs, executives and individuals to pledge 1% of the value of their company to philanthropic purposes.
4. To facilitate [REDACTED]'s involvement in the Pledge 1% movement, [REDACTED] is contemplating entry into the "Pledge 1% Deed" under which [REDACTED] undertakes to donate to one or more Australian charitable organisations an amount equal in value to 1% of [REDACTED]'s fully diluted share capital, being ordinary shares (clause 1.1).
5. [REDACTED]'s obligations under the Pledge 1% Deed are to make a cash donation (clause 3.1; clause 4.2), however [REDACTED] has the ability to satisfy the donation by issuing shares to the recipient of the donation (clause 5.1).
6. The Pledge 1% Deed will terminate after the expiry of ten years, if no liquidity event has occurred.
7. At the time when [REDACTED] resolves to make a partial gift under clause 3.1 or at the time of a liquidity event under clause 4.2, the directors of [REDACTED] would pass a resolution to pay the donation in cash.
8. Subsequent to the decision to pay the donation, the directors may consider whether to satisfy the obligation to pay the donation by issuing ordinary shares in [REDACTED]. In the event the directors resolved to satisfy the obligation in that way, the directors of [REDACTED] would pass a further resolution to issue the shares for that purpose. Shares in [REDACTED] would then be issued to the relevant Australian charitable organisation.
9. The number of shares to be issued is determined in accordance with clause 6.2, which requires that the number of shares to be issued is dependent on the value of the donation and the value of each share in [REDACTED].

ANNEXURE C
Your arguments and references

1. The Taxpayer is concerned that if shares are issued in order to satisfy s obligations under the Pledge 1% Deed, that share issue may cause a direct value shift to which Division 725 may apply.
2. A direct value shift will occur if the conditions in s.725-50 are satisfied. The section provides as follows:

A *direct value shift under a *scheme involving *equity or loan interests in an entity (the target entity) has consequences for you under this Division if, and only if:

- (a) the target entity is a company or trust at some time during the * scheme period; and
- (b) section 725- 55 (Controlling entity test) is satisfied; and
- (c) section 725- 65 (Cause of the value shift) is satisfied; and
- (d) you are an * affected owner of a * down interest, or an * affected owner of an * up interest, or both; and
- (e) neither of sections 725-90 and 725- 95 (about direct value shifts that are reversed) applies.

Note: For a down interest of which you are an affected owner, the direct value shift has consequences under this Division only if section 725-70 (about material decrease in market value) is satisfied.

3. In order for a direct value shift to occur, there must first be a "direct value shift". In this regard, the conditions in s.725-145 must be satisfied. The section provides as follows:

- (1) There is a direct value shift under a *scheme involving *equity or loan interests in an entity (the target entity) if:
 - (a) there is a decrease in the *market value of one or more equity or loan interests in the target entity; and
 - (b) the decrease is reasonably attributable to one or more things done under the scheme, and occurs at or after the time when that thing, or the first of those things, is done; and
 - (c) either or both of subsections (2) and (3) are satisfied.

Examples of something done under a scheme are issuing new shares at a * discount, buying back shares or changing the voting rights attached to shares.

- (2) One or more * equity or loan interests in the target entity must be issued at a * discount. The issue must be, or must be reasonably attributable to, the thing, or one or more of the things, referred to in paragraph (1)(b). It must also occur at or after the time referred to in that paragraph.

Example: A company runs a family business. There are 2 shares originally issued for \$2 each. They are owned by husband and wife. The market value of the shares is much greater (represented by the value of the assets of the company less its liabilities). The company issues one more share for \$2 to their son.

Caution is needed in such a situation. The example would result in a large CGT liability for the husband and wife under this Division, because they have shifted 1/3 of the value of their own shares to their son. No such liability would arise if the share had been issued for its market value.

- (3) Or, there must be an increase in the *market value of one or more *equity or loan interests in the target entity. The increase must be reasonably attributable to the thing, or to one or more of the things, referred to in paragraph (1)(b). It must also occur at or after the time referred to in that paragraph.
4. In the present circumstances, the Taxpayer considers that the condition in subsection (c) is not satisfied. For that condition to be satisfied, the conditions in s.725-145(2) or s.725-145(3) must be satisfied.
 5. This requires that, in relation to s.725-145(2), there is a decrease in the market value of equity interests in [REDACTED] an issue of equity interests at a discount, and such issue must be reasonably attributable to one or more things done under the scheme.
 6. Here, to the extent there is a decrease in the market value of equity interests in [REDACTED] that decrease occurs as a result of either [REDACTED] entering into the Pledge 1% Deed, or the directors of [REDACTED] resolving to pay a donation pursuant to the Pledge 1% Deed. Such matter is a mere incidence of the business of [REDACTED] and its philanthropic pursuits. It is not attributable to a scheme to shift value from equity interests in [REDACTED] to other equity interests in [REDACTED]. This is not a scheme to which Division 725 should apply, and the circumstances for the Division 725 to apply, as set out in s.725-1, are not present.
 7. In any case, the Taxpayer considers that once the directors of [REDACTED] resolve to pay the donation [REDACTED] will have a presently existing liability to pay an amount to the relevant Australian charitable organisation. If the directors subsequently resolve to issue shares in [REDACTED] to discharge the obligation to pay the Australian charitable organisation, the shares are not issued at a discount. This is because clause 5.2 of the Pledge 1% Deed requires that the number of shares to be issued will be based on the value of the donation and the value of the shares in [REDACTED].
 8. As Mellish LJ stated in *Re Harmony and Montague Tin and Copper Mining Co Ltd* (1873) LR 8 Ch App 407 (**Spargo's Case**):

Nothing is clearer than that if parties account with each other, and sums are stated to be due on one side, and sums to an equal amount due on the other side on that account, and those accounts are settled by both parties, it is exactly the same thing as if the sums due on both sides had been paid. Indeed, it is a general rule of law, that in every case where a transaction resolves itself into paying money by A to B, and then handing it back again by B to A, if the parties meet together and agree to set one demand against the other, they need not go through the form and ceremony of handing the money backwards and forwards.
 9. Similarly Fullagar J, relying on Spargo's Case, said in *Pro-Image Studios v Commonwealth Bank of Australia* (1991) 4 ACSR 586 (emphasis added):

Provided that the debt was genuinely created in the course of the company's business – a matter which in my opinion distinguishes the case of *Mosely v Koffyfontein Mines Ltd* later referred to – and provided that it is immediately payable, as is the liability to pay for the shares proposed to be allotted to the creditor, the issue of shares in consideration of the extinguishment of a debt of a sum equal to the nominal value of the shares issued is not an issue at a discount but in an issue for a payment in cash equal to the nominal value of the shares

10. Based on the set-off principle, it is not the case that shares are issued at a discount. Rather, the obligation to pay the donation is set-off against the subscription price for the shares. Accordingly the conditions in s.725-145(2) are not satisfied.
11. Further, the condition in s.725-145(3) is not satisfied because there is no increase in value of shares in 
12. For these reasons, the Taxpayer considers that the Pledge 1% Deed, and the transactions it contemplates, will not cause a direct value shift.