

NOTICE OF APPROVAL OF A SPECIAL TAX RETURN ARRANGEMENT

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BACKGROUND

- A Under section 39(1)(b) of the *Taxation Administration Act 1997* (Vic) (**TAA**), the Commissioner may, by written notice, 'give approval for a special arrangement for the lodging of returns and payment of tax under the taxation law to a specified agent on behalf of a specified taxpayer or taxpayers of a specified class'.
- B Under section 39(2)(b) of the TAA, an approval may authorise the lodging of returns and payment of tax by electronic means. The Duties Online System has been developed to assess the duty payable on certain transactions and to facilitate the payment of duty, if any, by electronic means.
- C Under the third party reporting provisions in Subdivision 396-B of Schedule 1 of the Commonwealth TAA, the State of Victoria is obliged to report to the Commonwealth Commissioner certain information regarding the transfer of freehold and leasehold interests in real property situated within the State. For the purposes of complying with this obligation, the Commissioner will exercise the rights granted to the Commissioner under Division 2B of Part 9 of the TAA in order to collect and provide certain information to the Commonwealth Commissioner with respect to Dutiable Transactions.
- D In order for the Commissioner to comply with the requirement referred to in paragraph C and to create a more efficient process for the submission of information required for the assessment of Duty, the Commissioner requires that all of the parties to a Dutiable Transaction (including the vendor and purchaser, transferor and transferee, or other parties, as the case may be) or persons acting on behalf of each such party provide certain information in relation to the Dutiable Transaction, including for disclosure to the Commonwealth Commissioner.
- E In order to facilitate the provision of this information, information about each Dutiable Transaction is required to be completed via a Digital Duties Form within the Duties Online System and submitted to the Commissioner (either through the Duties Online System or in another form permitted by the Commissioner).
- F The Commissioner has decided to give an approval to the User to use the Duties Online System to:
- (i) lodge returns and pay Duty on behalf of Taxpayers; and/or
 - (ii) submit Digital Duties Forms:
 - (A) with respect to a Dutiable Transaction entered into by the User; or
 - (B) or on behalf of a party to a Dutiable Transaction,
- subject to the conditions set out in this Notice.

OPERATIVE PROVISIONS

1 APPROVAL TO USE DUTIES ONLINE SYSTEM

- 1.1 On this Notice being served on a person (**User**) in accordance with section 42(b) of the TAA, the Commissioner grants (pursuant to section 39 of the TAA) an approval to the User to use the Duties Online System as a Taxpayer, or as an agent of behalf of one or more Taxpayers, in accordance with the terms of this Notice.
- 1.2 In addition to clause 1.1, on the SRO notifying the User that their application for approval to use the Duties Online System on the terms of this Notice has been approved, the Commissioner grants the User the right to use the Duties Online System to complete and submit Digital Duties Forms in accordance with the terms of this Notice.
- 1.3 In the course of applying for approval to use the Duties Online System, the User has agreed to use the Duties Online System in accordance with this Notice. Following the granting of such approval:
- 1.3.1 the conditions set out in this Notice are binding on the User by virtue of section 43(2) of the TAA to the extent that they are conditions on the approval for a special tax return arrangement, and breach of such a condition is an offence under that section; and
- 1.3.2 in addition and without limiting or affecting paragraph 1.3.1, the User agrees that the promises in this Notice are given in favour of and for the benefit of the Commissioner, and that the Commissioner may rely on and enforce the promises contained in this Notice.

2 DEFINITIONS AND INTERPRETATION

Definitions

- 2.1 In this Notice (including the Schedule), the following definitions apply:

Certify means, in respect of a DOL Transaction that is being undertaken via an ELN, to certify that:

- (a) the Data that has been entered into the Duties Online System correctly reflects the information provided by the Taxpayer, a tax agent of the Taxpayer (other than the User or any Individual User) or the SRO, and is otherwise complete and correct; and
- (b) the DOL Transaction is ready for financial settlement to occur via the ELN.

Change in Control means:

- (a) in relation to a body corporate, a change in any of the following:
 - (i) control of the composition of the board of directors of the body corporate;
 - (ii) control of more than one half of the voting rights attaching to shares in the body corporate;
 - (iii) control of more than one half of the issued share capital of the body corporate, excluding any part of the issued share capital which carries no right to participate beyond a specified amount in the distribution of either profit or capital; or
- (b) in relation to a partnership, a change of more than one half of the persons controlling the partnership; or
- (c) in relation to a trust, a change in the trustee of the trust or, if the trustee is a body corporate, a Change in Control of that corporate trustee as described in paragraph (a).

Commissioner means the person employed as the Commissioner of State Revenue pursuant to section 62 of the TAA or any person appointed or acting as a Deputy or Assistant Commissioner of State Revenue who has the same functions as the Commissioner of State Revenue under section 66 of the TAA.

Commonwealth Commissioner means the Federal Commissioner of Taxation appointed pursuant to the Commonwealth TAA.

Commonwealth TAA means the *Taxation Administration Act 1953* (Cth).

Data means any data captured and generated by the Duties Online System and includes personal details of the transacting parties and full details of the DOL Transaction.

Digital Duties Form means the form required to be completed in respect of a Dutiable Transaction, as made available for completion through the Duties Online System from time to time.

DOL Transaction means a transaction that is lodged by a User or via an ELN for the assessment and payment of Duty using the Duties Online System.

Dutiable Transaction means any transaction on which Duty is payable under Chapter 2 of the Duties Act where:

- (a) the contract or arrangement giving effect to the transaction was entered into on or after 1 July 2017; or
- (b) if there was no such contract or arrangement, the transaction occurred on or after 1 July 2017.

Duties Act means the *Duties Act 2000* (Vic).

Duties Online System means the 'on-line duty payment system' as defined in section 3(1) of the Duties Act, being the system available via a link on the SRO website that facilitates the assessment and collection of Duty by electronic means, and including all parts of that system (including the Digital Duties Form and the functionality that facilitates the completion of the forms).

Duty means duty payable under the Duties Act and any applicable interest or penalty tax payable under the TAA.

Electronic Conveyancing National Law (Victoria) means the Electronic National Conveyancing Law set out in the Appendix to the *Electronic Conveyancing (Adoption of National Law) Act 2012* (NSW) as it applies in Victoria pursuant to the *Electronic Conveyancing (Adoption of National Law) Act 2013* (Vic).

ELN means an 'Electronic Lodgement Network' within the meaning of the Electronic Conveyancing National Law (Victoria) that is operated or approved by the Registrar of Land Titles for the purpose of enabling the lodging of documents in electronic form for the purposes of the land titles legislation.

Finalised means, in respect of a DOL Transaction:

- (a) if the DOL Transaction is being undertaken using an ELN, the DOL Transaction has been locked on the ELN for financial settlement and the ELN has triggered the Duties Online System to make a final assessment of the Duty payable; or
- (b) otherwise, the User has committed to pay the Duty on that DOL Transaction.

Individual User means a natural person who accesses or uses the Duties Online System pursuant to the Commissioner's grant of approval to the User to use the Duties Online System.

Notice means this Notice of Approval of a Special Tax Return Arrangement.

PDP Act means the *Privacy and Data Protection Act 2014* (Vic).

Personal Information has the meaning given to it in the PDP Act.

SRO means the State Revenue Office.

TAA has the meaning given to it in paragraph A of the Background.

Taxpayer means a person who has been assessed as liable to pay an amount of Duty, who has paid an amount as Duty or who is liable or may be liable to pay Duty.

User has the meaning given to it in clause 1.1.

User Guide means the user guide for the Duties Online System published by the SRO on its website from time to time.

Interpretation

- 2.2 In the interpretation of this Notice, the following provisions apply unless the context otherwise requires:
- 2.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Notice.
 - 2.2.2 A reference in this Notice to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Melbourne, Victoria.
 - 2.2.3 If the day on which any act, matter or thing is to be done under this Notice is not a business day, the act, matter or thing must be done on the next business day.
 - 2.2.4 A reference to a time of day means that time of day in the place whose laws govern the construction of this Notice.
 - 2.2.5 Where a period of time is specified and dates from a given day or the day of an act or event it must be calculated exclusive of that day.
 - 2.2.6 A reference in this Notice to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
 - 2.2.7 A reference in this Notice to any Notice or agreement is to that Notice or agreement as amended, novated, supplemented or replaced.
 - 2.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Notice.
 - 2.2.9 An expression importing a person includes any natural person, company, trust, partnership, joint venture, association, body corporate or governmental agency.
 - 2.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
 - 2.2.11 A word which indicates the singular also indicates the plural, a word which indicates the plural also indicates the singular, and a reference to any gender also indicates the other genders.
 - 2.2.12 A reference to the word 'include' or 'including' is to be interpreted without limitation.
 - 2.2.13 Any schedules and attachments form part of this Notice.

3 CONDITIONS

- 3.1 All clauses of this Notice are conditions for the purposes of sections 41 and 43 of the TAA.

4 DUTIES ONLINE SYSTEM

Use of the Duties Online System

- 4.1 The User will have access to the Duties Online System via a link on the SRO website.

Conditions of Approval

- 4.2 The User's use of the Duties Online System is subject to the conditions contained in this Notice, including the conditions in the Schedule.
- 4.3 The conditions of this Notice are binding on the User and if any of the conditions are contravened by the User, the User may be:
- 4.3.1 guilty of a criminal offence and liable to penalty under the TAA; and/or
 - 4.3.2 liable to the Commissioner for breach of contract.

5 ACKNOWLEDGEMENT

- 5.1 Nothing in this Notice affects any liability for the payment of Duty by a Taxpayer under the Duties Act.

6 SUSPENSION, VARIATION OR CANCELLATION OF APPROVAL

Suspension of approval

- 6.1 The Commissioner may suspend the User from accessing or using the Duties Online System, or any particular functionality of the Duties Online System, with immediate effect. The Commissioner will give notice to the User of any suspension imposed, and will lift the suspension by notice to the User when the Commissioner is satisfied that it is appropriate to do so.

Power to Vary or Cancel the Approval by Written Notice

- 6.2 The Commissioner may vary or cancel the User's approval to use the Duties Online System by providing written notice to the User (including pursuant to section 39(4) of the TAA).
- 6.3 A decision by the Commissioner to vary or cancel the User's approval to use the Duties Online System is made at the Commissioner's discretion.

- 6.4 Variation or cancellation of the User's approval to use the Duties Online System by the Commissioner will take effect on the date specified in the notice of variation or cancellation.
- 6.5 The User may apply to the Commissioner in writing seeking a variation of the conditions of the User's approval to use the Duties Online System. However approval of any such variation is at the discretion of the Commissioner.

Effect of Cancellation by the Commissioner

- 6.6 Upon cancellation of the User's approval to use the Duties Online System, this Notice is terminated.
- 6.7 Termination of this Notice in respect of a User does not affect:
- 6.7.1 any of the User's obligations or liabilities that arise on or before the date of cancellation;
 - 6.7.2 each Taxpayer's obligation to pay the Commissioner all amounts of Duty payable by the Taxpayer;
 - 6.7.3 all disclaimers and limitations of liability set out in the terms of the Conditions; and
 - 6.7.4 any obligations or requirements imposed on any Taxpayer (or any other party to a Dutiable Transaction) by the TAA, the Duties Act or any other law.

7 TRUSTEES

Capacity of User

- 7.1 The User enters this Notice in its personal capacity and, if it is a trustee, in its capacity as trustee of the trust or trusts.

Representations and warranties as trustee

- 7.1 If the User enters this Notice as trustee of a trust, the User, as trustee, represents and warrants each of the following on a continuing basis:
- 7.1.1 it is the sole trustee of the trust and is not the trustee of any other trust;
 - 7.1.2 it is a validly appointed trustee of the trust;
 - 7.1.3 it is not in default under the trust deed;
 - 7.1.4 the trust fund will not vest during the term of this Notice;
 - 7.1.5 it is authorised by the trust deed to enter into this Notice and to perform its obligations under this Notice;

- 7.1.6 its entry into this Notice and the performance of its obligations under this Notice are for the commercial benefit of the trust and the beneficiaries of the trust;
- 7.1.7 all of its obligations under this Notice bind the assets of the trust; and
- 7.1.8 there are no limitations on the right of the User to be indemnified out of the assets of the trust.

Undertakings

- 7.2 If the User enters this Notice as trustee of a trust, the User must not take any of the following actions without the prior written consent of the Commissioner:
 - 7.2.1 retire as trustee or appoint any new or additional trustee of the trust;
 - 7.2.2 exercise any power, or delegate to any person any power, to vary, amend, alter, release or revoke any of the provisions of the trust deed of the trust in any manner which would adversely affect the obligations assumed by it as trustee of the trust under this Notice or which would affect the ability of Commissioner to enforce this Notice, including taking any steps to terminate or resettle the trust;
 - 7.2.3 exercise any power or delegate to any person any power to dispose of any assets of the trust other than for the purposes of the trust; or
 - 7.2.4 exercise any power or delegate to any person any power to incur any liability on behalf of the trust that is for less than full consideration.
- 7.3 Throughout the term of this Notice, the User must deliver to the Commissioner as soon as reasonably practicable all documents amending, supplementing, releasing or revoking any of the provisions of the trust deed.

8 NOTICES

Notices etc by User only by authorised signatories

- 8.1 Any notice or communication given or made by the User to the Commissioner in connection with this Notice must be in writing and signed by the User or (where the User is not a natural person) by an authorised signatory of the User.

Giving of notices by User

- 8.2 Any notice or communication given by the User under this Notice (including, where applicable, for the purposes of section 123 of the TAA) may be given and sent in one of the following ways:
 - 8.2.1 posting to the Commissioner at its address and marked for the attention of the relevant department or officer (if any) set out below;

- 8.2.2 sending by email to the Commissioner at its email address set out below; or
- 8.2.3 by any other means specified in section 123 of the TAA (but only to the extent that section applies to the notice or communication given to the Commissioner under this Notice).

Name: Commissioner of State Revenue
Address: State Revenue Office of Victoria
GPO Box 1641
MELBOURNE VIC 3001
DX: DX 260090, Melbourne
Email address: contact@sro.vic.gov.au
Attention: Duties Online Support

Giving of notices by Commissioner

- 8.3 The User agrees that the Commissioner may serve notices and other communications under this Notice to the User by:
 - 8.3.1 leaving it at, or posting it to, any address specified by the User in its application for approval to use the Duties Online System or any updated address specified by the User in its Duties Online System account settings;
 - 8.3.2 sending it to the email address specified by the User in its application for approval to use the Duties Online System or any updated email address specified by the User in its Duties Online System account settings; or
 - 8.3.3 any other means specified in section 125 of the TAA (to the extent that section applies to notices given by the Commissioner under this Notice),

and the User agrees for the purposes of section 125(1)(d) of the TAA (to the extent applicable) the means of service set out in clauses 8.3.1 and 8.3.2 have been indicated by the User as available means of service.

Time notice is given

- 8.4 Any notice or communication given under this Notice is to be treated as given at the following time:
 - 8.4.1 when service is deemed to be effective for the purposes of section 124 or 125A of the TAA, as the case may be (or would, if the notice or communication had been given under section 123 or section 125 of the TAA, have been effective); or
 - 8.4.2 if it is a notice or communication sent to the Commissioner by email, at the time that the email is received or, if it is received after 4.00pm on any day, on the next business day.

State Revenue Office
Mail GPO Box 1641, Melbourne Victoria 3001
Internet www.sro.vic.gov.au **Email** contact@sro.vic.gov.au **Tel** 132161
SRO - ISO 9001 Quality Certified **ABN** 76 775 195 331

Consent to electronic communications

- 8.5 Without limiting clause 8.3, the User consents to receiving notices under this Notice by email.
- 8.6 The Commissioner agrees to receiving information and documents in electronic form (and, if applicable, signed by a method other than signature by hand) for the purposes of the conduct of DOL Transactions, if that information or document is provided by the User (and, if applicable, signed) in a manner specified by the Commissioner as part of any guidelines or instructions for using the Duties Online System from time to time.

9 COSTS

- 9.1 Except as otherwise set out in this Notice, each of the Commissioner and the User must pay its own costs and expenses (including GST and taxes) for preparing, executing and completing this Notice.

10 AUTHORISATION

- 10.1 At any time when the User is undertaking any functions in relation to a DOL Transaction pursuant to this Notice, it warrants that it has been authorised by the Taxpayer or the Taxpayer's agent to undertake such functions.

11 WAIVERS

- 11.1 A waiver of any right, power or remedy of the Commissioner or the User under this Notice must be in writing signed by that person. A waiver only affects the particular obligation or breach for which it is given. It is not an implied waiver of any other obligation or breach or an implied waiver of that obligation or breach on any other occasion.
- 11.2 The fact that the Commissioner fails to do, or delays in doing, something the Commissioner is entitled to do under this Notice does not amount to a waiver.

12 CHANGE IN CONTROL

- 12.1 Any Change in Control of the User requires the prior written consent of the Commissioner.
- 12.2 If the User experiences a Change in Control without the consent of the Commissioner, the Notice may be terminated by the Commissioner immediately by giving notice to the User.

SCHEDULE

CONDITIONS

1 USE

- 1.1 The User may only use the Duties Online System in accordance with these Conditions.

2 PROHIBITED USE

- 2.1 Use of the Duties Online System in any manner or for any purpose that is unlawful or in any manner that violates any right of the Crown of the State of Victoria is prohibited.
- 2.2 Without limiting clause 2.1, the User is prohibited from:
- 2.2.1 using the Duties Online System in any manner that could damage, disable, overburden or impair the Duties Online System or interfere with any other person's use and enjoyment of the Duties Online system, or disobey any requirements, procedures, policies, or regulations of networks connected to the Duties Online System;
 - 2.2.2 directly or indirectly introducing or permitting the introduction into the Duties Online System any virus, worm, Trojan, corrupt data or other malicious code that may damage the operation of the computer, system or property of the Commissioner, the SRO or any other person;
 - 2.2.3 attempting to gain unauthorised access to any of the Duties Online System, other accounts, applications, computer systems or networks connected to the Duties Online System through hacking, password mining or any other means;
 - 2.2.4 threatening, abusing, disrupting, stalking or otherwise violating the legal rights (including rights of privacy and publicity) of others;
 - 2.2.5 using any information or material in any manner that infringes any copyright, trade mark, patent or other proprietary right of the Commissioner, the SRO or any other person (including by disassembling, decompiling, reverse engineering or creating derivative works or functionality equivalent software from the Duties Online System, except to the extent permitted by the *Copyright Act 1968* (Cth));
 - 2.2.6 incorporating, or attempting to incorporate, any part of the Duties Online System or the services provided through the Duties Online System into any product or service to be made available commercially; or
 - 2.2.7 otherwise using the Duties Online System for any purpose, or in any manner, not permitted by the terms of this Notice.

3 DUTY DETERMINATION

3.1 The Duties Online System will use the Data entered by:

- 3.1.1 the User (including, where a DOL Transaction is being undertaken via an ELN, Data entered into the ELN and populated into the Duties Online System from the ELN); and
- 3.1.2 other users of the Duties Online System (including Data entered into a Digital Duties Form by or on behalf of another party to a Dutiable Transaction and populated into the version of the Digital Duties Form viewable by the User or Data entered into any other part of the Duties Online System, and including Data entered into the ELN and populated into the Digital Duties Form where the Dutiable Transaction is being undertaken via the ELN),

to assess Duty and determine whether a Duty exemption or concession applies.

3.2 The User agrees to process through the Duties Online System only transactions which are permitted to be processed by the Duties Online System, as specified by the Commissioner from time to time and listed on the SRO's website, and to refer all other transactions to the SRO for processing.

3.3 The User agrees not to Certify or Finalise a DOL Transaction in any of the following circumstances:

- 3.3.1 the User has reason to believe that misleading, incorrect or incomplete documentation or information has been provided in relation to a DOL Transaction (including any misleading, incorrect or incomplete information provided in a Digital Duties Form);
- 3.3.2 the User has insufficient information to process the DOL Transaction in accordance with the instructions included in the Duties Online System or the User Guide; and/or
- 3.3.3 the Commissioner has not authorised the User to process a transaction of that kind. For the purposes of this paragraph, the User is authorised to process through the Duties Online System all transactions that are specified in the User Guide as able to be processed through the Duties Online System, and that satisfy the criteria set out in the User Guide, unless the Commissioner has notified the User otherwise.

4 DUTY PAYMENT

4.1 Nothing in this Notice alters a Taxpayer's liability to pay Duty under the Duties Act, the TAA or any other taxation laws.

Payment of Duty via Duties Online System

- 4.2 Clauses 4.3 to 4.9 apply where Duty will not be paid as part of financial settlement of a DOL Transaction occurring via an ELN and accordingly will be paid via the Duties Online System.
- 4.3 Subsequent to Duty determination, the Duties Online System will facilitate the payment of Duty by the User (**Duty Payment**), via an electronic or non-electronic payment method, to satisfy the relevant Taxpayer's liability to pay Duty.
- 4.4 The User agrees that, after a DOL Transaction is Finalised, the User must initiate payment to the SRO on the same calendar day.

Electronic Payment (EFT/BPay)

- 4.5 The User must not Finalise a DOL Transaction unless the User's account holds the exact amount of Duty assessed in cleared funds.
- 4.6 Any bank fees or charge incurred by the User due to the User having insufficient funds required to pay Duty are the responsibility of the User.

Payment by Cheques

- 4.7 Cheques made payable to the SRO must not be banked into the User's own bank account. Such cheques must be given to the SRO by post or courier to the address specified in clause 8.2 of this Notice or any replacement address notified by the SRO on its website from time to time.
- 4.8 The User must not Finalise a DOL Transaction unless the User holds the exact amount of Duty assessed and will be able to initiate payment of the Duty within the timeframe required under clause 4.4.
- 4.9 Cheques must be submitted to the SRO with a cheque remittance slip such that they will be received by the SRO within three calendar days after the DOL Transaction has been Finalised, unless the Commissioner specifies a different timeframe for the User by notice to the User from time to time. It is the responsibility of the User to ensure payment is received by the SRO within the allowed timeframe. Without limiting the Commissioner's rights under clause 6 of this Notice, the Commissioner may suspend the User's access to the Duties Online System in the event that payment is not received within the required timeframe.

Payment via ELN

- 4.10 The User is not required to initiate payment of Duty in accordance with clauses 4.3 to 4.9 in the event that, as part of financial settlement of a DOL Transaction occurring via an ELN, the amount of Duty is paid to the Commissioner to satisfy the relevant Taxpayer's liability to pay Duty.

Non-payments

- 4.11 If cleared funds are not received within the timeframes specified by the SRO (including the timeframes set out in clauses 4.4 and 4.9 (as applicable) or, where clause 4.10 applies, on the same calendar day as the financial settlement of the DOL Transaction occurred):
- 4.11.1 the Commissioner will contact the User in person and/or in writing to resolve any outstanding payment issues; and
 - 4.11.2 if non-payment issues persist:
 - (a) the Commissioner may suspend the User from using the Duties Online System under clause 6 of this Notice;
 - (b) the Commissioner may cancel the User's approval to use the Duties Online System under clause 6 of this Notice; and/or
 - (c) the User may be subject to penalties for failure to comply with payment obligations under this Notice pursuant to section 43(2) of the TAA.

5 DIGITAL DUTIES FORM REQUIREMENTS

- 5.1 Without limiting any other obligations that the User may have under this Notice or the TAA, the User must:
- 5.1.1 ensure that all of the information entered into the Digital Duties Form through the Duties Online System (including information populated into the Digital Duties Form by the Duties Online System or an ELN) and viewable by the User is correct;
 - 5.1.2 if the User submits a Digital Duties Form to the SRO via the Duties Online System, certify that all of the information in the Digital Duties Form is complete and correct and ensure that each other party to the relevant Dutiable Transaction (or a person entitled to act on behalf of each such party) has done so; and
 - 5.1.3 ensure that the Digital Duties Form has been completed and submitted to the SRO before the User requests the SRO to carry out an assessment or calculation of any Duty payable on the relevant Dutiable Transaction (including making such a request in connection with a DOL Transaction that is being undertaken via an ELN).
- 5.2 The User must not submit a Digital Duties Form to the SRO (whether via the Duties Online System or otherwise) unless the User has complied with the verification of

identity requirements with respect to the Digital Duties Form published on the SRO's website from time to time.

6 RECORD KEEPING REQUIREMENTS

Requirement to Keep Proper Records

- 6.1 The User must keep, or cause to be kept, all records specified in the User Guide or otherwise by the Commissioner, in accordance with any requirements set out in the User Guide or otherwise as specified by the Commissioner.
- 6.2 The User must maintain at its expense the records referred to in clause 6.1 for not less than 5 years after the DOL Transaction has been Finalised. Records can be kept electronically, provided the record is able to be readily produced to the Commissioner if the Commissioner requires its production, and the information in the record is clear, legible and in English or in a form that can be readily converted or translated into English.
- 6.3 The User must provide the records referred to in clause 6.1 to the Commissioner within the time specified in the User Guide or in any notice given by the Commissioner or the Commissioner's delegate.
- 6.4 The User must permit the Commissioner to access the User's premises to view any records that are kept by the User in accordance with clause 6.1.

Additional Records

- 6.5 The Commissioner may require the User, by written notice, to keep, or cause to be kept, additional records specified in any notice given to the User.

Inclusion of False or Misleading Information in Records

- 6.6 The User must not make a record that comprises or contains, or include in a record, matter that is false or misleading in a material particular.

7 PRIVACY

- 7.1 Personal Information submitted into the Duties Online System (whether entered directly into the Duties Online System, or entered into an ELN and populated into the Duties Online System) or in connection with this Notice is collected by the SRO to enable it to administer the assessment and collection of Tax in respect of each transaction submitted using the Duties Online System and/or to report to the Commonwealth Commissioner on certain Dutiable Transactions. If the required details are not provided, it may not be possible to make an accurate assessment of the Duty payable. The Personal Information submitted by a User into the Duties Online System or in connection with this Notice may also be used by the SRO for the administration and enforcement of Victoria's taxation laws generally.

- 7.2 Personal Information collected by the SRO is protected by secrecy provisions in the TAA and by the PDP Act.
- 7.3 The SRO's privacy policy at www.sro.vic.gov.au provides further detail on how the SRO uses and protects personal information obtained in connection with the laws it administers. That policy also sets out the mechanisms by which an individual may request access to Personal Information relating to them or make a privacy complaint.
- 7.4 In relation to Personal Information submitted by way of the Duties Online System (whether entered directly into the Duties Online System or entered into an ELN and populated into the Duties Online System), the Commissioner and the SRO may use and disclose the Personal Information:
- 7.4.1 in order to assess and collect the Duty payable on DOL Transactions and in order to carry out their various functions and activities associated with administering and enforcing Victoria's taxation legislation;
 - 7.4.2 by sharing it with a number of third parties that are specifically listed in legislation that applies to the Commissioner or the SRO, as set out in the SRO's privacy policy available on its website;
 - 7.4.3 in order to monitor the User's use of the Duties Online System as required to ensure the User complies with this Notice;
 - 7.4.4 by publishing in a publicly available electronic register details of the User's identity including the User's:
 - (a) legal entity name;
 - (b) trading name; and
 - (c) ABN; and
 - 7.4.5 where the Commissioner or the SRO is required to do so by law.
- 7.5 The User must take reasonable steps to ensure that any individual whose Personal Information the User submits to the SRO (including any Taxpayer or any other party to a Dutiable Transaction):
- 7.5.1 is or has been made aware of the matters set out in clauses 7.1 to 7.4; and
 - 7.5.2 has provided any consents necessary for the Commissioner and the SRO to use and disclose that Personal Information as contemplated by clauses 7.1 to 7.4 without infringing any rights of the individual or contravening the TAA or the PDP Act.

Centrelink Consent

- 7.6 Before conducting a Duties Online pensioner eligibility query, the User is required to obtain the written consent of the Taxpayer in the form of a signed Pensioner Concession Application form.
- 7.7 The Pensioner Concession Application form must be retained by the User in accordance with clause 6 of these Conditions.
- 7.8 The User agrees not to use the result of any Centrelink query for any other purpose than for obtaining a Duty determination pursuant to clause 3.1 of these Conditions.

8 USERNAMES AND PASSWORDS

Username and Passwords Confidential

- 8.1 The User is responsible for maintaining the confidentiality of the User's username (**Username**) and related password (**Password**) for the Duties Online System and agrees not to disclose them to any other person.

Notification of Unauthorised Use of Usernames or Passwords

- 8.2 The User agrees to immediately notify the Commissioner if it becomes aware of any unauthorised use of its Username or Password or any other breach of security.

Responsibility of the User

- 8.3 The User is responsible for all use of the Duties Online System that occurs when the User's Username is used in conjunction with the User's Password.
- 8.4 The User agrees not to:
- 8.4.1 use another person's Username to access or use the Duties Online System; or
 - 8.4.2 impersonate any person or entity for the purpose of misleading others when accessing or using the Duties Online System.

9 AUTHORISED INDIVIDUALS

- 9.1 The User may only allow Individual Users to access and use the Duties Online System only:
- 9.1.1 (where the User is a body corporate) if the Individual User is an employee or officer of the User;
 - 9.1.2 (where the User is a partnership) if the Individual User is a partner or employee of the User; and
 - 9.1.3 if the Individual User requires access to the Duties Online System for the purpose of the User undertaking DOL Transactions.

- 9.2 The User must allocate appropriate levels of access (including administrator access) to Individual Users.
- 9.3 The User acknowledges and agrees that:
- 9.3.1 it is responsible for ensuring that all of its Individual Users access and use the Duties Online System in accordance with this Notice; and
- 9.3.2 it is liable for all acts and omissions of its Individual Users in connection with the Duties Online System (whether or not those acts and omissions were authorised by the User) to the extent that it would be liable under this Notice or the TAA if those acts and omissions were acts or omissions of the User itself.
- 9.4 The User agrees to ensure that authority to access the Duties Online System is revoked for any Individual User who:
- 9.4.1 takes leave for an extended period; or
- 9.4.2 no longer satisfies the requirements in clause 9.1.

10 FIT AND PROPER PERSON REQUIREMENTS

- 10.1 In applying for the right to use the Duties Online System and using the Duties Online System, the User represents and warrants that it provided all information about any charges of an offence involving fraud or dishonesty that have been laid against:
- 10.1.1 the User; or
- 10.1.2 any person who will be an Individual User, to the extent that the User is aware of those charges.
- 10.2 The User must promptly give the SRO notice if any charges of an offence involving fraud or dishonesty are laid against:
- 10.2.1 the User; or
- 10.2.2 any Individual User, to the extent that the User is or becomes aware of those charges.

11 EXCLUSION OF LIABILITY AND INDEMNITY

Limitation of Liability

- 11.1 The User acknowledges that the Duties Online System is made available to the User on an "as is" basis without any representation or endorsement made by the Commissioner and the User accesses and uses the Duties Online System at its own risk.
- 11.2 Without limiting the above clause, the Commissioner does not represent or warrant that:

- 11.2.1 the User's access to or use of the Duties Online System will be secure, uninterrupted, error-free or timely;
 - 11.2.2 errors or defects in the operation of the Duties Online System will be able to be corrected; or
 - 11.2.3 the Duties Online System will be free of computer viruses, Trojans, worms or other malicious programs or code.
- 11.3 To the fullest extent permitted by law, the Commissioner disclaims any conditions and warranties, including but not limited to the implied warranties of satisfactory quality, fitness for a particular purpose, non-infringement, compatibility, security and accuracy that would otherwise apply to the User's access to, or use of, the Duties Online System.
- 11.4 The Commissioner (including its officers, consultants, employees, agents or contractors), is not liable to the User for any loss or damage incurred as a result of or in connection with the User's access to, or use of, the Duties Online System, arising from:
- 11.4.1 any error, omission or misrepresentation in any information entered by the User on the Duties Online System;
 - 11.4.2 the unauthorised use of the User's Username and Password;
 - 11.4.3 any interference or delay to the User's access or use of the Duties Online System as a result of equipment failure, routine maintenance or the internet; and
 - 11.4.4 any interference or damage to computer systems, hardware or software occurring as a result of computer viruses, Trojans, worms, malicious programs, hacking and other malicious code.

The provisions of this clause 11.4 apply regardless of the cause of action, whether based in contract, tort (including negligence) or otherwise.

Indemnity

- 11.5 The User agrees to indemnify and hold harmless the Commissioner from and against any damage, loss or liability reasonably sustained or incurred by the Commissioner as the result of a claim made or threatened by a third party arising out of or in connection with:
- (a) a breach by the User of its obligations under this Notice;
 - (b) any negligent act or omission by the User; or
 - (c) any fraudulent or unlawful act or omission by the User.

Nothing in this clause 11.5:

- (d) extends any duty of the User to any third party beyond exercising the standard of care and skill reasonably to be expected in the circumstances;

- (e) increases the compensation or damages for which the User would otherwise be liable in respect of any breach of duty under paragraph (b) above the amount payable in tort; or
- (f) is intended to exclude the operation of any applicable legislation relating to proportionate liability.

12 LINKS TO THIRD PARTY WEBSITES

- 12.1 The Duties Online System may contain hyperlinks and other pointers to Internet web sites operated by third parties. These linked web sites are not under the control of the Commissioner, and the Commissioner is therefore not responsible for the contents of any linked web or any hyperlink contained in a linked web site. The Commissioner provides these hyperlinks to the User as a convenience only, and the inclusion of any link does not imply any endorsement of the linked web site by the Commissioner. Any link made to any such web site is made entirely at the risk of the User.

13 INTELLECTUAL PROPERTY

Ownership of Intellectual Property Rights

- 13.1 The Commissioner owns or is the licensee of all intellectual property rights, including copyright, trade marks and any other information, design, text, graphics, materials, images, 'look and feel' and all software and source code (**Intellectual Property Rights**) connected with the Duties Online System.

User Licence to the Duties Online System

- 13.2 The Commissioner grants to the User a non-exclusive, revocable, non-transferable licence to use the Intellectual Property Rights required to access and use the Duties Online System.

14 WARRANTY

- 14.1 The User warrants that it will comply with all applicable legislation in accessing and using the Duties Online System, including by handling any personal or sensitive information in accordance with the relevant legislation.

15 AUTHORISATION

- 15.1 The User is, each time the User accesses and uses the Duties Online System, taken to give to the Commissioner the warranties set out in clauses 10.1 and 14.1 of these Conditions.

16 DISPUTE RESOLUTION

Meeting to attempt to resolve disputes

- 16.1 If a dispute arises under this Notice or concerning its subject matter, either the Commissioner or the User may at any time give written notice to the other requesting that a meeting take place to seek to resolve the dispute. The nominated senior representatives of the Commissioner and the User must meet within five business days of the notice and try to resolve the dispute in good faith. If such a meeting does not take place or if five business days after the meeting the dispute remains unresolved, either the Commissioner or the User may pursue its rights at law.

Performance of obligations

- 16.2 Despite the existence of a dispute, each of the Commissioner and the User must continue to perform its obligations under this Notice.

Interlocutory relief and right to terminate

- 16.3 Clauses 16.1 and 16.2 do not restrict or limit the right of either the Commissioner or the User to obtain interlocutory relief, or the right of the Commissioner to immediately terminate the User's approval to use the Duties Online System under this Notice.

Non Application

- 16.4 Clause 16 does not apply to any dispute in relation to the assessment of Duty which is governed by the TAA.

17 OBLIGATIONS UNDER OTHER STATUTES

- 17.1 Nothing in this Notice alters or is intended to alter any obligations or requirements imposed on the User or the Taxpayer or other party to a Dutiable Transaction on whose behalf the User acts or is authorised to act, by the TAA, the Duties Act or any other law.

18 SEVERABILITY

- 18.1 If any provision of this Notice is held invalid, unenforceable or illegal for any reason, then the provision will be deemed to be removed from this Notice and the remaining provisions will remain valid and enforceable.