

Deed of Release

The Commonwealth of Australia as represented by the
Australian Taxation Office (**ATO**)

Gary Kurzer (**Mr Kurzer**)

Date September 2012

Parties

Name **The Commonwealth of Australia as represented by the Australian Taxation Office (the ATO)**

Address 26 Narellan Street Civic ACT 2601
PO Box 900 Civic Square ACT 2608

Name **Gary Kurzer (Mr Kurzer)**

Address PO Box 129 Bondi NSW 2026

Background

- A Beginning in late 2007, the ATO conducted an audit of a partnership in the name of Mr Kurzer and Ms Aghan. The primary focus of the audit was the tax implications of a subdivision, redevelopment and sale of investment units by the partnership in Terrigal, New South Wales. A decision on the Audit (the **Audit Decision**) was made in December 2008.
- B Mr Kurzer and Ms Aghan lodged formal objections to the Audit Decision with the ATO. The ATO upheld the objection in part by withdrawing the penalties imposed on Mr Kurzer by the Audit Decision and reducing their income tax assessments (the **Objection Decision**).
- C Mr Kurzer and Ms Aghan appealed the Audit Decision and the Objection Decision in the Administrative Appeals Tribunal (**AAT**). The ATO settled the AAT proceedings with Mr Kurzer and Ms Aghan on 9 December 2010 (the **AAT Settlement**).
- D Mr Kurzer and Ms Aghan lodged an application dated 28 March 2011 to the ATO for compensation under the *Scheme for Compensation for Detriment Caused by Defective Administration* (**CDDA**) in relation to the conduct of the Audit, the Objection and the AAT proceedings. Mr Kurzer lodged an amendment to the CDDA application on 16 June 2011.
- E The ATO provided Mr Kurzer and Ms Aghan with a decision in relation to their CDDA application on 25 November 2011, declining his claim for compensation. Mr Kurzer submitted a further CDDA application dated 10 January 2012.
- F Mr Kurzer has also raised several complaints with the ATO regarding his dissatisfaction with the actions and behaviour of the ATO and its officers leading up to and during the Audit Decision, the Objection Decision, the AAT Settlement, the alleged defective administration and the ATO's processing of the CDDA claims. The ATO conducted a further review of its actions and advised Mr Kurzer of its decision under cover of a letter from Ms Liz Goli dated 9 August 2012. The ATO General Counsel reviewed Mr Kurzer's CDDA claims and his conclusive findings on that review were conveyed to Mr Kurzer at a confidential mediation before Mr Tony Fitzgerald QC on Monday 17 September 2012.
- G Mr Kurzer and the ATO have agreed to resolve the matters set out in the above paragraphs on the terms and conditions contained in this deed.
- H Paragraphs A to F collectively are referred to as "the Dispute" in this deed.

1 PAYMENT BY THE ATO

- 1.1 Upon execution of this deed by Mr Kurzer, the ATO will pay the sum of seventy thousand dollars (\$70,000) to Mr Kurzer in full and final satisfaction of the Dispute. This payment is made without any admission of liability. The payment is made under the CDDA scheme and is a compensation payment in the nature of general damages for a personal injury. The ATO is not required to make this payment until Mr Kurzer has complied with cl 2.6 below.

2. Mr KURZER RELEASES AND INDEMNIFIES THE ATO

- 2.1 This deed fully satisfies the rights that Mr Kurzer, and anyone who claims through Mr Kurzer, has or may have against the ATO or any of its officers, employees and agents arising directly or indirectly out of the Dispute.
- 2.2 Mr Kurzer releases the ATO and each of its officers, employees and agents from claims and liability arising directly or indirectly out of the Dispute.
- 2.3 Mr Kurzer indemnifies the ATO and each of its officers, employees and agents against any loss, damage or expense (including legal fees) incurred by the ATO or any of its officers, employees and agents arising directly or indirectly out of any breach by Mr Kurzer of this deed.
- 2.4 This release covers all claims and liability, however described and however arising, including all claims and liabilities under legislation, common law and equity. It covers claims by, and liability to anyone who claims through Mr Kurzer. It covers claims and liability that arise in the future. It covers all claims whether or not such claims are presently within the contemplation of any party and whether or not the facts or law giving rise to any such claim are presently within the belief or knowledge of any party.
- 2.5 Mr Kurzer agrees not to lodge any further complaints, reviews, requests or demands, howsoever described, in relation to this Dispute, including the ATO's handling of his compensation claim(s), to any person or body, including any Government agency or Member of Parliament. Mr Kurzer agrees not to make any requests for information under the *Freedom of Information Act 1982* in relation to this Dispute, or the ATO's administration of monetary claims made against it generally, including its administration of the CDDA Scheme .
- 2.6 Mr Kurzer agrees to withdraw his complaint about the Dispute with the Commonwealth Ombudsman. The notification of withdrawal must not refer to this deed or any of the requirements under this deed.

3. BAR TO PROCEEDINGS

- 3.1 The ATO and each of its officers, employees and agents may use this deed, including as a bar, against Mr Kurzer in any court or other proceeding brought by Mr Kurzer (or anyone who claims through Mr Kurzer).

4. KEEPING THIS DEED CONFIDENTIAL

- 4.1 Mr Kurzer must not disclose the content of this deed, any discussions and correspondence relating to the negotiation of this deed, or the settlement that is given effect to by this deed, unless the ATO first agrees in writing.
- 4.2 Clause 4.1 does not prevent Mr Kurzer disclosing information to his legal or financial advisers or where the law authorises information to be disclosed.
- 4.3 Mr Kurzer will not be associated with any disclosure of, or authorise or permit any person to disclose, the content of this deed, any discussions and correspondence that relates to the negotiation of this deed or the settlement that is given effect to by this deed, unless the ATO agrees in writing.

- 4.4 The ATO and its advisers must not disclose the content of this deed, any discussions and correspondence relating to the negotiation of this deed or the settlement that is given effect to by this deed, unless Mr Kurzer agrees in writing.
- 4.5 Clause 4.4 does not prevent the ATO disclosing information to the Commonwealth Ombudsman, the Australian National Audit Office, the ATO's legal or financial advisors, or where a law otherwise authorises information to be disclosed by the ATO. Nothing in this deed prevents the ATO from making any necessary disclosure to a Minister of State or to the Parliament or a Parliamentary Committee.

5. ACKNOWLEDGEMENTS

- 5.1 The ATO and Mr Kurzer acknowledge that:
- a) they have freely entered into this deed;
 - b) they unreservedly accept the terms of this deed;
 - c) they have received, or chosen not to receive, independent legal advice in entering this deed.

6. DEED MAY BE EXECUTED IN COUNTERPARTS

- 6.1 This deed may be executed in counterparts. Each counterpart constitutes an original of this document, all of which together constitute one instrument. A party who has executed a counterpart of this document may exchange it with another party by faxing, or by emailing a pdf (portable document format) copy of, the executed counterpart to that other party.

7. GOVERNING LAW

- 7.1 This deed is governed by and will be construed according to the laws of the State of New South Wales.

8. SEVERABILITY

- 8.1 Part or all of any provision of this deed that is illegal or unenforceable may be severed from this deed and the remaining provisions of this deed continue in force.

Signing page

EXECUTED as a deed.

Signed sealed and delivered by Gary Kurzer in the presence of

Signature of witness



Gary Kurzer



Name of witness (print)

Signed sealed and delivered for and on behalf of the **Commonwealth of Australia as represented by the Australian Taxation Office** by its duly authorised representative in the presence of

Signature of witness



Signature of representative



Dom Sheil

Simon Matthews

Name of witness (print)

Name of representative (print)

Senior Principal Lawyer

ATO General Counsel

Position of representative (print)