



MEMO

To: Board of Directors
From: Company Secretary
Subject: **PUBLIC OFFICER**

Section 252(1) of the Income Tax Assessment Act (“Tax Act”) requires that every company be represented by a “duly appointed” Public Officer within 3 months after the company commences to carry on business or derive income in Australia to ensure its various taxation-related obligations and responsibilities are fulfilled.

In summary, the Public Officer is responsible for ensuring that the company complies with the tax law and for liaising with the ATO concerning the company's taxation matters.

Such person is also Public Officer for all other tax laws (Sec 56 Taxation Administration Act).

Whilst the Tax Act actually only requires this appointment if the company is carrying on business or deriving income in Australia, in practice such appointment is usually part of the standard process when incorporating through shelf company providers.

There must be **a** Public Officer appointed at all (relevant) times but only **one** may be appointed at any one time, and any change must be notified to the ATO in writing (Reg 173 Income Tax Regulations) within 28 days of the change.

Under Sec 252(3) the criteria to be a Public Officer includes that a person must be at least 18 years of age and an Australian resident. The Public Officer must be a natural person.

Although not a specific requirement of the Tax Act, by convention it is usual to:

1. obtain the Public Officer's consent in writing [see sample below], and
2. pass a Board minute/directors resolution [see sample below] to “duly appoint” the Public Officer (so that, amongst other things, the Board is aware that this Tax Act obligation is met and it is clearly ‘on the record’ who holds the position). I know of no legal requirement to record such in board minutes, nor does any legislation require specific board approval to the Public Officer appointment, but doing this will give prima facie 'evidence' of the authority of the person signing the ATO letter, so it is probably a good procedure to adopt.

Also, some company constitutions have a section dealing with the public officer, viz:



Rule 56: Public officer

The Directors may appoint a public officer to the Company and may if they think fit remove such person from office and appoint another in her/his place.

The Tax Act also requires that the following details of the Public Officer be notified to the ATO in writing [see sample below]:

- full name
- address (for service of notices).

The ATO has produced a “Change of Registration Details” form which can also be used (at least, for changes after the initial appointment) to notify changes in Public Officer (and other matters), but that requires slightly different details to be provided:

- title
- full name
- date of birth
- sex
- TFN (although it is not an offence to not provide this).

and does not specifically provide for advising the Public Officer’s residential address even though the Tax Act requires it.

Note in particular that under the Tax Act:

- the Public Officer is answerable for all things required to be done by a company under that Act (and any other tax laws or regulations) and shall be liable for the same penalties;
- any proceedings taken against a company may also include the Public Officer and he may be jointly liable with the company for any penalty imposed;

and, most importantly

- any such actions, etc may also be taken against any director or Company Secretary.

Typically the Public Officer is the company executive most directly involved with tax and accounting matters whose duties would include signing and lodging various returns with the ATO. The Public Officer role is not really within the scope of the Company Secretary/provider of company secretarial services (other than the Company Secretary is one of the persons authorised by the ATO to sign a letter/form appointing a PO).

In light of these requirements I recommend that the Board resolve to appoint the Chief Financial Officer as the Public Officer.



DISCLAIMER

The comments in this memo reflect some commercial aspects and observations on the matter experienced or observed by the writer in practice as he understands them. The information is given as a guide only and does not represent a definitive or legal view of any of the issues raised, covered or referred to and the reader is urged to seek his own professional advice on all aspects of, or pertaining to, this and any related matter.

© Copyright Company Secretarial Services Pty Ltd ABN: 41 074 535 345
www.companysecretary.com.au



COMPANY SECRETARIAL SERVICES PTY LTD

ACN 074 535 345

Directors
Company Secretarial Services Pty Ltd
Suite 5
54 Kersley Road
Kenmore Qld 4069

Sirs,

CONSENT TO ACT AS PUBLIC OFFICER

I hereby consent to being appointed Public Officer of the Company pursuant to and for all purposes under Section 252 of the Income Tax Assessment Act and provide the following information:

Title: Mr / Mrs / Ms / Dr / other.....

Full Name:

Address for Service of Notices:
.....
.....

Date of Birth: __ / __ / ____

Tax File Number: ____ - ____ - ____

Yours faithfully,

.....
[Signature]

.....
Date



COMPANY SECRETARIAL SERVICES PTY LTD

ACN 074 535 345

MINUTES

Minutes of a Meeting of the Directors of the Company held at its Registered Office, Suite 5, 54 Kersley Road, Queensland on <DATE> commencing at <TIME>

Present: [Chairman].....
.....

In Attendance: [Company Secretary].....

Apology:

Opening & Welcome: The Chairman opened the meeting, welcomed those present and declared that a quorum was present.

Minutes of Previous Meeting: RESOLVED that the minutes of the previous Board meeting held on <DATE> be confirmed.

Public Officer: The written resignation of<NAME>..... as Public Officer was tabled.

RESOLVED that the resignation of<NAME>..... as Public Officer be accepted.

The written consent of<NAME>..... to act as Public Officer was tabled.

RESOLVED that<NAME>..... be appointed immediately to fill the position of Public Officer of the Company as required by Section 252 of the Income Tax Assessment Act and that notice of such appointment be given forthwith to the Australian Tax Office.

General Business: The Company Secretary was requested to attend to all corporate actions necessary to effect the decisions of this meeting.

Next Meeting: Date to be advised.

Closure: There being no further business the meeting was declared closed at <TIME>

Signed as a true and correct record of the proceedings of the meeting

.....
[Chairman]

.....
Date



COMPANY SECRETARIAL SERVICES PTY LTD

ACN 074 535 345

Deputy Commissioner of Taxation
Australian Taxation Office
PO Box 2012
Chermside QLD 4032

Dear Sir

APPOINTMENT OF PUBLIC OFFICER: TFN / ABN _ _ _ _ _

We advise that, pursuant to and for the purposes of the Income Tax Assessment Act,
.....<NAME>..... (whose signature appears below) has been duly
appointed by the Board of the Company as its Public Officer.

.....<NAME>.....'s address for service of notices is

.....<ADDRESS>.....
.....
.....

Please acknowledge receipt of this advice.

Yours faithfully,

.....
[Company Secretary]

.....
Date

.....<NAME>.....'s signature:.....