PCG 2016/1 - Practical Compliance Guidelines: purpose, nature and role in ATO's public advice and guidance

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Practical Compliance Guidelines: purpose, nature and role in ATO's public advice and guidance

Relying on this Guideline

This Practical Compliance Guideline describes how the Commissioner will provide practical guidance and assurance through Practical Compliance Guidelines to assist taxpayers in complying with tax laws. Provided you follow such Guidelines in good faith, the Commissioner will administer the law in accordance with the approaches set out.

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What this Guideline is about

1. This Guideline outlines the nature and role of practical compliance guidelines within the framework of public advice and guidance provided by the ATO in relation to administration of the tax laws.

2. This Guideline explains:

   (a) the nature of practical compliance guidelines

   (b) when and how they are prepared

   (c) their interaction with other forms of public advice and guidance

   (d) their status and the reliance that can be placed upon them.

Date of effect

3. This Guideline will have effect from its date of issue.

What are practical compliance guidelines?

4. The ATO is committed to providing clear and practical public advice and guidance on which taxpayers can rely to manage their tax affairs. Public rulings[1] are a key form of public advice, enabling the ATO to express views on how tax laws apply to entities, or classes of entity, in relation to classes of scheme or particular schemes.

5. In addition to public rulings, taxpayers may also benefit from broader law administration guidance that conveys the ATO's assessment of relative levels of tax compliance risk across a spectrum of behaviours or arrangements. Such guidance may, for example, enable taxpayers to position themselves within a range of behaviours, activities or transaction structures that the ATO describes as low risk and unlikely to require scrutiny – to safely 'swim between the flags'.

6. Broader guidance can also enable the ATO to communicate how it will sensibly apply its audit resources or provide practical compliance solutions where tax laws are uncertain in their application or are found to be creating unsustainable administrative or compliance burdens in light of, for example, evolving commercial practices.

7. Guidance of the kind described in paragraphs 5 and 6 of this Guideline (compliance guidance) can provide useful insights into the practical implications of tax laws and ATO administrative approaches, going beyond views on how particular provisions apply and the matters ancillary to that interpretation.

8. The provision of compliance guidance can be seen as consistent with the duty of good management stemming from the Commissioner's general powers of administration of the taxation laws. Balanced against the duty to assess and collect the revenue properly payable under the law, the duty of good management involves efficient resource allocation decisions to achieve optimal, though not necessarily maximum, revenue collection. Practical compliance guidelines will transparently communicate the ATO's assessment of risk in relation to tax law compliance issues and consequential resource allocation intentions.

9. Practical compliance guidelines are the identifiable, coherent, principal source of the type of broad compliance guidance described above in respect of significant law administration issues.

Example: Administrative 'safe harbours'

10. A 'safe harbour' may be described as conduct that is taken to comply with a rule or law that might ordinarily apply on the basis of more uncertain standards. Safe harbours are sometimes provided specifically in legislative provisions, or a provision may contemplate the creation of safe harbours by an administrator. Other safe harbours determined by an administrator may represent practical, purposive interpretation of a statutory provision.

11. In appropriate circumstances, such as those described in paragraph 6 of this Guideline, the Commissioner may make sensible resource allocation decisions consistently with safe harbour approaches and express those approaches in practical compliance guidelines. In such cases, safe harbours can provide additional certainty and compliance savings for taxpayers in the face of provisions that are otherwise uncertain in their application or impose unexpectedly heavy compliance cost burdens. From the ATO's perspective, safe harbours can provide an efficient and consistent means of assessing levels of taxpayer compliance, allowing the ATO to direct its compliance resources to higher risk areas of the law.

[1] Taxation Ruling TR 2006/10 *Public rulings*.

Relationship with law administration practice statements and website information

12. Advice in the nature of compliance guidance has previously been provided by the ATO in the form of law administration practice statements (practice statements) or information published on the ATO website.

13. Although practice statements are published in the interests of open administration, their intended audience is ATO staff and they have a main purpose of providing instructions to staff on the manner of performing law administration duties. Going forward, practice statements will align more closely with their main purpose and practical compliance guidelines will be the appropriate communication product providing broad law administration guidance to taxpayers.

14. General information published on the ATO website, such as fact sheets, can also provide useful guidance to taxpayers. However, it is not considered to be the appropriate channel for communicating compliance guidance on some of the more significant law administration issues, especially when the content is of a detailed and technical nature, or affects only a relatively small number of taxpayers.

15. Practical compliance guidelines will be located on the ATO's Legal database, providing a single location for finding relevant compliance guidance, ensuring ease of access and allowing updates over time to be reflected on the face of the document. It will of course be possible for ato.gov.au to provide high-level information about a practical compliance guideline topic with appropriate references or links to the more detailed material on the ATO Legal database.

When and how are practical compliance guidelines prepared?

16. Relevant topics or issues for practical compliance guidelines may be identified by the ATO in course of its general administration of the tax system or raised by taxpayers and their representative bodies, industry groups, and tax professionals for consideration by the ATO consistently with its consultation framework.

17. Consultation will be a key aspect of the development of practical compliance guidelines. It is expected that it will take place to determine the scope of issues to be dealt with, and will continue as required throughout the development of guidance content. Consultation is intended to be ongoing and dynamic, with an emphasis on early consideration of all practical issues relevant to the guidance material. This is consistent with the consultation approach for significant public advice and guidance generally, to ensure that it deals with the right issues, is appropriately framed and targeted, and is practical and effective.

18. There will not be an automatic process of issuing formal drafts for public comment prior to finalisation and publication of practical compliance guidelines. One of the benefits of early and ongoing consultation is the ability to issue more timely and informed guidance. The timeliness benefit could be undermined by the overlay of a formal draft/final process when not practically necessary.

19. However, draft practical compliance guidelines on significant tax law administration issues will be issued for public comment if there has been insufficient opportunity for appropriate consultation during the scoping and preparation phase or if the consultation has been relatively closed in circumstances where the guidance has the potential to affect a much wider range of taxpayers.

Status of practical compliance guidelines

20. A public ruling is a written ruling on the way the Commissioner considers a relevant provision applies or would apply to entities generally or classes of entity. Such a ruling 'may cover any matter involved in the application of the provision'.[2]

21. The Commissioner therefore has considerable scope to deal with related administrative matters in a ruling on the way a provision applies, including issues relating to 'liability, administration, procedure, collection, and ultimate conclusions of fact'[3]. A ruling expressing a view on how a provision applies might also deal in appropriate cases with matters such as the approach to discretions, risk management, and a range of other administrative matters consistent with the view on how the provision applies.

22. To increase the practical utility of its public rulings as guidance documents, the ATO will give greater consideration to the inclusion of such matters in support of views expressed on the application of relevant provisions.

23. Practical compliance guidelines, on the other hand, are not prepared for the primary purpose of expressing a view on the way a tax law provision applies. They represent guidance material on how the ATO will allocate its compliance resources according to assessments of risk, and may outline administrative approaches that mitigate practical difficulties relating to the operation of tax laws. Accordingly, practical compliance guidelines will generally not be public rulings.

Reliance on practical compliance guidelines

24. As practical compliance guidelines are not public rulings, they will not have the legally binding effect of a ruling. However, practical compliance guidelines will contain clear statements of how they can be relied upon by taxpayers and descriptions of the relevant classes of taxpayer to which they apply.

25. They may also include statements concerning expectations of taxpayers in adopting relevant administrative approaches, as well as how and when the guidelines are to be reviewed to determine their effectiveness. On the basis that practical compliance guidelines are intended to outline sensible and efficient approaches to ongoing tax administration, rather than interpretive views of the law, it is considered particularly important that they be subject to periodic review.

26. If a practical compliance guideline outlines an approach (for example, an administrative safe harbour) that has clear consequences for determining tax liabilities of taxpayers who rely on that approach in good faith, and the ATO subsequently changes its view and/or the practical compliance guideline is withdrawn or altered, the principles under PS LA 2011/27[4] will be relevant and the ATO will not take action to apply any changed view of the law to prior years. In these circumstances, any action in terms of applying the ATO view of the law will only occur on a prospective basis. The law will also provide protection from general and shortfall interest charges where a taxpayer has reasonably relied in good faith on an approach set out in a Guideline.[5]

27. The ATO has good reason to stand by approaches outlined in practical compliance guidelines. These guidelines are intended to guide the behaviour of taxpayers who wish to operate in a low tax risk environment, as well as to signal when the ATO considers certain behaviour to be of a higher risk of non-compliance with the law. These objectives would be undermined if the guidelines were not applied consistently by the ATO.

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[2] Subsection 358-5(2) of Schedule 1 to the *Taxation Administration Act 1953* (TAA).
[3] Explanatory Memorandum to the Tax Laws Amendment (Improvements to Self Assessment) Bill (No. 2) 2005.
[4] Law Administration Practice Statement PS LA 2011/27 *Determining whether the ATO's views of the law should be applied prospectively only*.
[5] Section 361-5 of Schedule 1 to the TAA.

Commissioner of Taxation
3 June 2016

References

Legislative references	TAA 1953 TAA 1953 Sch 1 358-5(2) TAA 1953 Sch 1 361-5
Related rulings/determinations	TR 2006/10
Other references	Explanatory Memorandum to the Tax Laws Amendment (Improvements to Self Assessment) Bill (No. 2) 2005 PS LA 2011/27 *Determining whether the ATO's views of the law should be applied prospectively only*

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