

PS LA 1998/7 - Public rulings and policy change

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ATO Practice Statement Law Administration

PS LA 1998/7

This Practice Statement is withdrawn from 14 May 2004.

FOI Status: may be released

This Practice Statement is issued under the authority of the Commissioner and must be read in conjunction with Law Administration Practice Statement PS LA 1998/1. It must be followed by ATO officers unless doing so creates unintended consequences. Where this occurs ATO officers must follow their Business Line's escalation process.

SUBJECT: Public rulings and policy change

STATEMENT

1. All public rulings which propose to resile from an established ATO policy or practice must be brought to the attention of the Chief Tax Counsel by Tax Council Network (TCN) members. The matter should be referred through the relevant Deputy Chief Tax Counsel. No such public ruling is to be settled and released, even in a draft form, without clearance from the Chief Tax Counsel.
2. Specifically, TCN should advise the Chief Tax Counsel of any ruling where:
 - the exceptions noted at paragraphs 15 to 19 of Taxation Ruling TR 92/20 exist, or are said to exist by externals;
 - exceptional circumstances exist such that a variation to the guidelines set out in Taxation Ruling TR 92/20 may be justified (refer paragraphs 7 and 24 of the ruling); or
 - there has been a previous and different policy position taken, or a practice put into place, by people within the office, who had authority to set that policy or practice, whether or not it has been communicated externally.
3. Any proposals to depart from current policy or practice will be taken to the Commissioner. Accordingly, a comprehensive submission on these matters by TCN in partnership with the Business Lines officers involved, will be required so that the ATO is in a position to make the best possible decision, and to answer taxpayers and their representatives. The needs and views of the relevant business line, cleared at an appropriately senior level, usually the Deputy Commissioner, should be clearly set out in the submission, together with a draft briefing for Government where appropriate.

EXPLANATION

4. The difficulty we face in some cases is that a proper construction of the law today does not always accord with the policy or other practical approaches applied in the past.
5. Any change in policy or practice brings with it difficulties of implementation and transition, both within the ATO and for taxpayers (including scope for uncertainty and inconsistency of advice, together with potential impact on audit and penalty issues). Often

these difficulties are significant, and sometimes appear virtually insoluble under current law.

6. Policy or practice has frequently been set at very senior levels within the ATO, for good and sound reasons, and on that basis should not lightly be departed from. In some cases there has been a commitment as to administrative policy given by the Commissioner to the Government around the time the legislation was introduced. In these circumstances it is appropriate that Government be consulted before there is any change in our approach.

subject references: public rulings; ATO policy

related public rulings: TR 92/20

related practice statements: PS LA 1998/6

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