PS LA 2000/1 (Withdrawn) - Case Decision Summaries

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ATO Practice Statement Law Administration

PS LA 2000/1

Law Administration Practice Statement PS LA 2000/1 was withdrawn on 3 November 2003 and has been replaced by PS LA 2001/8.

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: **Case Decision Summaries**

PURPOSE: **To advise when:**

- **you must comply with a Case Decision Summary;**
- **a taxpayer can rely on a CDS;**
- **you must prepare a CDS; and**
- **feedback needs to be provided.**

STATEMENT

Compliance with Case Decision Summaries (CDSs)

1. As an ATO officer, you must apply the law having regard to all relevant forms of guidance. This includes searching for and considering current CDSs relevant to the advice you are providing. In applying a statutory discretion, you must also have regard to the need to independently consider the application of the particular discretion.

2. Where the facts in your case are on all fours with a current CDS and you consider that the outcome in your case would be correct if you apply the CDS, then you must apply it. However, if you consider that the outcome would be incorrect if you apply the CDS, then you must escalate the matter using the same processes that operate for significant issues in your business line. You may need to refer to the *Case Report System* (CRS) report underlying the CDS to determine whether or not you should apply the CDS.

3. CDSs are not the law. They are not legally binding on the Commissioner and are provided for information and guidance only. However, if a taxpayer reasonably relies on a current and relevant CDS (which has not been withdrawn at the time the taxpayer relies on it), the taxpayer will be taken to have exercised reasonable care.

4. The Commissioner does not consider that a CDS comes within the scope of the definition of 'authority' in subsection 222C(4) of the *Income Tax Assessment Act 1936* (ITAA 1936). However, when considering whether a taxpayer's differing position is reasonably arguable, the ATO will take into account, along with any other relevant authorities, the authorities underpinning the CDS and its reasoning.

Part IVA Case Decision Summaries

5. Part IVA CDSs contain a special caution note as follows:

> 'This Case Decision Summary should not be relied upon in deciding whether to enter into any particular arrangement or transaction (referred to as a 'scheme' in Part IVA *Income Tax Assessment Act 1936*) for the reasons which follow. It is recommended that should you wish to enter into a scheme similar to that summarised you seek further advice or a ruling from the ATO, or advice from a professional adviser.
>
> This Case Decision Summary illustrates the approach taken by the Commissioner of Taxation in applying Part IVA to a real fact situation. The facts have been simplified to focus on key practical issues.
>
> To properly apply Part IVA, the law must be applied to all the relevant facts. In particular, an eight step test must be applied to determine whether, on the facts, a particular scheme objectively has the dominant purpose of obtaining a tax benefit not intended by the law. Where the scheme simply takes advantage of the intended operation of a structural feature of the law, Part IVA will not apply because the required dominant purpose will not exist.
>
> In applying the dominant purpose test, regard must be had to the manner in which the scheme is carried out; that is, whether the scheme bears the stamp of tax avoidance. The Full Federal Court in *Bellinz Pty Limited v Federal Commissioner of Taxation* 98 ATC 4634 at 4647; 39 ATR 198 at 212 has noted the difficulty in applying Part IVA prior to the scheme being carried out, because the execution of the scheme may in fact be different to that originally proposed. Even where the scheme has been carried out, the Court has noted that a difficulty in coming to a view on the application of Part IVA is to ensure that all relevant facts are considered, including those concerning the manner in which the scheme is carried out.'

Selection of cases and the meaning of 'precedent'

6. Subject to paragraph 16, whenever you, in consultation with your team leader or manager, identify an issue in a CRS case as 'precedent' (as defined in the CRS rules), you must prepare a CDS. Where you identify multiple precedential issues in a case, you must prepare a separate CDS for **each** issue. You should follow the procedures which your Business Line has specified for preparing CDSs.

Feedback on quality of CDSs

7. The quality of CDSs is of paramount importance. Every CDS must be technically accurate, ensure the anonymity of the taxpayer in the case and be correctly presented (format and style). It is the responsibility of every officer involved in the preparation and review of a CDS to ensure that frequent feedback is provided to each other.

EXPLANATION

What Case Decision Summaries are

8. CDSs are summaries of decisions on ATO interpretive issues – decisions of precedential value (as defined in the CRS Rules). CDSs are an additional research tool for both taxpayers and ATO officers.

9. CDSs are an indication of the Commissioner's view on a particular issue. We produce them to assist both taxpayers and ATO officers to understand how the Commissioner applies the law in a particular factual situation. CDSs are, however, brief summaries of what may have been complex legal arguments applied to complex facts. A general similarity to the circumstances in a CDS will not necessarily lead to the same tax result. Even an exact correlation could lead to a different tax result where the CDS, in summarising a CRS case, has simplified or generalised matters. Consequently, you may need to refer to the CRS report underlying the CDS. A taxpayer may wish to obtain further advice from the ATO (via a private ruling) or a professional adviser.

10. CDSs may be based on interpretative advice arising from an audit, a private ruling, an objection, etc.

11. CDSs set out decisions in a clear, easy to follow format and generally include:

- question or issue;
- answer;
- facts;
- reason for decision; and
- references (keywords, legislation etc).

Location of Case Decision Summaries

Form of distribution

12. We publish all CDSs internally on ATO*law*, and, unless it is not prudent to do so, externally on the ATO's Internet site, ATO*assist* (www.ato.gov.au). Where relevant, we have cross-referenced CDSs with legislation, case law, public rulings, law administration practice statements and other CDSs.

13. ATO*law* contains references to both the original case report in CRS, and the Business Line responsible for the case. These references help ATO officers in researching issues related to the CDS. We do not provide these references on ATO*assist*, to ensure taxpayer privacy.

FOI Status

14. We allocate each CDS a unique FOI extraction number and release it to the public. However, there may be CDSs which would be of value to ATO staff, but for various reasons cannot be released to the public. These cases would be available on the

internal database but would not be allocated an FOI number or placed on ATO*assist*.

15. Copies of any CDS provided to the public by ATO officers **must not** include the CRS reference number or the business line details.

Preparation of Case Decision Summaries

Case selection

16. In some business lines, case officers, in consultation with their team leader or manager, initially identify the precedent CRS cases to be included on the CDS database. In other business lines, senior technical officers identify and select cases.

17. We consider for publication all ATO decisions on CRS which satisfy the precedent criteria. However, this is subject to a number of other criteria, including:

- compliance with the secrecy provisions of the tax laws (for example, subsection 16(2) of the ITAA 1936);
- maintenance of taxpayer confidentiality; and
- the suitability of the CRS report for research.

Clearance processes

18. Clearance processes differ between business lines. You can find details of your business line's requirements, and contact details of 'Gatekeeper' staff in your business line, through your business line's home page on ATO*connect*.

19. When you prepare a CDS you must ensure the requirements in the CDS checklist (the checklist) have been met before referring the CDS for review in your business line. The CDS template (with checklist attached) and guidelines for preparing CDSs are available on ATO*connect* (see paragraph 22 below).

20. After reviewing a CDS, the business line reviewer is then required to certify that the requirements in the checklist have been met before referring the CDS to OCTC.

21. As a general requirement, each person preparing or reviewing CDSs, whether in the Business Line or OCTC, is expected to ensure:

- legislation and case reference accuracy;
- use of the correct style, layout, structure and appropriate headings;
- use of plain English expression;
- the reasons for decision are correct and complete;
- there is consistency with the CRS report; and
- compliance with secrecy provisions and confidentiality requirements.

Style & format

22. The CDS resource kit (on ATO*connect*) provides guidance on the style and format requirements of CDSs. Alternatively, the Gatekeeper in your business line can assist.

Feedback on Quality

23. Ongoing feedback is critical to ensure the continuing high quality of CDSs. The nature, format and timing of feedback will be determined within each Business Line and between OCTC and each Business Line.

24. OCTC officers will return to the relevant Business Line for alteration any potential CDS considered not to meet the requirements of paragraph 21.

Numbering

25. OCTC will allocate CDSs a unique reference number which begins with the prefix 'CDS' and ends with a 5-digit number. These numbers are assigned in order of publication of the CDS and OCTC will only assign them when a CDS is added to ATO*law*.

Secrecy, Privacy & Anonymity

26. The secrecy provisions prevent disclosure of information respecting the affairs of another person. Therefore, a CDS must not make any reference to specific details of the taxpayer or contain information that is likely to enable the taxpayer to be identified by someone – this would be a breach of our obligations under the secrecy provisions. You must avoid references to geographic regions or places, industry specific terms or details, or monetary amounts. You should avoid gender references and details of associates, including their gender and gender-associative descriptions (e.g., wife, husband, brother, sister, etc.).

Draft Public Rulings

27. A draft Taxation Ruling or draft Taxation Determination, or similar document, represents the preliminary, though considered views of the ATO. Only a final ruling represents an authoritative statement by the ATO of the Commissioner's stance on the particular matters covered in the ruling. Where a CDS relies on a draft Taxation Ruling or draft Taxation Determination, we will not add it to the database until the ruling or determination is finalised.

Currency of Case Decision Summaries

28. OCTC has overall responsibility for the functions involved in maintaining and updating the CDS database. However, each business line shares the responsibility, by maintaining a flow of relevant CDSs and notifying OCTC when a CDS may need to be withdrawn or qualified. For example:

- where new legislation is passed, the business line responsible for that legislation must advise OCTC of any changes required to CDSs;

- where a new ruling issues, the business line responsible for that ruling must advise OCTC of any changes required to CDSs; or

- where a CDS is considered incorrect and subsequently found by the business line's escalation process to be incorrect, that business line must advise OCTC of any changes required to the CDS.

29. We will appropriately annotate withdrawn or qualified CDSs including the date of, and reasons for, the withdrawal or qualification. As both taxpayers and ATO officers will rely on cases from time to time that may later be altered, CDSs that have been altered or are no longer current will be retained on the database for a reasonable period of time. This enables both taxpayers and ATO officers to identify those CDSs they may have relied upon in making their decisions.

Differences of opinion in the interpretation of the law

30. Where there is a difference of opinion within the ATO on the interpretation of the law, we expect that every effort will be made to resolve the difference at the point at which it occurs. However, where agreement cannot be reached, the business lines' escalation processes must be used to determine the correct interpretation before a CDS is finalised.

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