


# ***PS LA 2000/7 - Management of Significant Technical Issues***

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# ATO Practice Statement Law Administration

**PS LA 2000/7**

Law Administration Practice Statement PS LA 2000/7 was withdrawn on 3 November 2003 and replaced by Law Administration Practice Statement PS LA 2003/10.

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**FOI status: may be released**

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*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.*

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**SUBJECT:      Management of Significant Technical Issues**

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## **STATEMENT**

### **Purpose of significant issues**

1. Identification and resolution of significant issues is an integral part of the ATO's compliance and law clarification strategy. It assists the ATO to manage risks relating to key corporate objectives and to formulate 'whole of ATO' compliance strategies and consistent legal interpretation in a timely manner.

### **Criteria for identifying a significant issue**

2. A tax technical issue is considered to be a "significant issue" if it meets one or more of the following criteria:
  - Significant loophole, deficiency or anomaly in, or unintended application of the law.
  - Significant absence of, deficiency in, or constant challenging of ATO technical interpretative policy.
  - Application of anti-avoidance provisions such as the general provision contained in Part IVA of the *Income Tax Assessment Act 1936*.
  - Significant interpretative issues and tax planning opportunities arising from tax reforms.
  - Significant international tax technical issues.
  - Substantial revenue implications. Total potential annual tax revenue impact of a particular issue to exceed \$25 million.
  - Sensitive, important or controversial issues where senior ATO officers or Government need to be informed or consulted.
3. The above criteria act as a filtering process to ensure that only the most significant issues are escalated corporately. Table A below provides an explanation of these criteria.

4. Table A: Explanation of Significant Issues Criteria

Risks	Significant Issues Criteria	Explanation
<i>Compliance</i>	Significant loophole, deficiency or anomaly in, or unintended application of the law.	<p>“Significant” means the issue involves:</p> <ul style="list-style-type: none"> <li>• a large number of taxpayers;</li> <li>• major impact from the community perspective;</li> <li>• industry-wide impact;</li> <li>• complex, novel, or sensitive issues;</li> <li>• substantial actual or potential tax revenue; or</li> <li>• long term effect on the tax system.</li> </ul> <p>Significant issues need clarification, whether by legislation, objections, litigation (including appeals), public rulings, or some other means – e.g. a test case.</p>
	Significant absence of, deficiency in, or constant challenging of ATO technical interpretative policy.	
	Application of anti-avoidance provisions such as the general provision contained in Part IVA of the <i>Income Tax Assessment Act 1936</i> .	
<i>Implementation of tax reform</i>	Significant interpretative issues and tax planning opportunities arising from tax reforms.	International treaty issues are considered significant where they involve:
<i>Globalisation</i>	Significant international tax technical issues.	<ul style="list-style-type: none"> <li>• international tax avoidance schemes;</li> <li>• referral by the Australian Government, another department/agency or a foreign government;</li> <li>• international issues of political significance;</li> <li>• legislative projects;</li> <li>• litigation involving the ATO;</li> <li>• matters under treaties that require Competent Authority consideration;</li> <li>• complex questions of interpretation, or novel issues relating to international agreements; or</li> <li>• treaty issues involving significant revenue.</li> </ul>
<i>Revenue base protection</i>	Substantial revenue implications. Total potential annual tax revenue impact of a particular issue to exceed \$25 million.	Examples include tax planning opportunities arising from tax reforms that have a substantial revenue impact.
<i>Community confidence</i>	Sensitive, important or controversial issues where senior ATO officers or Government need to be informed or consulted.	<p>Examples include tax matters relating to high profile taxpayers (large corporates, high wealth individuals etc.), media sensitive etc.</p> <p>Matters which anticipate community concerns by the issue of public rulings and amendments to legislation etc. to ensure consistent tax treatment.</p>

**Registration of an issue on SIGNUM**

5. Officers involved in technical work are responsible for identifying and nominating potentially significant issues using the criteria set out in paragraph 2 and for escalating the issues in accordance with the procedures of the respective Business Lines and Centres of Expertise. Officers are required to substantiate the nomination so that their respective SES manager (or his/her nominees) is in a position to make the best possible decision on whether the issue should be registered in the significant issues database (SIGNUM). The use of external consultants, as directed

by Law Administration Practice Statement PS LA 1999/1, needs to be considered as a means of resolving the issue.

6. In the event that a similar issue is already registered in SIGNUM, the officer responsible for the new issue is only required to identify his or her issue on the SIGNUM data field “No. of similar issues/products” in consultation with the existing issue owner. The existing issue owner is responsible for updating SIGNUM and keeping other owners informed of key developments. Other issue owners should also review SIGNUM regularly and contact the existing issue owner if required.
7. Taxpayers and their advisers and representatives may provide input to the process by bringing issues to the attention of ATO technical officers. Issues identified from external sources are dealt with under the same escalation processes as other issues.
8. Where the ATO view is challenged through objection and/or litigation action, a new entry on SIGNUM will be necessary, if the criteria set out at paragraph 2 are satisfied. Once a significant issue has been finalised, the issue owner from the Business Lines or Centres of Expertise must update SIGNUM as soon as the issue is signed off on SIGNUM as outlined in paragraphs 9 to 16.

#### **Finalisation of a significant issue on SIGNUM**

9. Each Business Line/Centre of Expertise is required to set up a structure that supports and ensures that resolution of significant issues is timely, accurate, complete and consistent.
10. SIGNUM is a strategic management tool; therefore it should not be used for detailed case management. Whilst the situations described in paragraph 12 outline when the ATO view is considered to be determined, after a significant issue has been finalised off SIGNUM, Business Lines/Centres of Expertise must continue to use the appropriate management information system to monitor the issue to conclusion. Examples include the Legislative Management Program in relation to proposed legislative amendments and case management systems (including the Case Reports System) in relation to taxpayer specific technical advice and audit completion.
11. A significant issue is considered to be finalised on SIGNUM when the ATO view has been determined by the Tax Counsel Network (TCN), the International Tax Division (ITD), or a Business Line/Centre of Expertise officer (see paragraphs 13-16). The ATO view is this Office’s interpretation of the provisions of the tax laws. Where the decision is made by a Business Line/Centre of Expertise officer, processes need to be in place to ensure that appropriate senior officers have been involved.
12. The ATO view is considered to be determined in the following circumstances:
  - Audits – the date when TCN/ITD/Business Line signs off the ATO’s interpretation of the provisions of the tax laws as they apply to the particular circumstances in the audit. In most cases it would be expected that the ATO view would be reached prior to the issue of an ATO position paper to the taxpayer. However, there may be cases where the ATO view is not finally

determined until after the taxpayer's response to the ATO position paper has been considered.

- Objections – the date the objection report is signed off by TCN/ITD/Business Line.
- Litigation (including appeals) – the date when TCN/ITD/Business Line approves the ATO position, and the arguments supporting that position, which are to be put before a tribunal or court. It is not necessary to wait until a court decision is handed down to remove an issue from SIGNUM.
- Public Rulings – the date when TCN/ITD signs off on the final version of the ruling. In most situations the ATO will first issue a ruling as a draft ruling and, whilst this is not the final ATO position on the topic, the issue of a draft will, for SIGNUM purposes, mean that the ATO does have a view on the matter and it can be taken off SIGNUM.
- Private Rulings and Opinions – the date when TCN/ITD/Business Line/Centre of Expertise signs off the ATO's interpretation of the provisions of the tax laws as they apply to the particular circumstances of the private rulings and opinions.
- Legislation – the date when a legislative proposal has been approved by the Legislative Management Committee or the relevant SES officer.
- Projects – the date when the final project report is approved by the sponsor.

### **Role of the Tax Counsel Network (TCN)**

13. In order to cover the organisation's highest priorities, TCN may not be able to cover significant issues to the extent that has occurred previously and Business Lines/Centres of Expertise will need to play an increased role in the resolution of such issues. They should however consult TCN in cases where, after escalation within the Line, doubt still exists and/or further guidance is required. As a guide, the following principles apply in respect of TCN:
  - TCN will be available to form the ATO view on significant issues arising from tax reform (i.e. GST, ABN and other ANTS issues; Business Tax Reform; tax reform relating to Excise). Key areas will be significant issues arising from Centres of Expertise.
  - Where priorities have to be set, non-tax reform significant issues may in general not be as significant as significant issues arising under tax reform and will normally be matters for resolution within the Business Lines or through the use of consultants.
  - Current TCN involvement in non-tax reform significant issues will be reviewed by OCTC in conjunction with the Business Lines to determine who will resolve the issue. Continuing TCN involvement may need to be on an exception basis. Examples will include TCN involvement in public rulings (other than product rulings, see below), and in respect of hot spots such as

the more significant issues arising in aggressive tax planning and the High Wealth Individuals Taskforce.

- Where TCN involvement was in respect of litigation subsequent to formation of the ATO view, ATO Legal Practice should be called on for assistance. TCN involvement will only be on an exception basis to be determined by OCTC in conjunction with the Line.
- TCN will play a key role in Integrated Tax Design (e.g. in quality assurance reviews of draft legislation).
- TCN will continue to play a professional leadership role on Tax Pack with resources to be determined by OCTC in conjunction with INB.
- TCN will not be involved in product rulings except where novel and significant issues arise, or where further guidance is required, or where an existing view is sought to be reviewed. Otherwise product rulings will be resolved by the Line having regard to established precedents.

#### **Role of the International Tax Division (ITD)**

14. Paragraph 13 does not apply to ITD. All significant international issues must be referred to ITD in accordance with ITD referral guidelines.

#### **Role of Business Lines/Centres of Expertise**

15. Business Lines/Centres of Expertise play a key role in resolving significant issues, the extent of that role depending on whether TCN or ITD are involved (see paragraphs 13 and 14). Where TCN or ITD are involved, Business Lines are responsible for the identification of significant issues, their overall management, assisting TCN or ITD to form the ATO View (e.g. development of a draft ATO view) and implementation of the ATO view as determined by TCN or ITD. Where TCN and ITD are not involved, Business Lines have the additional responsibility of forming the ATO view. As appropriate, in any case, Centres of Expertise will also play a role.
16. As part of the process of resolving significant issues, Business Lines/Centres of Expertise should develop 'whole of ATO' compliance and assistance strategies consistent with the settled ATO view. In general TCN will not, unless otherwise agreed between OCTC and the Business Line/Centre of Expertise, participate in strategies to implement the ATO view.

#### **EXPLANATION**

17. As the ATO creates "a new tax office for a new tax system", it is appropriate to review and update the processes surrounding the identification and resolution of significant issues, as well as the use of the significant issues database, SIGNUM.
18. Benefits of the significant issues program include:
  - Assistance in the more timely resolution of significant tax technical issues.

- Development and sharing of technical knowledge and skills across Business Lines/Centres of Expertise.
- Identification and provision of advice on systemic trends, risks and patterns that become apparent in the resolution process.

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*subject references:* significant issues; escalation processes for significant issues

*related practice statements:* PS LA 1998/2; PS LA 1999/1

*file references:* 2000/15713

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