PS LA 2001/15 (Withdrawn) - Taxpayer Alerts

This cover sheet is provided for information only. It does not form part of *PS LA 2001/15 (Withdrawn) - Taxpayer Alerts*

Law Administration Practice Statement PS LA 2001/15 was withdrawn on 19 August 2005 and replaced by Law Administration Practice Statement PS LA 2005/13.

This document has changed over time. This version was published on *19 August 2005*

Generated on: 25 November 2026, 06:42:52 AM

ATO Practice Statement Law Administration

PS LA 2001/15

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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: **Taxpayer Alerts**

PURPOSE: **Taxpayer Alerts are intended to be an 'early warning' of significant new and emerging tax planning issues or arrangements that the ATO has under risk assessment.**

STATEMENT

1. It is **mandatory** for ATO officers to escalate to Strategic Intelligence Analysis (SIA) arrangements that have the same or similar features as those in a Taxpayer Alert.

2. ATO officers responding to taxpayer inquiries regarding Taxpayer Alerts should advise taxpayers who have entered into or are contemplating entering into an arrangement similar to that described in the Taxpayer Alert that they can seek a formal determination of the ATO's position through a Private Ruling. Such taxpayers might obtain their own advice and/or contact the ATO officer named in the Alert.

3. Any application received for a ruling must be forwarded to the Alert contact officer. A ruling application could assist the ATO to obtain information about the arrangement or issue and therefore help in finalising the ATO view.

4. Should ATO officers become aware of tax planning issues they believe should be the subject of a Taxpayer Alert, they should forward a draft of a Taxpayer Alert to, or contact, the SIA Taxpayer Alert Manager, as soon as possible.

EXPLANATION

What are Taxpayer Alerts?

5. Taxpayer Alerts are intended to be an 'early warning' of significant new and emerging tax planning issues or arrangements that the ATO has under risk assessment.

6. Taxpayer Alerts will provide information that is in the interests of an open tax administration to taxpayers. Taxpayer Alerts are written principally for taxpayers and their advisers and they also serve to inform ATO officers of new and emerging

tax planning issues. Not all potential tax planning issues that the ATO has under risk assessment will be the subject of a Taxpayer Alert, and some arrangements that are the subject of a Taxpayer Alert may on further examination be found not to be of concern to the ATO.

7. Taxpayer Alerts will give the title of the issue (which may be a scheme, arrangement or particular transaction), briefly describe the issue and will highlight the features which the ATO considers give rise to taxation issues. These issues will generally require more detailed analysis to provide an ATO view to taxpayers.

8. The sort of features which typify significant tax planning arrangements under risk assessment include:

- arrangements which are contrived and artificial in their method of execution;
- little or no real underlying business activity or purpose;
- the significance of the claimed tax benefit in realising an economic return;
- the complete or substantial removal of any risk to a taxpayer;
- the contrived transfer of a tax benefit;
- limited or non recourse financing associated with a round-robin flow of funds;
- little cash outlay associated with borrowing of funds under a capitalising debt facility;
- mechanisms for winding up or exiting an arrangement before net income is generated for an investor;
- assumptions, including 'blue sky' projections, that can lead to seemingly excessive valuations of assets resulting in inflated deduction claims;
- use of tax-exempt entities, especially charities, to wash income; and
- transactions involving tax havens.

9. Taxpayer Alerts are not law and are not Public Rulings.

10. Taxpayer Alerts will be made publicly available on ATO*assist* and through the websites and newsletters of a number of tax professional organisations as part of their educational role.

A corporate initiative

11. Taxpayer Alerts are a corporate initiative, and will cover significant new and emerging tax planning issues in all Business Lines.

Administration of Taxpayer Alerts

Approval

12. The Aggressive Tax Planning Risk Review Panel will review draft Taxpayer Alerts and make a recommendation to the approving officer. Taxpayer Alerts can be approved and issued by the Commissioners and the First Assistant Commissioner (Aggressive Tax Planning).

SIA Alert Manager

13. The SIA Taxpayer Alert Manager will be responsible for the maintenance of the Taxpayer Alert system and its site on ATO*assist*. The occupant of this position will ensure consistency in content and style of Taxpayer Alerts and that appropriate authorisation has been given.

Determination of ATO View on issues subject to Taxpayer Alerts

14. Once the ATO has determined its view on an issue subject to a Taxpayer Alert it will publish it on ATO*assist.* The ATO undertakes to determine and publish its view on issues subject to Taxpayer Alerts as a matter of urgency. To enable this to happen those involved in developing or marketing the arrangement should provide the facts of the arrangement to the ATO.

15. The Aggressive Tax Planning Risk Review Panel will actively monitor progress of the formation of the ATO view on these issues and will escalate cases to the First Assistant Commissioner (Aggressive Tax Planning) that are not progressing with the highest priority. Where there is a delay in finalising the ATO view because of insufficient facts, the ATO will publicly notify its present position.

Distribution of Taxpayer Alerts

Form of Distribution

16. All Taxpayer Alerts will be sent to National Program Managers under cover of an internal electronic mail message. Concurrently they will be placed on ATO*assist* for both ATO officers and public access.

Searching on ATOassist

17. Searches may be conducted for Taxpayer Alerts in the same way as other technical information such as ATO Interpretative Decisions. Taxpayer Alerts will be cross referenced, where relevant, by subject references, legislative references, Public Rulings, other Taxpayer Alerts and case references. In early 2002 Taxpayer Alerts will be included on a tax planning site on the ATO Home page.

Numbering structure

18. Each Taxpayer Alert will be allocated a unique reference number similar to those allocated to Public Rulings. This reference number will be based on the order of issue during a calendar year.

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subject references:	Taxpayer Alerts
file references:	2001/019419

Date issued:	**20 December 2001**
Date of effect:	**20 December 2001**