

# ***PS LA 2001/3 (Withdrawn) - GST Escalation Process***

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! Law Administration Practice Statement PS LA 2001/3 was withdrawn on 3 November 2003 and replaced by the Scope of the Guiding Principles and Law Administration Practice Statement PS LA 2003/10.

! This document has changed over time. This version was published on *3 November 2003*



# ATO Practice Statement

## Law Administration

**PS LA 2001/3**

Law Administration Practice Statement PS LA 2001/3 was withdrawn on 3 November 2003 and replaced by the [Scope of the Guiding Principles](#) and Law Administration Practice Statement PS LA 2003/10.

**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: GST Escalation Process**

**PURPOSE: To set out the process for identifying, escalating and resolving significant technical issues in the GST Business Line**

### STATEMENT

1. This Law Administration Practice Statement should be read in conjunction with PS LA 2000/7 concerning management of significant technical issues.
2. Broadly, there are five steps to the resolution of a significant issue.
  - Step 1 – Identification
  - Step 2 – Escalation
  - Step 3 - System requirements
  - Step 4 – Resolution
  - Step 5 - Finalisation
3. Any reference in this Law Administration Practice Statement to the 'SES segment leader' should be read as either a reference to the Assistant Commissioner Compliance (Tax Practice), the Assistant Commissioner Large Enterprise Compliance, the Senior Assistant Deputy Commissioner Law and Interpretation or an Assistant Commissioner with responsibility for a Law and Interpretation segment (i.e. General Advice, Industry Teams, Rulings or Law Design and Development).

#### Step 1 – Identification

4. Each GST segment has its own particular internal process for vetting technical issues. Significant issues may arise from a single case or may be common to several cases. An issue is significant if one or more of the significant issues criteria

listed in Law Administration Practice Statement PS LA 2000/7 apply. For GST this means that an issue is significant if it meets one or more of the following:

- loophole, deficiency or anomaly in, or unintended application of the law;
- absence of, deficiency in, or constant challenging of ATO technical interpretative policy;
- application of the anti-avoidance provisions in Division 165 of the *A New Tax System (Goods and Services Tax) Act 1999*;
- interpretative issues and tax planning opportunities arising from tax reforms i.e.
  - there is an absence of, or deficiency in, ATO policy on the issue;
  - nationally applicable guidelines on the matter have not issued and the question to be decided is one that is seen as having wide application e.g. the issue may concern a particular kind of supply or acquisition, one or more industries or classes of entities;
  - inconsistent interpretations of the law have been given and cannot be reconciled; or
  - existing taxation policy or guidelines are subject to constant challenge or debate;
- 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.

In addition, the following will also be considered significant for GST purposes:

- cases to be litigated and those on appeal to the Federal Court.

5. An issue requiring escalation may arise through a variety of sources such as, but not confined to, the following:

- directly by an entity;
- a professional association or peak industry body;
- industry consultative committees;
- another Government agency;
- because of a court decision;

- internal sources or field contact.
6. Because GST is transaction-based, you should consider an otherwise ‘isolated’ transaction (that is the subject of a GST decision) in the context of the national economy. Even if the individual transaction concerns a negligible amount, because of the transaction’s possible universal and broad-based nature, the total number of annual transactions may have national implications. Therefore, when estimating the expected revenue impact of any issue, you should carefully consider the flow-on effect.
  7. Likewise, you should consider issues concerning principles that go to the very basic building blocks of GST as significant. Any final decision, if not escalated, may have unintended serious impacts in other areas concerning GST.

## **Step 2 – Escalation**

8. If you consider that the issue you are working on falls within one or more of the significant issue criteria (paragraph 4), you should refer the matter to your team leader, manager, a Senior Technical Adviser (STA) or a Principal Technical Adviser (PTA) as appropriate. In conjunction with these people and the relevant SES segment leader, you should form the preliminary ATO view and fill out a Significant Issue Template available on ATO Connect at:

<http://gstweb/gst/Work/Content/Procedures-guidelines/EscalationProcess/EscalateIssueTemplate.doc>

The SES segment leader should endorse the template details. You should then forward this template to the National Quality Team (NQT) via e-mail.

9. The NQT is located in National Office and is the GST ‘gatekeeper’ for SIGNUM. The NQT is also the facilitator for ensuring that significant issues are progressed in the GST business line.
10. Once the NQT receives the template it will arrange a phone hookup of all relevant senior technical officers to discuss the significance of the issue. The relevant SES segment leader will be involved in the hookup and will be asked to:
  - endorse the fact that the issue is significant;
  - where the issue is to be resolved by public ruling, endorse this course of action and identify a segment resource to assist; and
  - where the issue is to be resolved by litigation or legislation, endorse this course of action.
11. If it is decided that the issue is not significant, the NQT will communicate the reasons for this decision and any guidance on how to resolve the case to the referring officers.
12. If the issue is significant, the NQT will communicate this decision, who is to have responsibility for resolving the significant issue (the ‘issue owner’) and any guidance about how the significant issue should be addressed to the referring

officers. The 'issue owner' may be the case officer, manager, STA, PTA or SES segment leader.

### **Step 3 - System requirements**

13. The issue owner must then record the significant issue on the SIGNUM database. The use of ATO electronic support systems is mandatory - see Law Administration Practice Statement PS LA 1998/2.
14. It is important that the full details requested on SIGNUM, CRS and CWMS are provided as comprehensively as possible and kept updated. This corporate information provides vital intelligence and is used for a range of purposes such as providing guidance to other officers who have similar issues, assisting in policy development and macro analysis of significant issues, management reporting and strategic planning. The use of these systems is mandatory.
15. After the significant issue is recorded on SIGNUM, the system automatically ranks the issue from 1 (very high) to 6 (awaiting priority). If insufficient data is available to adequately determine a priority level, the issue should not be registered on SIGNUM until additional information is available. Priorities are automatically set but can be manually overridden by appropriately authorised officers (e.g. NQT).

### **Step 4 – Resolution**

16. Where a significant issue has a priority of 1, 2 or 3, TCN or SES segment leader assistance **must** be sought to resolve it. The NQT will advise the issue owner where a TCN is allocated to their issue.
17. TCN's role is to provide leadership in clarifying the law and in supporting technical staff in Business Lines. Subject to the Commissioner, the Chief Tax Counsel (CTC) has overall responsibility for establishing the ATO view on any question of interpretation of the law.
18. Where a significant issue arises in the context of the 'Code of Settlement Practice', the arrangements and processes outlined in the code must be adhered to. A panel of experienced mediators has been established to assist in appropriate settlement discussions.
19. A significant issue may be progressed and resolved by a variety of approaches including public rulings, private binding rulings, litigation, legislative response, and mediation.
20. The resolution of the significant issue may involve follow up activities, such as community education and compliance projects.

### ***Public Rulings***

21. Prior to referring an issue to the Public Rulings Unit, either a PTA or the relevant SES segment leader must endorse the issue as being a suitable subject for a Public Ruling and identify a segment resource to assist in drafting the Ruling.
22. In the event of conflict as to whether a subject should be added to the Rulings Program, the AC GST Rulings will resolve the conflict in consultation with the relevant parties.

### ***Private Binding Rulings***

23. Where a significant issue is resolved by way of private ruling, the decision must be recorded on CRS and marked as precedent. The issue must then be referred for preparation of a Case Decision Summary.

### ***Litigation***

24. All cases subject to litigation will be reviewed by the GST Review and Litigation Unit and, where appropriate, referred to the GST Litigation Panel.

### ***Legislation***

25. Issues should be escalated to the Legislation team where:
  - it is considered a change may be required to the legislation;
  - there is a question as to the policy behind the law;
  - the law does not appear to be operating as intended;
  - there is potential revenue leakage due to an apparent loophole or defect in the law.

### ***Mediation***

26. The use of independent mediators in cases considered appropriate for settlement will provide a further option for resolution where the parties have been unable to reach agreement. Use of mediators will be optional, requiring the agreement of both parties to participate and to share the costs.

### ***Review Process***

27. The escalation process outlined in this paper does not abrogate any review process that an entity may be entitled to under the relevant legislation or the Taxpayers' Charter.

### **Step 5 – Finalisation**

28. Once the ATO position has been determined, an authorised officer must make the decision. Where the significant issue is a priority 1, 2 or 3 case, the authorised officer making the decision must be either an SES segment leader (in most

circumstances) or a TCN officer. A more senior officer may be the decision-maker in those rare circumstances where the issue is considered by senior management to be so sensitive or important that it requires its imprimatur.

29. The issue owner should ensure that SIGNUM and CRS are updated to reflect finalisation of the issue.
30. You can find details of significant issue escalation contact officers on ATO Connect at:

<http://atoconnect/gst/Work/Content/Procedures-guidelines/EscalationProcess/EscalationProcessContacts.htm>



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

*legislative references:* ANTS(GST)A99 Div 165

*related practice statements:* PS LA 1998/2; PS LA 2000/1; PS LA 2000/7

*file references:* 2001/000926

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