PS LA 2001/4 (Withdrawn) - Provision of written advice by the Australian Taxation Office

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This practice statement has been replaced by PS LA 2008/3

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ATO Practice Statement Law Administration

PS LA 2001/4

This practice statement has been replaced by PS LA 2008/3

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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.

SUBJECT: Provision of written advice by the Australian Taxation Office

PURPOSE: **To clarify:**
- **the different forms of written technical advice the Australian Taxation Office ('ATO') provides**
- **the circumstances in which such advice is to be provided**
- **the extent to which such advice can be relied on**

APPROACH: **This Law Administration Practice Statement first sets out 'Key Design Principles' on which it is based. It proceeds to set out a short 'Statement' of the rules surrounding the provision of written advice by the ATO, which is then expanded on in the 'Explanation' part. Tax officers and tax advisers should make themselves familiar with this Law Administration Practice Statement. To assist, a one-page decision tree capturing the major rules is at Attachment A and a one-page protection chart is at Attachment B.**

KEY DESIGN PRINCIPLES

- **Providing advice is central to the role of the ATO in a self-assessment system.**
- **The ATO provides many forms of written advice about the laws administered by the Commissioner. Most important is written advice which addresses the extent of liability.**
- **The many forms of written advice provide different levels of protection – as to penalties, interest or primary liability – depending on the extent to which the advice relates to the specific circumstances of the recipient.**
- **If a legally binding form of written advice can be given, that is the form the ATO will use to provide the advice.**
- **The ATO has adopted a strategic approach of developing a high integrity public rulings program to provide guidance to large numbers of persons.**
- **If a private ruling cannot be given because consent from all rulees has not been obtained and the request relates to many, the advice is to be provided in the form of a public ruling.**

- **If there are a number of private ruling requests dealing with an issue, or if the matter covered by a private ruling request is likely to be relevant to a wider range of persons, the advice should be promulgated more widely - for example, as a public ruling**.
- **There are important conditions on obtaining the certainty provided by a private ruling, namely:**
  - **the arrangement must be entered into as described;**
  - **the ruling only applies to the person/s identified in the ruling ('the rulee'); and**
  - **the ruling only applies for the period specified in the ruling.**
- **If a private ruling cannot be given, the ATO will continue to provide administratively binding advice where it has been our long-standing practice and it is still appropriate to do so. This practice will continue pending finalisation of proposals to extend the breadth of the rulings system.**
- **The disciplines and conditions associated with private rulings must be applied to administratively binding advice. So-called advance opinions and other written advice that purport to apply the law to specific circumstances without those disciplines and conditions are no longer available.**
- **All written advice must state the form of advice that it is, the level of protection that it affords and, for legally or administratively binding advice, an authorisation number.**

STATEMENT

1. There are many forms of written advice that the ATO provides about the laws administered by the Commissioner. This Law Administration Practice Statement presents these forms of advice (and their respective availability and degree of certainty) under the following general headings:

- written advice to a particular entity, namely private rulings, administratively binding advice, written general advice and advice about proposed changes to tax laws.
- written advice to the public, namely the various types of public rulings and publications.

2. The focus of the Law Administration Practice Statement is on written advice as opposed to other ATO documents such as assessment notices, dispute decisions or audit position papers. Furthermore, the focus is on advice that addresses the extent of liability as opposed to advice on administrative, procedural, collection, disbursement or other non-liability matters. A list of the matters excluded from this Law Administration Practice Statement is provided at paragraph 99.

3. Further information about the way the ATO deals with advice requests is contained in the Online Resource Centre for Law Administration (ORCLA).

Written advice to a particular entity

Private rulings under Part IVAA of the Taxation Administration Act 1953 ('TAA')

4. A person may apply to the Commissioner for a private ruling on the way in which a tax law applies to that person in relation to an identified arrangement for a year of income: section 14ZAF of the TAA. Similarly, a person may, with the written consent of a rulee, apply to the Commissioner for a private ruling on the way in which a tax law applies to the rulee in relation to an identified arrangement for a year of income: section 14ZAG of the TAA.

5. Whenever a person requests advice on the way in which a tax law applies to that person or to a consenting rulee for a year of income in relation to an arrangement, the request is to be treated as an application for a private ruling.

6. If the Commissioner provides a private ruling, it is legally binding on him to the extent provided by section 170BB of the *Income Tax Assessment Act 1936* ('ITAA 1936').

7. All private rulings must be provided in a notice of private ruling and be accompanied by an explanatory note stating its status. The Case Reports System ('CRS') automatically provides for this. All cases received after 31 March 2001 will be allocated a sequential authorisation number on being finalised. Any written ATO advice issued in response to a private ruling request received after this date must not state that it is a private ruling for the purposes of Part IVAA of the TAA unless the advice quotes the properly obtained authorisation number.

8. For further explanation see paragraphs 50 to 62.

Indirect taxes/GST private rulings[1]

9. Any written ruling or advice about the goods and services tax ('GST') that we give to a particular entity is a private ruling: subsection 995-1(1) of the *Income Tax Assessment Act 1997* (ITAA 1997). In addition, any written ruling or advice about the wine equalisation tax ('WET') or luxury car tax ('LCT') that we give to a particular entity is a private ruling: section 105-60 of Schedule 1 to the TAA. What is said later in this Law Administration Practice Statement about GST private rulings equally applies to WET and LCT private rulings.

10. An entity can make a request for a GST, WET or LCT private ruling by using an 'Application for GST private ruling' form. Alternatively, they can submit a request, in writing, containing the relevant information.

11. In this Law Administration Practice Statement we distinguish between two types of GST private rulings, being:

a) Specific advice to a particular entity about how the law applies to its individual circumstances, which is referred to as a GST specific private ruling; and

[1] See also GST written general advice at paragraph 15 below.

b) General advice to a particular entity which simply restates parts of a public ruling without applying the law to the individual entity's individual circumstances, which is referred to as GST written general advice.

GST specific private ruling

12. If the Commissioner provides an entity with a GST specific private ruling, the entity can rely on it to the extent provided in section 105-60 of Schedule 1 to the TAA.

13. A GST specific private ruling is to contain a statement that it is a private ruling for the purposes of section 105-60 of Schedule 1 to the TAA and a statement explaining its status (the CRS system automatically provides for this). All cases received after 31 March 2001 will be allocated a sequential authorisation number on being finalised. For GST private ruling requests received after 31 March 2001, tax officers must ensure that any private ruling that they issue contains a properly obtained authorisation number.

14. For further explanation see paragraphs 63 to 68.

GST written general advice

15. The ATO frequently provides advice to entities about the GST, WET and LCT which simply restates part of a public ruling without applying the law to the entity's particular circumstances. This advice is a GST private ruling and the entity can rely on it to the extent provided in section 105-60 of Schedule 1 to the TAA.[2] Essentially, to the extent that the general view of the law applies to the entity's circumstances, the Commissioner will be bound by that advice.

16. Such general GST advice is to contain a statement explaining its form and status (the CRS system automatically provides for this).

17. If an entity requires more specific advice in relation to its particular circumstances, it may provide further details and request a further GST private ruling: see paragraphs 9 to 14.

Administratively binding advice

18. If a legally binding form of written advice cannot be given, a person may request the Commissioner to provide administratively binding advice on the way in which a law administered by the Commissioner applies to an arrangement that has been entered into, or is seriously proposed to be entered into. The law need not be a 'tax law' as defined in the TAA, but must be a law under which the extent of liability is worked out (for example a superannuation surcharge law). Administratively binding advice that may be provided is limited to those areas where it has been our long-standing practice to provide such advice and it is still appropriate to do so. An exhaustive list of the matters on which administratively binding advice may be given is provided in Attachment C to this Law

[2] This contrasts with other ATO written general advice. This advice is not binding on the Commissioner.

Administration Practice Statement. The Commissioner is not required at law to provide administratively binding advice.

19. If a person requests administratively binding advice, it will be treated in a similar way to an application for a private ruling. The request must fully and accurately identify the parties to the arrangement and disclose all relevant facts and it must be in writing. Furthermore, no fundamental assumptions are to be made about the arrangement.

20. Administratively binding advice is not legally binding on the Commissioner. However, the Commissioner will stand by what is said in such advice and will not depart from it except in the circumstances explained at paragraph 73. So, similar to private rulings, administratively binding advice may protect the person affected from primary tax. Furthermore, and also similar to private rulings, administratively binding advice may protect the person from penalties and interest: see paragraph 74.

21. Administratively binding advice is to contain a statement explaining its form and status (the CRS system automatically provides this). All cases received after 31 March 2001 will be allocated a sequential authorisation number on being finalised. For requests received after 31 March 2001, tax officers must ensure that any administratively binding advice they issue has an authorisation number on its face.

22. For further explanation see paragraphs 69 to 74.

Written general advice (other than GST)

23. The ATO also provides written advice of a more general nature. Written general advice is usually provided if the person has asked for advice about the general principles of the operation of the law. In these cases, the decision remains with that person how those principles apply to his or her circumstances.

24. If the Commissioner provides written general advice it must be qualified by a statement that the advice is of a general nature and is not binding on the Commissioner. If a person wants to be certain about the application of general advice to their individual circumstances, they should ask for a private ruling or, if applicable, administratively binding advice. However, if a person follows information contained in written general advice and in doing so makes an honest mistake, they will be protected from any penalty on underpaid tax.[3] Furthermore, if something in the written general advice is misleading or incorrect and a person makes an honest mistake as a result, they will be protected from any penalty and any interest on underpaid tax.[4]

25. For further explanation see paragraphs 75 to 77.

Advice about proposed changes to tax laws

26. Law Administration Practice Statement PS LA 2004/6 explains the assistance that tax officers can give taxpayers in relation to proposed changes to the tax law. It also deals with queries about proposed changes to a tax law that will apply retrospectively

[3] See, for example, section 226G of ITAA 1936 and Taxation Ruling TR 94/4 on reasonable care.

[4] See above, note 3, and section 8AAG of the TAA about general interest charge remission.

27. Broadly, officers must not provide indicative interpretative advice about legislation prior to its Royal Assent, or on regulations prior to their gazettal. Where the taxpayer's query raises issues which may have significant policy or administrative implications, officers should inform the taxpayer that the issues will be referred to the Treasury, and arrange follow-up of the matter.

28. Any advice or information provided to external parties about announced proposed changes to the tax laws or regulations should be limited to the public announcement and other publicly released information in the source documents that announced the proposed law change (eg, Press Release, Explanatory Memorandum, draft legislation).

29. Where a proposed law or regulation change is to apply retrospectively when the enabling law is enacted (or gazetted for regulations), the Tax Office's Policy Implementation Forum (PIF) will determine the appropriate form of advice to be given to the enquirer. In situations where information on possible changes to the tax law has not yet been made public, it is not appropriate for officers to refer to the proposed changes when dealing with external parties. The advice should reflect the existing law.

30. For further explanation see paragraphs 78 to 83.

Written advice to the public

Public rulings under Pt IVAAA of the TAA

31. A public ruling under Pt IVAAA of the TAA sets out the Commissioner's considered view on the way in which, in his or her opinion, a tax law applies to a person or class of persons in relation to an arrangement or class of arrangements that commenced on or after 1 July 1992.

32. If the Commissioner issues a public ruling, it is legally binding to the extent provided by section 170BA of the ITAA 1936. Broadly, an assessment must be made in accordance with the way in which that public ruling states that the law applies, if the amount of final tax is less than it should otherwise be under the law.

33. The Commissioner has established a Public Rulings Panel and an International Public Rulings Panel, which include eminent tax experts, to ensure the quality of public rulings.

34. Tax officers may nominate topics for inclusion on the Public Rulings Program through their business line's escalation process. The relevance and performance of the Public Rulings Program is monitored by the National Tax Liaison Group and topics for the program may be submitted through tax and industry representative bodies.

35. For further explanation see 84 to 87.

Product Rulings

36. Product Rulings enable the Commissioner to rule publicly on the availability of claimed tax benefits from an arrangement in which a number of persons individually enter into substantially the same transactions with a common entity or a group of entities.

37. Product Rulings are a type of public ruling and are therefore legally binding on the Commissioner to the extent provided by section 170BA of the ITAA 1936.

38. For further explanation see paragraphs 88 to 91.

Class Rulings

39. The ATO has developed a new type of public ruling - namely, Class Rulings. Class Rulings will enable the Commissioner to provide legally binding advice in response to a request from an entity seeking advice about the application of the tax law to a large number of persons in relation to a particular arrangement. This will obviate the need for a private ruling to be sought by or on behalf of every person who may be affected by the arrangement.

40. Class Rulings are a type of public ruling and are therefore legally binding on the Commissioner to the extent provided by section 170BA of the ITAA 1936.

41. For further explanation see paragraph 92.

Indirect taxes/GST public rulings

42. All forms of written advice involving the interpretation of the GST law, other than GST private rulings, are GST public rulings: subsection 995-1(1) of the ITAA 1997. In addition, all forms of written advice covering the operation of the WET and LCT laws, other than WET and LCT private rulings, are WET or LCT public rulings, respectively. What is said later in this Law Administration Practice Statement about GST public rulings applies equally to WET and LCT public rulings.

43. GST public rulings can be relied on to the extent provided in section 105-60 of Schedule 1 to the TAA. Essentially, to the extent that the general view of the law applies to the entity's circumstances, the Commissioner will be bound by that advice.

44. A GST Public Rulings Panel, which includes eminent tax experts, ensures the quality of important GST public rulings under the ATO's Public Rulings Program.

45. For further explanation see paragraphs 93 to 95.

Other publicly-issued rulings

46. This covers rulings publicly issued before 1 July 1992 and those issued after that date which are not public rulings under the TAA, for example, the IT, MT, SGR and SCR series of rulings.

47. These rulings, though providing considerable guidance, are not legally binding on the Commissioner. However, the ATO will stand by what is said in these rulings and will not depart from them unless:

- there have been legislative changes since the ruling issued;
- a Tribunal or Court decision has affected our interpretation of the law since the ruling issued; or
- for other reasons, the approach adopted in the ruling is no longer considered appropriate.

48. For further explanation see paragraphs 96 to 98.

Publications (other than GST, WET and LCT)5

49. Publications, including *TaxPack*, are issued to help the community understand and meet their obligations under the laws administered by the Commissioner. Broadly speaking, publications are for general guidance and cannot cover all possibilities or the circumstances of every person. So, a publication cannot automatically be relied on as a basis for action. If a person wants to be certain about the application of advice in a publication to their individual circumstances, they should ask for a private ruling or, if applicable, administratively binding advice. However, if a person follows information contained in a publication and in doing so makes an honest mistake, they will be protected from any penalty on underpaid tax.[6] Furthermore, if something in an ATO publication is misleading or incorrect and a person makes an honest mistake as a result, they will be protected from any penalty and any interest on underpaid tax.[7]

EXPLANATION

Written advice to a particular entity

Private rulings under Pt IVAA of the TAA

50. Section 14ZAF of the TAA provides that a person may apply to the Commissioner for a private ruling on the way in which, in the Commissioner's opinion, a tax law (as defined in the TAA) applies to the person in relation to an identified arrangement in respect of a year of income. Section 14ZAG in Part IVAA of the TAA provides that a person may, with the written consent of another person, apply to the Commissioner for a private ruling on the way in which, in the Commissioner's opinion, a tax law applies to the other person in relation to an identified arrangement in respect of a year of income.

51. An application for a private ruling must be in a form approved by the Commissioner and must give such information relating to the ruling as required by the Commissioner: section 14ZAJ of the TAA. To facilitate this, the ATO provides a standard 'Application for Private Ruling' form specifying the requirements of an application. Tax advisers are encouraged to use the standard form and follow its requirements. However, the Commissioner does not insist that this form be used. All that is required is that the request be in writing and provides the necessary information, including copies of all relevant documents.

52. The private ruling system is designed to provide certainty to taxpayers who are unsure about the tax effect of an arrangement. The basic requirements of a private ruling are:

- The private ruling must be on a tax law (that is, an income tax law or a fringe benefits tax law). In an income tax context, an income tax law is a provision of an Act or a regulation under which the extent of liability to income tax, withholding taxes, franking deficit tax, or Medicare levy is worked out. A provision or regulation is one under which the extent of liability to income tax is worked out if it would affect the amount of tax payable by the rulee. A provision or regulation would affect the amount of tax payable by the rulee if it goes towards working out the rulee's assessable income, allowable

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5 For GST, WET and LCT publications, see paragraphs 42 to 45.

6 See, for example, section 226G of ITAA 1936 and Taxation Ruling TR 94/4 on reasonable care.

7 See above, note 6, and section 8AAG of the TAA about general interest charge remission.

deductions or tax offsets. A person cannot apply for a private ruling on a procedural, administrative or collection aspect of the law – for example a ruling on a PAYG matter – because it does not affect a person's final liability to tax.

- There must be a consenting rulee. A rulee is the person who is the subject of the ruling. The rulee must be a clearly identified person and must have given consent to the application. There can be more than one rulee but, if there is, all rulees must give their consent to the application.

- There must be an arrangement. The arrangement must be clearly and accurately defined and must have been entered into or be in serious contemplation.

- Each ruling request must relate to a year of income.

53. The Commissioner makes a private ruling by preparing a written notice of it and serving it on the applicant: subsection 14ZAR(1) of the TAA. If two or more private rulings sought by an applicant relate to an arrangement or related arrangements, then one notice may be given of all or some of them: subsection 14ZAR(2) of the TAA. This means that the written notice prepared by the Commissioner may actually contain two or more private rulings for the purposes of the TAA. To facilitate this, CRS treats a request for two or more private rulings which relate to an arrangement or related arrangements as the one private ruling case.

54. If the rulee provides information that indicates that the proposed arrangement will be entered into in a way that is materially different from that described in the original application, this is to be treated as a new ruling request and, as such, should be accounted for on CRS as a new ruling request. The applicant should be asked to withdraw the earlier request, or the relevant parts of the earlier request.

55. Pre-ruling opinions, draft private rulings or any other written expressions or written endorsements of informal advice, such as file notes of telephone conversations or interviews, are not to be provided. This does not mean that ATO officers cannot undertake discussions with the applicant to firmly establish the particulars of the arrangement and its purpose.

56. A private ruling is only provided if there is a clear ATO view of the relevant law. If there is no clear ATO view, the issue must be escalated in accordance with the usual escalation processes. The aim of the escalation process is to establish an ATO view to enable a private ruling to be given.

57. In line with the spirit of the Taxpayers' Charter, whenever a person requests advice on the way in which a tax law applies to that person for a year of income in relation to an arrangement, that will be treated as an application for a private ruling. In other words, even if a person does not specifically apply for a private ruling, one is to be provided if the request is for written advice on the application of a tax law to the person's specific circumstances.

58. If a person requests written advice on the application of a tax law (as defined in the TAA) to specific circumstances but the request does not meet the standards of a private ruling application, but could do so, the person must be invited to supply the necessary

information and, as appropriate, be given guidance in making a valid application. In order to avoid confusion as to the status of a reply, no general advice should be provided to the person in such a situation.

59. If the Commissioner provides a private ruling, it is legally binding to the extent provided by section 170BB of the ITAA 1936. Broadly, an assessment must be made in accordance with the way in which that private ruling states that the law applies, if the amount of final tax is less than it should otherwise be under the existing law. This means that, in the interests of certainty, the rulee (and only the rulee) will be protected from having to pay the amount of primary tax that would otherwise be properly payable but for the private ruling, even if the Commissioner's opinion is later found to be incorrect at law. Of course, this is subject to the requirement that all material facts have been given to the ATO by the rulee and the arrangement is actually entered into as represented in the ruling.

60. In addition, if there are procedural or other defects in the issue of private rulings, sections 15AA and 15AB of the TAA ensure that the validity of the ruling is not affected.

61. However, if a ruling was to issue for an improper or fraudulent purpose it cannot be binding on the Commissioner, just as any assessment that might be issued in bad faith would not be valid.

62. Further information on the private ruling system is provided in Taxation Ruling TR 93/1 and in ORCLA.

Indirect taxes/GST specific private rulings

63. If the Commissioner provides an entity with a GST private ruling, the entity can rely on it to the extent provided in section 105-60 of Schedule 1 to the TAA. Broadly, if an entity relies on a GST ruling which says that the law applies to it in one way and another GST ruling is later issued advising that the law actually applies in a different way, the entity will not be liable for any more tax than would have been payable under the original GST ruling for the period before the alteration.

64. However, the above is subject to the Commissioner being satisfied that the entity did not contribute to the giving, or continuing in force, of the earlier ruling by a misstatement or by suppressing a material fact: subsection 105-60(2) of Schedule 1 to the TAA. Furthermore, if a GST private ruling was to issue for an improper or fraudulent purpose, it cannot be binding on the Commissioner.

65. An entity can make a request for a GST private ruling by using an 'Application for GST private ruling' form. Alternatively, they can submit a request containing the relevant information. This enables the entity to obtain specific advice about the application of the GST law to their individual circumstances.

66. Even if an entity does not specifically request a GST private ruling, any request for written advice on the application of a GST law to the entity's specific circumstances will be treated as an application for a GST private ruling and dealt with accordingly.

67. If an entity requests written advice on the application of the GST law to specific circumstances and the request does not contain all the information required to provide a GST specific private ruling, the entity must be asked to provide that further information before the ruling is given.

68. Further information on GST private rulings is contained in Goods and Services Tax Ruling GSTR 1999/1. The ATO Advice Manual will also provide further information.

Administratively binding advice

69. The ATO is not obliged to provide written advice other than in the form of a private ruling.

70. Nevertheless, in the interests of sound administration, the ATO's practice has been to provide administratively binding advice in a range of circumstances, subject to the same requirements of a private ruling and subject also to other reservations.[8] Subject to this Law Administration Practice Statement, this practice will continue pending finalisation of proposals to extend the scope of the rulings system. Attachment C contains an exhaustive list of those circumstances in which the ATO may provide administratively binding advice.

71. If a person requests administratively binding advice, it will be treated in a similar way to an application for a private ruling. That is, the disciplines and conditions associated with private rulings must be applied to administratively binding advice. For greater detail about the disciplines and conditions associated with private rulings, refer to paragraphs 52 to 56 above and Taxation Ruling TR 93/1. All the requirements of private rulings are to be satisfied subject to the following general rules:

- The relevant law to be applied need not be a 'tax law' as defined. It can be a superannuation, excise or any other law administered by the Commissioner under which the extent of liability is worked out.

- The relevant arrangement may have begun before 1 July 1992.

- The consent of the person to whom the request relates ('the subject entity') is not required in certain limited circumstances, such as take-overs[9] and incorporations. (This should be distinguished from a situation where the request for advice is about the application of the law to a large number of persons whose consent has not been obtained, in which case a Class Ruling - as opposed to administratively binding advice - should be provided.)

The request must fully and accurately identify the parties to the arrangement and disclose all relevant facts and it must be in writing. Furthermore, no fundamental assumptions can be made about the arrangement. That is, the arrangement must be in such serious contemplation that its material elements are settled and clearly stated by the applicant.

72. If a person requests advice on any of the topics listed in Attachment C, it must be treated as a request for administratively binding advice.

73. Administratively binding advice is not legally binding on the Commissioner. When the time comes to assess liability to tax, the law as it then exists must be applied to the facts as

[8] This advice was commonly referred to as advance opinions. However, the use of this term has led to some confusion and it is no longer to be used.

[9] However, in these circumstances the person making the request may not be in a position to provide relevant details about the target entity, so we need to ensure that we have sufficient facts on which to base our advice. Alternatively, the outcome of a take-over may be different from that detailed in the advice request. If the underlying facts change in a material way, the advice can no longer be relied on.

established at that time: see *FCT v Wade* (1951) 84 CLR 105. However, the Commissioner will stand by what is said in such advice and will not depart from it unless:

(i) there have been legislative changes since the advice was given;

(ii) a Tribunal or Court decision has affected our interpretation of the law since the advice was given; or

(iii) for other reasons, the advice is no longer considered appropriate – for example, if commercial practice has changed, the advice has been exploited in an abusive and unintended way or the advice is found on reconsideration to be wrong in law.

Where we depart from our earlier advice because of a legislative change to the law, we will apply the change from the date of effect of the amending legislation. If we depart from our earlier advice for other reasons, normally departure from that advice would be on a prospective basis only, unless particular circumstances warrant another approach.

74. Furthermore, similar to private rulings, administratively binding advice may protect the person from penalties and interest: see section 226V of the ITAA 1936 for the penalty exception and section 8AAG of the TAA about general interest charge remission.

74A. Requests for administratively binding advice on matters arising under the *Petroleum Resource Rent Tax Assessment Act 1987* (the PRRT Act) should be directed to the following Tax Office contact points:

- Paper based applications may be sent to:
  - PO Box 1318, Albury NSW 2640; or
  - PO Box 9111, Moonee Ponds Vic 3039.
- The application may be faxed to 1300 661 106.
- The application may be emailed to LBIAdvice@ato.gov.au

Written general advice (other than GST)

75. Written general advice is provided if the person has asked for advice about the general principles of the operation of the law (for example how does section 8-1 generally operate in respect of self-education?). In these cases, the decision remains with the person how those principles apply to his or her circumstances. This advice is general in nature and is not binding on the Commissioner.

76. As with *TaxPack*, a person who has exercised reasonable care in relying on written general advice may be protected from penalties and interest on underpaid tax. Specifically, if a person follows written general advice and in doing so makes an honest mistake, they will be protected from any penalty on underpaid tax.[10] If something is misleading or incorrect in the advice and the person makes an honest mistake as a result, they will be protected from any penalty and any interest on underpaid tax.[11]

[10] See, for example, section 226G of ITAA 1936 and Taxation Ruling TR 94/4 on reasonable care.

[11] See above, note 10, and section 8AAG of the TAA about general interest charge remission.

77. It may sometimes be difficult to draw a distinction between requests for general and specific advice. That is, it is sometimes difficult to establish whether the person has a specific transaction in mind and is expecting binding advice or whether they are just broadly considering a course of action and are only expecting general guidance. An example of such a situation is where a history teacher simply asks if self-education deductions are available for travel to places of historical significance. If the ATO officer is in any doubt whether the request is for general or specific advice, they should contact the person and clarify the matter.

77A. Requests for general advice on matters arising under the *Petroleum Resource Rent Tax Assessment Act 1987* (the PRRT Act) should be directed to the following Tax Office contact points:

- Paper based applications may be sent to:
    - PO Box 1318, Albury NSW 2640; or
    - PO Box 9111, Moonee Ponds Vic 3039.
- The application may be faxed to 1300 661 106.
- The application may be emailed to LBIAdvice@ato.gov.au

Advice about proposed changes to tax laws

78. Tax officers may provide assistance to taxpayers who make enquiries about the potential effect of proposed changes to the tax law announced by the Government. However, any advice or information should be limited to the source documents that announced the proposed law change. Examples of source documents are Press Releases and the Explanatory Memorandum.

79. If an enquirer wants to know the Tax Office position on a measure where the enabling legislation has not received Royal Assent (or been gazetted in the case of regulations), tax officers should advise the enquirer that the Tax Office is not in a position to provide interpretative advice until after Royal Assent or gazettal. Officers should take the opportunity to gain an understanding of the taxpayer's issues and pass any information on to the Tax Office project manager responsible for the proposed measure or, where the enquirer is seeking to raise significant policy or administrative issues, undertake to refer these issues to the Treasury..

80. Where the taxpayer is seeking advice about the application of existing law to particular situations and there is a publicly announced proposed law change that is relevant, the advice should be based only on the existing law. However, the advice should explain that there is a prospect of a law change which, if enacted, may affect the advice being given. References to the possible law change should adhere to the words used in the source documents that announced the law change.

81. Where the request for advice or information is in connection with a proposed law change that has an application date before the date of its Royal Assent (or the date of gazettal for regulations), the PIF will determine the form of advice that should be provided to taxpayers. PIF determinations in connection with the changes are communicated to taxpayers using the most appropriate medium. They will also be posted onto the Tax Office website.

82. Where Tax officers are aware of possible changes to the tax law, but knowledge of the change has not yet been made public, it is not appropriate to refer to the unannounced changes in dealing with external parties. In such cases, the advice should reflect the existing law.

83. Further details on the provision of advice on legislation before its Royal Assent (or regulations before their gazettal) can be found in Law Administration Practice Statement PS LA 2004/6 , which replaces Law Administration Practice Statement PS LA 2000/4 from 7 May 2004.

Written advice to the public

Public rulings under Pt IVAAA of the TAA

84. Part IVAAA of the TAA sets out, in relation to income taxes and fringe benefits taxes, what is necessary for a published opinion of the Commissioner to be a public ruling. Under the public ruling provisions, a 'public ruling' sets out the Commissioner's opinion on the way in which 'a tax law' applies to:

a) any person in relation to a class of arrangements (section 14ZAAE of the TAA);

b) a class of persons in relation to an arrangement (section 14ZAAF of the TAA); or

c) a class of persons in relation to a class of arrangements (section 14ZAAG of the TAA).

85. A 'tax law' to which the public ruling provisions apply is a provision of an Act or a regulation under which the extent of liability to income tax, withholding taxes, franking deficit tax, Medicare levy, or fringe benefits tax is worked out (see definition of 'tax law' in section 14ZAAA of the TAA).

86. A public ruling merely states the Commissioner's view of the law in relation to a particular arrangement. It is not the law. However, under section 170BA of the ITAA 1936 and section 74A of the FBTAA, the Commissioner is legally bound to apply a public ruling if an assessment made on the basis of that ruling would be more favourable to a person than an assessment that is within the terms of the law or another ruling. So, a person is protected in the event that they rely on the Commissioner's interpretation of the law in relation to a particular arrangement, even if the Commissioner's opinion is later found to be incorrect at law.

87. Further information about public rulings is available in Taxation Ruling TR 92/1 and TD 92/100.

Product Rulings

88. Product Rulings have been introduced to enable the Commissioner to rule publicly on the availability of claimed tax benefits from 'products'. A 'product' refers to an arrangement in which a number of persons individually enter into substantially the same transactions with a common entity or a group of entities. Being a type of public ruling, the Commissioner issues Product Rulings under Part IVAAA of the TAA. The Commissioner

has a discretion whether or not to issue a Product Ruling in relation to any particular project. A Product Ruling does not provide any guidance or advice about the commercial or financial viability of the product.

89. A Product Ruling provides certainty to potential investors in respect of the tax effect of the arrangement set out in the Product Ruling provided that the arrangement is carried out in accordance with the way it is described in the Arrangement part of the Product Ruling. The highest levels of disclosure are expected of the applicant. If the arrangement described in the Product Ruling is materially different from the arrangement that is actually carried out, investors cannot rely on the Product Ruling. As a result:

- the Ruling has no binding effect on the Commissioner, because the arrangement entered into is not the arrangement ruled on; and
- the Ruling will be withdrawn or modified.

This is likely to occur if there is a material omission or misrepresentation in the application for the Ruling, or the arrangement is implemented in a way materially different to that described in the ruling.

90. Potential investors in a particular project may wish to seek assurances from the promoter of the project that the arrangement will be carried out as described in the Product Ruling relating to the project, and may also seek independent advice as to the commercial and financial viability of the product.

91. Further information on Product Rulings is contained in PR 1999/95.

Class Rulings

92. If an entity is seeking advice about the application of the tax law to a large number of persons in relation to a particular arrangement, the advice can be provided in the form of a public ruling. The following are examples of situations where such a ruling may be given:

a) Advice sought by an employer about the tax consequences of an employee share acquisition plan for individual employees.

b) Advice sought by a company about the tax consequences for its shareholders of a restructure of the company, a split or consolidation of its shares, any other proposed transaction of the company affecting the tax affairs of its shareholders, and advice sought by a public company about the application of the scrip for scrip roll-over provisions to its shareholders.

c) Advice to a Commonwealth, State or Territory Government or one of their Government authorities about a proposed transaction; for example, an industry restructure which has taxation consequences for participants in that industry.

Indirect taxes/GST public rulings

93. GST public rulings can be relied on to the extent provided in section 105-60 of Schedule 1 to the TAA. Broadly, if an entity relies on a GST ruling that says that the law applies to it in one way and another GST ruling is later issued advising that the law actually applies in a different way, the entity will not be liable for any more tax than would have been payable under the original GST ruling for the period before the alteration.

94. Clearly, the extent to which an entity can reasonably rely on a GST public ruling depends on the extent that the GST public ruling is relevant to their circumstances. If an entity is unsure about the way in which a GST public ruling applies to their individual circumstances, it should request a GST private ruling.

95. Further information on GST public rulings is contained in Goods and Services Tax Ruling GSTR 1999/1.

Other publicly-issued rulings (eg IT, MT, SGR and SCR series of rulings)

96. These rulings provide guidance and instruction for both the public and ATO staff. They do not have the force of law. When the time comes to assess liability to tax, the law as it then exists must be applied to the facts as established at that time: see *FCT v Wade* (1951) 84 CLR 105. However, the basic administrative policy of the ATO is to stand by what is said in these rulings and to depart from them only if there are good and substantial reasons. Any departure would be confined to situations where:

(i) there have been legislative changes since the ruling issued;

(ii) a Tribunal or Court decision has affected our interpretation of the law since the ruling issued; or

(iii) for other reasons, the ruling is no longer considered appropriate – for example, if commercial practice has changed, the ruling has been exploited in an abusive and unintended way, or the ruling is found on reconsideration to be wrong in law.

97. In category (i) cases, the timing of the change from previous practice will depend on the date of effect of the legislation. In so far as categories (ii) and (iii) are concerned, any such departure would be announced by issuing some form of public advice and would normally apply to transactions entered into after the issue of that public advice, but this is subject to the particular circumstances.

98. Further information about these types of advice is available in Taxation Ruling TR 92/1.

EXCLUSIONS

99. This Law Administration Practice Statement does not deal with the following:

- An actual exercise of a discretion. An exercise of a discretion is not advice in the ordinary sense of the word and is not usually about the extent of liability. Examples include administrative and procedural decisions such as granting substituted accounting periods, approving extensions of time to lodge returns, and endorsing charitable entities. However, this Law Administration Practice Statement does deal with public or private rulings on the way in which a discretion of the Commissioner under a tax law (as defined in the TAA) would be exercised.

- A question raised by a person under subsection 169A(2) of the ITAA 1936 in a document given with a return of income being a question that is relevant to their liability for that year.

- Matters relating to laws over which the Commissioner does not (currently) have general powers of administration. For instance, matters relating to the Family Assistance Office and matters relating to the collection of excise.

- Matters giving rise to a duty to withhold amounts. For instance, PAYG withholding matters.

- Matters giving rise to a duty to transfer amounts. For instance, matters relating to the administration of the *Superannuation Guarantee (Administration) Act 1992* and related regulations.

- Matters involving the Commissioner's administration of provisions of the *Superannuation Industry (Supervision) Act 1993* and related SIS legislation.

- Matters involving the Commissioner's administration of provisions of the *Superannuation (Unclaimed Money & Lost Members) Act 1999* and the *Small Superannuation Accounts Act 1995*.

- Australian Prudential Regulation Authority related matters.

- Matters involving disbursements. For instance, matters relating to diesel fuel grants and other such matters dealt with by the Excise business line.

- Advance Pricing Arrangements. These are more akin to agreements than advice.

- Case Decision Summaries. These are an indication only of the Commissioner's view on a particular issue. Refer to Law Administration Practice Statement PS LA 2000/1 on Case Decision Summaries.

- Law Administration Practice Statements. Refer to Law Administration Practice Statement PS LA 1998/1.

- Speech papers.

- Forum minutes.

- Valuation matters.

Any advice on the above matters or on all other matters not dealt with by this Law Administration Practice Statement is to continue to be dealt with in accordance with current ATO business practices and procedures.

subject references:	administratively binding advice; advice; case decision summaries; general advice; group ruling; GST public ruling; GST specific private ruling; GST written general advice; advice about proposed changes to tax laws; publications; private ruling; product ruling; public ruling; written advice.
legislative references:	ITAA 1936 169A(2); 170BA; 170BB ITAA 1997 995-1(1) FBTAA 74A TAA 14ZAA; 14ZAAE; 14ZAAF; 14ZAAG; 14ZAF; 14ZAG; 14ZAJ; 14ZAN(j); 14ZAN(j)(ii); 105-60 of Schedule 1; Part IVAAA; Part IVAA;
related public rulings:	TR 92/1; TR 92/100; TR 93/1; TR 95/23; GSTR 1999/1; PR 1999/95
related Practice Statements:	PS LA 1998/1; PS LA 2000/1; PS LA 2000/4; PS LA 2001/5
case references:	*FCT v Wade* (1951) 84 CLR 105
file references:	T2000/020863

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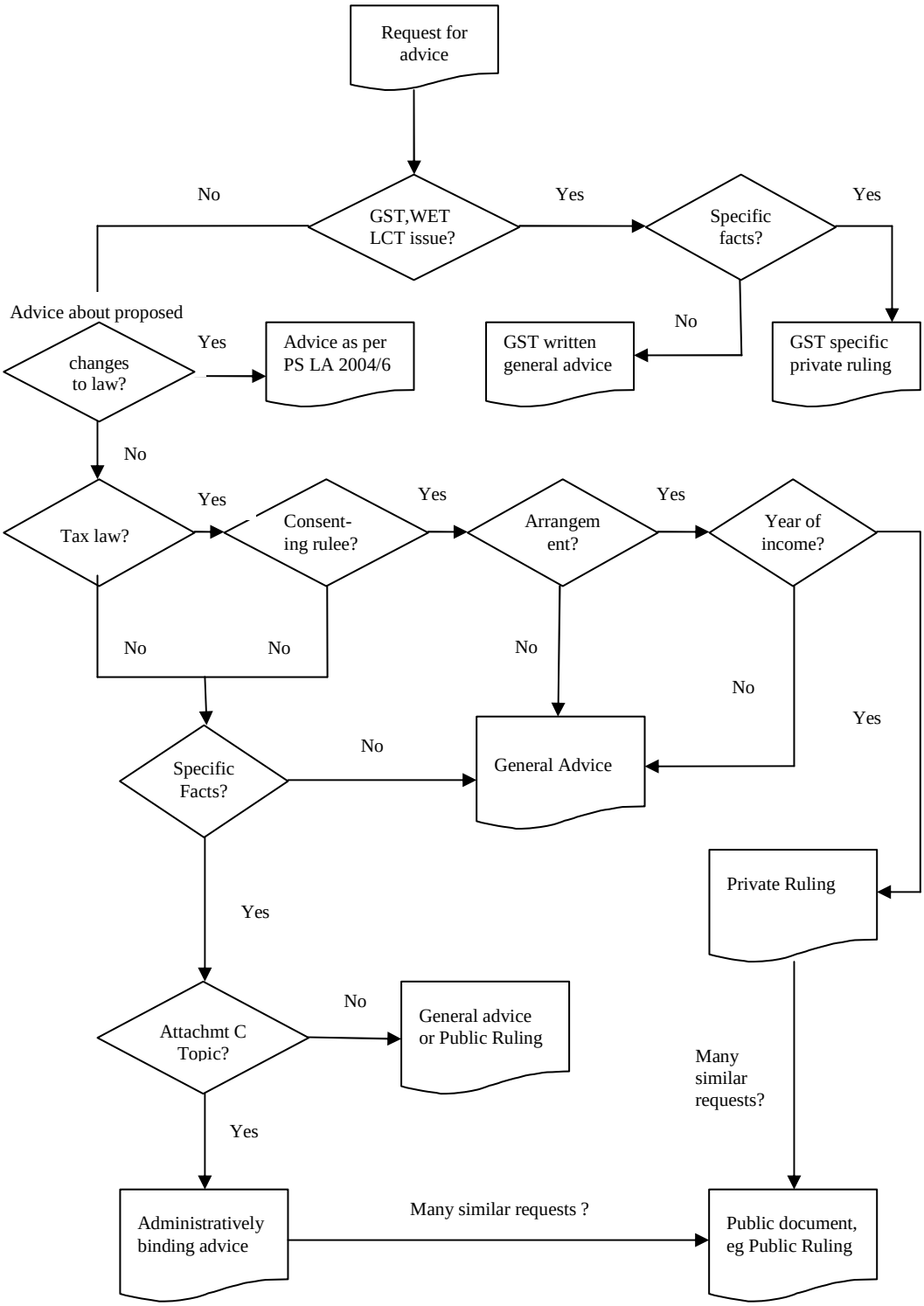
Other Business Lines consulted	**LB&I; SB; INB; SPR; Excise; GST; CoE**
Amendment history:	7 May 2004: To give effect to changes arising from the introduction of PS LA 2004/6 and the simultaneous withdrawal of PS LA 2000/4 14 July 2004: To give effect to changes arising from the withdrawal of Miscellaneous Taxation Ruling MT 93/1 1 July 2006: Update references to section 37 of the TAA to subsection 995(1) of ITAA 1997 and section 105-60 of Schedule 1 to the TAA

Attachment A

DECISION TREE FOR WRITTEN RESPONSES TO TAXPAYER REQUESTS FOR ADVICE



Attachment B

WRITTEN ADVICE PROTECTION CHART*

Levels of protection:

1. Protection for primary tax or liability if the actual arrangement matches the entity's stated arrangement (subject to the conditions outlined in this Law Administration Practice Statement).
2. Protection for primary tax or liability if the entity's arrangement comes within the scope of the generally ruled arrangement. That is, protection if correctly self-assessed.
3. Penalty protection if ATO advice is followed and an honest mistake is made; penalty and interest protection if ATO advice is misleading or incorrect and an honest mistake is made as a result.

Category	**Protection**
Written advice to a particular entity	
Private rulings under Part IVAA of the TAA	1
Indirect taxes/GST private rulings GST specific private ruling GST written general advice	 1 2
Administratively binding advice	see paragraphs 18 to 22
Written general advice	3
Advice on proposed changes to tax laws	see paragraphs 26 to 30
Written advice to the public	2
Public rulings under Part IVAAA of the TAA Product Rulings Class Rulings	 2 2
Indirect taxes/GST public rulings (including publications)	2
Other publicly-issued rulings	see paragraphs 47 to 49
ATO publications (other than GST, WET and LCT)	3

**** This chart sets out a quick -reference summary of the degree of certainty provided by ATO advice.***

Attachment C

ADMINISTRATIVELY BINDING ADVICE - EXHAUSTIVE LIST OF TOPICS

Where the requirements of this Law Administration Practice Statement have been otherwise met, and pending Government consideration of the proposals by the Review of Business Taxation to extend the private ruling system, administratively binding advice can continue to be provided on the following topics:

- Advice on a superannuation, excise or any other law administered by the Commissioner (for example superannuation surcharge) which is not a 'tax law' in terms of the TAA but under which the extent of liability is worked out. (Advice on procedural, administrative and other non-liability provisions are not covered.)

- Advice to an international organisation on whether it is entitled to exemption under the *International Organisations (Privileges and Immunities) Act 1963* and the regulations made under that Act from taxes imposed under the laws administered by the Commissioner.

- Advice on entitlement to exemption from taxes under either the *Diplomatic Privileges and Immunities Act 1967* or the *Consular Privileges and Immunities Act 1972*.

- Advice on an arrangement carried out before 1 July 1992 when the TAA private ruling system was introduced.

- Advice on an arrangement where a company intends to launch a takeover of a target company and the first company wants advice (without getting consent from the target company) on the tax consequences for the target company.* In such a case a private ruling cannot be given because rulee consent cannot be realistically obtained. A public ruling is also inappropriate.

- Advice on an arrangement, or proposed arrangement, to be undertaken by a company that is not yet incorporated. In such a case, a private ruling cannot be given because rulee consent cannot be obtained. A public ruling is also inappropriate.

- Advice to a Commonwealth, State or Territory Government or one of their Government authorities about the taxation consequences for a taxable purchaser under a proposed privatisation.

- Advice to a Commonwealth, State or Territory Government or one of their Government authorities about a proposed transaction, for example, an industry restructure which has taxation consequences for any new entity to be created as part of the restructure.

- Advice on an arrangement, or proposed arrangement, where private or public infrastructure matters are raised and:

  (a) there are no entities presently in existence capable of requesting a private ruling; or

  (b) the advice is sought by an exempt entity which cannot get a private ruling.

* However, in these circumstances the person making the request may not be in a position to provide relevant details about the target entity, so we need to ensure that we have sufficient facts on which to base our advice. Alternatively, the outcome of a take-over may be different from that detailed in the advice request. If the underlying facts change in a material way, the advice can no longer be relied on.

Possible extension of the list of administratively binding advice topics:

Other matters may arise in the future on which the ATO may provide administratively binding advice. ATO officers wishing to provide such advice must seek prior approval from the SES officer in charge of the relevant work area who, in turn, must seek clearance from the Assistant Commissioner (Rulings). The AC (Rulings) will arrange for this attachment to be updated accordingly.