PS LA 2001/8 - ATO Interpretative Decisions

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PS LA 2001/8
ATO Interpretative Decisions

This Law Administration Practice Statement explains the policy for ATO Interpretative Decisions.

This practice statement is an internal ATO document, and is an instruction to ATO staff.

Taxpayers can rely on this practice statement to provide them with protection from interest and penalties in the following way. If a statement turns out to be incorrect and taxpayers underpay their tax as a result, they will not have to pay a penalty. Nor will they have to pay interest on the underpayment provided they reasonably relied on this practice statement in good faith. However, even if they don't have to pay a penalty or interest, taxpayers will have to pay the correct amount of tax provided the time limits under the law allow it.

1. What is an ATO ID?

An ATO ID is a summarised version of a decision we have made on the application of the law[1] to a particular situation.

2. Why do we have ATO IDs?

ATO IDs set out a precedential ATO view. The precedential ATO view system is explained in PS LA 2003/3 *Precedential ATO view.* Precedential ATO views are produced to ensure we provide consistent interpretative decision making and you are required to search for existing precedential ATO views and those being prepared as part of your resolution of interpretative issues.

You must follow an ATO ID where:

- in your judgment, there is no material difference between the facts of the issue you are making a decision on and the facts of an existing ATO ID, and
- you are satisfied that the application of the precedential ATO view set out in the ATO ID will result in a correct decision.[2]

An interpretative issue is one where the application of the law is not straightforward. An exercise of a discretion, a conclusion of fact or the determination of a value for example, would not be an interpretative issue.

3. When might an ATO ID be prepared?

When deciding whether to prepare an ATO ID, you need to give serious consideration as to whether or not another form of precedential ATO view, for example a public ruling or determination is not more appropriate.

As these products offer a high level of protection to taxpayers and provide more certainty, they are preferred. This is particularly so if there are multiple related issues for which a precedential ATO view is required. You should also be aware that if necessary, another form of precedential ATO view, for example a public ruling or determination, can be prepared over timeframes similar to that of an ATO ID on the same matter. That is, the question of timing should not of itself influence your consideration of what product is most appropriate.

All proposals to prepare an ATO ID should first be discussed with the Public Advice and Guidance Unit in your business line.

If it is agreed to be the right product, an ATO ID may be prepared for each decision on an interpretative issue where:

- there is no precedential ATO view on the issue, or
- there is an existing precedential ATO view however an ATO ID will improve the clarity or certainty of the ATO's interpretation of the particular area of the law.

An ATO ID might arise from any aspect of our work where an interpretative issue emerges, for example a private ruling, an audit, correspondence or a dispute. They can also arise from an interpretative issue where we are not yet required to make an actual decision, but we are aware that a scheme or transaction exists or is in serious contemplation.

4. Can taxpayers rely on ATO IDs?

ATO IDs are publications approved in writing by the Commissioner, and therefore offer penalty and interest protection to any taxpayer who might rely on them.[3]

[1] Law administered by the Commissioner includes law governing income tax, indirect taxes, fringe benefits tax, withholding taxes, resource rent taxes, superannuation and excise.

[2] If following the ATO ID would result in an incorrect decision, you should escalate the issue.

[3] See sections 361-5 and 298-20 of Schedule 1 to the *Taxation Administration Act 1953*.

5. The process for preparing an ATO ID

The requirements of, and process for preparing, an ATO ID, are set out in the processes for public advice and guidance. These guidelines are available via the link in the More Information section of this practice statement.

6. Maintaining the currency of ATO IDs

In line with the requirements for precedential ATO view documents, business lines have the primary responsibility for maintaining the currency of ATO IDs.

The ATO ID Guidelines provide guidance on making changes to ATO IDs. In general terms, if an ATO ID is incorrect or requires substantial change, it should be withdrawn and replaced by a taxation ruling or determination. However, if the updates are minor, and do not affect the decision or reasons for decision, then the ATO ID can be amended rather than being withdrawn.

7. More information

For more information, see:

- Public advice and guidance – reference materials and processes

Date issued: **8 June 2007**

Date of effect: **8 June 2007**

Business line OCTC

Amendment history

Date of amendment	Part	Comment
9 June 2016	All	Updated to the new LAPS format and style
	Section 3	Clarify when an ATO might be prepared in accordance with new PAG guidelines
	Section 5	Replace reference to ATO ID guidelines with PAG processes
3 September 2014	Paragraph 30 Paragraph 31	Format amended for clarity Deleted. Requirement for professional accreditation for authorised officers removed
3 May 2013	Paragraphs 19-21 Paragraph 28 Paragraph 34	Revised to clarify that a public ruling should be considered when issue represents a significant risk. Remove reference to general written advice, following integration of GST rulings system into general rulings provisions Update to provide link to ATO ID template in Other References.
28 March 2013	Paragraph 17	Corrected dot point reference to para 27 to para 28
21 May 2012	Throughout	Updated to – reflect the replacement of the priority technical issues system, and the requirement to escalate precedential issues to Centres of Expertise with the new rules for engagement of tax technical officers in Law and Practice set out in PS LA 2012/1. – delete material which was merely a replication of policy stated elsewhere, ie • the protection afforded by ATO IDs, which is set out now in PS LA 2008/3 • responsibilities for reviewing and maintaining ATO IDs, which is set out in PS LA 2003/3 – improve clarity about when an ATO ID should be prepared - particularly around the interplay of ATO IDs with other precedential ATO view documents (paragraphs 17-22) – clarify requirements for accreditation to issue ATO IDs – remove lower level detail in the preparation and publishing process – more logically reorder material and remove duplication
1 December 2011	Paragraphs 46 – 48 Throughout	Content updated as a result of the publication of TD 2011/19 which explains general administrative practice. References to PMU changed to PTI&PRU References to Tax Office changed to ATO Correction of citation of references to related law administration practice statements
9 November 2009	Paragraphs 14, 28, 31 and 29 Paragraph 25 Paragraph 28	References to the Technical Decision Making System (TDMS) updated to refer to Siebel. Updated reference to CGT Instance of when an ATO ID does not need to be prepared

Date of amendment	Part	Comment
		deleted
	Paragraph 30	Updated reference to TCN
	Paragraph 32	Updated a reference to a related practice statement from PS LA 2001/7 to PS LA 2008/4 Further clarification on publication and preparation of an ATO ID added BSL references updated from OCTC to L&P
	Footnote 12	Updated a reference to a related practice statement from PS LA 2001/4 to PS LA 2008/3
2 September 2009		Contact officer details updated
23 July 2009		Updated a related practice statement from PS LA 2001/4 to PS LA 2008/3
11 August 2008		Contact officer details updated
26 November 2007	Paragraph 45	Corrected paragraph reference of PS LA 2003/3 (from para 33 to 35 of that practice statement)
8 June 2007		To clarify the issue of what 'no material difference' means, and to detail new exceptions to the requirement that ATO IDs are to be published

References

Legislative references	TAA 1953 Sch 1 298-20 TAA 1953 Sch 1 361-5(1)
File references	2001/7447 Siebel case ID 1-5TNXJL2
Related practice statements	PS LA 2003/3 PS LA 2008/3
ATOlaw topic	Administration~~Other
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