PS LA 2002/13 - Authorisation of written binding advice

This cover sheet is provided for information only. It does not form part of *PS LA 2002/13 - Authorisation of written binding advice*

Law Administration Practice Statement PS LA 2002/13 applies on and after 22 July 2002 and provides directions about whch officers may authorise the issue and withdrawal of written binding advice.
For directions about which officers could authorise the issue and withdrawal of written binding advice prior to 22 July 2002, refer to PS LA 2001/5.
Refer to end of document for amendment history. Prior versions can be obtained from the PTI & Public Rulings Branch if required.

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Australian Government
Australian Taxation Office

Practice Statement Law Administration

PS LA 2002/13

FOI status: may be released

This practice statement is issued under the authority of the Commissioner of Taxation and must be read in conjunction with Law Administration Practice Statement PS LA 1998/1. It must be followed by Tax Office staff unless doing so creates unintended consequences or is considered incorrect. Where this occurs Tax Office staff must follow their business line's escalation process.

SUBJECT: **Authorisation of written binding advice**

PURPOSE: **To provide direction as to which officers may authorise written binding advice**

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STATEMENT

1. Only an Officer who is a duly authorised Authorising Officer (see paragraph 11 of this practice statement) may authorise the issue or withdrawal of written binding advice or decide not to comply with an application for written binding advice.

2. The duly authorised Authorising Officer is responsible for the decision to issue or withdraw written binding advice and is the decision maker for that written binding advice.

3. The only persons who may be provided with authorisation-level access to written binding advice stored on information technology (IT) systems are:

   - IT systems administrators with a specific need for access and who are duly approved as IT Systems Administrators by their business line, and
   - Duly authorised Authorising Officers.

4. Each business line is to appoint an Authorisations Administrator for the purpose of maintaining a register of duly authorised Authorising Officers, including relevant Senior Executive Service (SES) officers. These registers will be stored and managed on a corporate database.

5. Managers must notify the relevant Authorisations Administrator of the commencement and cessation dates and appropriate subject areas, prior to an officer being placed in a duly authorised Authorising Officer role, whether on a permanent or temporary basis. The Authorisations Administrator must ensure that the proposed officer is a duly authorised Authorising Officer prior to registering the proposed officer as a duly authorised Authorising Officer.

6. The manager of a duly authorised Authorising Officer must immediately notify relevant IT systems administrators if and when that officer is no longer a duly authorised Authorising Officer for the purposes of issuing or withdrawing written binding advice. The relevant IT systems administrators must ensure that authorisation-level access is immediately removed in respect of the officer in question.

7. Taxpayers do not have to ensure that the tax officer dealing with their ruling request is authorised to do so, nor do taxpayers have to ascertain the level of the officer dealing with their request.

EXPLANATION

8. For the purposes of this practice statement, written binding advice means either:

   - legally binding advice in the form of a private ruling which the Commissioner of Taxation is required at law to provide, or
   - administratively binding advice that is provided where a private ruling cannot be given, or where it has been the long standing practice of the Tax Office to provide such advice and it is still appropriate to do so. (Matters on which administratively binding advice may be given are listed in Attachment B to Law Administration Practice Statement PS LA 2008/3)

9. Authorisation of written binding advice means the act of deciding to issue or to withdraw written binding advice, including directing another officer to issue or withdraw written binding advice.

10. The power to decide to issue written binding advice includes the power to decide not to comply with an application for written binding advice or to direct another officer not to comply with such an application.

11. A duly authorised Authorising Officer for the purposes of written binding advice is either an officer who:

    - holds appropriate authority under an instrument of authorisation
    - has been accredited as a result of a professional accreditation assessment as being competent to authorise written binding advice, this assessment having been made in accordance with the ATO Professional Accreditation Program, and
    - makes decisions to issue and/or withdraw written binding advice in the proper course of their normal duties,

    or:

    - is an SES Officer who has a specific delegation from the Commissioner of Taxation to authorise written binding advice. These persons are not required to have been accredited as a result of a professional accreditation assessment, although they are only delegated to make decisions to issue and/or withdraw written binding advice in the proper course of their normal duties.

12. To ensure that written binding advice is issued only by duly authorised Authorising Officers who are competent to perform this role, the Tax Office has instituted a professional accreditation process. Accreditation is one of three conditions (see paragraph 11 of this practice statement) that must be met for an officer to be a duly authorised Authorising Officer. (For more information about accreditation see Law Administration Practice Statement PS LA 2004/8.)

13. Delegates of the Commissioner of Taxation have determined the minimum levels of officers who will be authorised to issue or to withdraw written binding advice, or to decide not to comply with an application for written binding advice, in the proper course of their normal duties. The level of a duly authorised Authorising Officer varies according to the nature and complexity of the matters dealt with in the relevant business line or organisational unit.

14. Instruments of authorisation are in place to cover the making of decisions in relation to written binding advice, including the issue and withdrawal of private rulings and decisions not to deal with applications for written binding advice. The relevant Delegates of the Commissioner of Taxation have executed instruments of authorisation as follows:

Business line or Organisational Unit	**Minimum level of officer authorised to issue written binding advice**
Aggressive Tax Planning	EL1
Operations	APS6
Excise	APS6 for fuel scheme matters; EL1 for all other revenue matters
Goods And Services Tax	APS6
Micro Enterprises & Individuals	APS6
Large Business & International	EL2
Law and Practice: Tax Counsel Network	EL2
Law and Practice: Centres of Expertise	APS6
Small and Medium Enterprises (SME) High Wealth Individuals (SME)	APS6, except for the power to make decisions in relation to liability; EL1 EL2
Superannuation	APS6

15. Duly authorised Authorising Officers are permitted to approve written binding advice only for those particular subject areas assigned to them by their business lines. Not all officers at the levels shown in the table at paragraph 14 of this practice statement are authorised to issue written binding advice within their business line. For instance, an officer at the appropriate level who does not issue written binding advice in the proper course of their normal duties, such as the manager of a support unit, is not authorised to issue written binding advice.

Subject references	administratively binding advice; private rulings; Provision of Advice Project; written binding advice
Legislative references	
Related public rulings	
Related practice statements	PS LA 2008/3; PS LA 2001/8; PS LA 2004/8
Case references	
File references	2001/001374; POA/WCAP
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