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 which tax officers may authorise the issue and withdrawal of written binding advice.
For directions about which tax officers could authorise the issue and withdrawal of written binding advice prior to 22 July 2002, refer to PS LA 2001/5.
This practice statement was originally published on 31 March 2001. Versions published from 2 September 2009 are available electronically - refer to the online version of the practice statement. Versions published prior to this date are not available electronically. If needed, these can be requested by emailing obtained from Law Practice Management in Law and Practice.

This document has changed over time. This version was published on *27 October 2011*

This practice statement was originally published on 22 July 2002. Versions published from 28 February 2008 are available electronically - refer to the online version of the practice statement. Versions published prior to this date are not available electronically. If needed, these can be requested by emailing TCNLawPublishingandPolicy@ato.gov.au

Australian Government
Australian Taxation Office

Practice Statement Law Administration

PS LA 2002/13

Law Administration Practice Statement PS LA 2002/13 applies on and after 22 July 2002 and provides directions about which tax officers may authorise the issue and withdrawal of written binding advice.

For directions about which tax officers could authorise the issue and withdrawal of written binding advice prior to 22 July 2002, refer to PS LA 2001/5.

This practice statement was originally published on 31 March 2001. Versions published from 2 September 2009 are available electronically – refer to the online version of the practice statement. Versions published prior to this date are not available electronically. If needed, these can be obtained from the Corporate Policy and Process Unit in Law and Practice.

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 officers unless doing so creates unintended consequences or is considered incorrect. Where this occurs tax officers must follow their business line's escalation process.

SUBJECT: **Authorisation of written binding advice**

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

Table of contents **Paragraph**

STATEMENT **1**

EXPLANATION **8**

STATEMENT

1. With the exception of the work type specified in paragraph 2 of this practice statement, only a tax 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. WorkCover private rulings[1] are excluded from the requirements set out in paragraph 1 of this practice statement. This work type has been formally assessed under the Australian Taxation Office (ATO) Risk Matrix and corporately endorsed as 'low risk' and therefore does not require the level of assurance ordinarily demanded for the issue or withdrawal of written binding advice.

[1] WorkCover private rulings are private rulings in relation to the taxation treatment of payments received on redemption of amounts paid under the South Australia *Workers Rehabilitation and Compensation Act 1986*.

3. 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.

4. The only persons who may be provided with authorisation-level access to written binding advice (other than the work type specified in paragraph 2 of this practice statement) 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.

5. To provide authorisation-level access, managers must add the appropriate Siebel role to the tax officer's SAP record and request access from the relevant IT system administrators. The IT system administrator must ensure that the proposed tax officer is currently accredited as an Authorising Officer prior to granting the access.

6. The manager of a duly authorised Authorising Officer must immediately notify relevant IT systems administrators if and when that tax 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 tax 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 tax 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 (including linked issues emanating from the private ruling) which the Commissioner of Taxation is required at law to provide or
   - administratively binding advice (including linked issues emanating from the administratively binding advice) that is provided where a private ruling cannot be given, or where it has been the long standing practice of the ATO 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 tax 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 tax officer not to comply with such an application.

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

    - holds appropriate authority under an instrument of authorisation
    - has been accredited as a result of a professional accreditation assessment as being capable 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

12. To ensure that written binding advice is issued only by duly authorised Authorising Officers the ATO has instituted a professional accreditation process. Accreditation is one of three conditions (see paragraph 11 of this practice statement) that must be met for a tax 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 tax 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
Indirect 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 managers. It is the manager's responsibility to ensure that the tax officer has the necessary knowledge of the particular subject area.

16. Not all tax 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, a tax 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.

Amendment history

Date of amendment	Part	Comment
27 October 2011	Paragraph 14	Update table
22 December 2010	New paragraph 2	Exclude WorkCover private rulings
	Old paragraph 4	Remove requirement for BSL Authorisation Administrators
	Paragraph 4	Update for authorisation-level access procedures
	New paragraph 5	Update for Siebel R3 IA
	Paragraph 8	Update to clarify definition of written binding advice
28 February 2008	Paragraph 8	Update reference to PS LA 2008/3
	Paragraph 14	Update table

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 2004/8 PS LA 2001/8
Case references	
File references	2001/001374 POA/WCAP
Date issued	22 July 2002
Date of effect	22 July 2002
Other Business Lines consulted	All