PS LA 2003/3 - Precedential ATO view

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This document has changed over time. This version was published on *13 October 2016*

This practice statement was originally published on 12 May 2003. Versions published from 23 July 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 Corporate Policy and Process in Tax Counsel Network by emailing TCNLawPublishingandPolicy@ato.gov.au .

Generated on: 22 November 2026, 05:17:58 AM

PS LA 2003/3
Precedential ATO view

This Law Administration Practice Statement explains the precedential ATO view system.

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

If taxpayers rely on this practice statement, they will be protected 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.

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1. What is a precedential ATO view?

A precedential ATO view is the ATO's documented view about the application of any of the law administered by the Commissioner[1] in relation to a particular interpretative issue.

2. Why do we have precedential ATO views?

We have precedential ATO views to ensure that our decisions on interpretative issues are accurate and consistent.

3. What documents set out precedential ATO views?

Precedential ATO views are set out in the following documents:

- public rulings (including draft public rulings)
- ATO Interpretative Decisions (ATO IDs)
- decision impact statements, and
- documents listed in the Schedule of documents containing precedential ATO views.

4. What do I need to do when making a decision on an interpretative issue?

If you are making a decision about an interpretative issue[2], you need to:

- search for and identify relevant precedential ATO views, and
- apply the precedential ATO view if you believe the facts of the interpretative issue, and the circumstances outlined in the precedential ATO view document are similar enough that the law will be applied correctly.

ATOlaw and the Legal Database allow you to search across the entire range of precedential ATO view documents.

Before you apply the precedential ATO view, you should consider whether there are circumstances which would make it appropriate to apply that view only on a prospective basis.[3]

If you do not find a precedential ATO view, or you think the application of the precedential ATO view would result in an incorrect decision or unintended outcome, you should seek engagement of appropriate technical officers, using your business line's procedures. In these instances, a new precedential ATO view should be created.

5. What sort of decisions do not require the application of a precedential ATO view?

You do not have to identify and apply a precedential ATO view where the decision you are making is:

- covered by an exercise of the general powers of administration, such as those that are documented in practical compliance guidelines and law administration practice statements.

  In some circumstances, we provide taxpayers with practical solutions to complying with the law where there might otherwise be unreasonable administrative problems in doing so. And provided they follow our agreed approaches in

[1] Includes law governing income tax, indirect taxes, fringe benefits tax, resource rent taxes withholding taxes, superannuation and excise.

[2] That does not fall within the exceptions set out in section 5 of this practice statement.

[3] See PS LA 2011/27 *Matters the Commissioner considers when determining whether the ATO view of the law should only be applied prospectively*.

good faith, you should accept this as compliance with the law.

But you should also be aware that taxpayers are not obliged to follow these approaches, and may instead adhere to the 'black letter of the law'.

- a straightforward application of the law

  A straightforward application of the law would occur where the law provides clear authority for your decision, and no interpretation of certain clauses of the legislation is required

- the exercise of a discretion

  Exercising a discretion, such as an extension of time, requires you to choose between alternative courses of action. It is a decision you make after taking into account the individual circumstances at hand, weighing up the evidence and having reference to any relevant guidelines. There is no one consideration and no combination of considerations that determines the decision.

- an ultimate conclusion of fact

  Some decisions require you to make an ultimate conclusion of fact for the purposes of applying the law, for example whether a taxpayer is carrying on a business. This also is a decision you make after taking all evidence into consideration and having reference to any relevant guidelines.

- determining the value of something.

  This is similar to making an ultimate conclusion of fact. You should follow any procedures that deal with valuation matters.

6. Who is responsible for ensuring that precedential ATO view documents remain current?

Everyone involved in interpretative work has a responsibility toward the maintenance of precedential ATO view documents because they must check the precedential ATO view in the process of applying that view.

Business lines must also have processes in place to ensure that precedential ATO view documents are reviewed and updated in a timely manner, and should ensure that they consult other business lines if required as part of this process.

Authors of new precedential ATO view documents must consider any effect the new precedential ATO view will have on existing precedential ATO view documents and ensure they are either withdrawn (with reference to the new precedential ATO view document) or updated.

The Tax Counsel Network business line has responsibility for oversight of the precedential ATO view system, as established by this practice statement, and ensuring that it operates effectively.

7. How can I access previous versions of precedential ATO view documents to see what the view was at a certain time?

Precedential ATO view documents are presented on ATOlaw and the Legal Database using point-in-time functionality. This means that there will be a link to past versions which were in effect at certain periods of time.

An explanation of all changes made to precedential ATO view documents will also be made, in the following ways:

- for a public ruling – via the formal addendum or erratum notice
- for ATO IDs – via a history table at the end of the document
- for decision impact statements – via a history table at the end of the document
- for documents on the Schedule of documents containing precedential ATO views – via a 'What's changed' section or similar, depending on the type of document and the type of change.

8. More information

For more information:

- See the Schedule of documents containing precedential ATO views
- Email the Law publishing and policy team in the Tax Counsel Network

Date issued: 8 June 2007

Date of effect: 8 June 2007