PS LA 2003/3 - Precedential ATO view

Australian Government
Australian Taxation Office

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 laws 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
- 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
- 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 sorts 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.

Date issued: 8 June 2007

Date of effect: 8 June 2007

Amendment history

Date of amendment	Part	Comment
2 November 2018	More information	Internal link to Schedule of documents updated
	Contact officer	Details updated
3 May 2018	All	Minor formatting and style corrections.
19 February 2015	All	Rewritten practice statement published.
23 April 2014	Footnotes 10 and 11	Update title to PS LA 2012/1
	Paragraph 37	Remove footnote 16 Insert dot point to reference decision impact statements
	Throughout	Minor formatting and style corrections
19 September 2013	Throughout	Update references to Law and Practice to Tax Counsel Network
	Paragraphs 36 – 37	Inclusion of requirement to maintain historical record of changes to all precedential ATO view documents
16 April 2013	Paragraph 4	Removal of footnote reference to PS LA 2002/16
	Throughout	Minor formatting and style corrections
	Related public rulings	Removed reference to GSTR 2000/17
21 May 2012	Throughout	Updated to ▪ reflect the replacement of 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 ▪ update the responsibilities for maintenance of the ATO view ▪ clarify the requirement for accreditation to create a precedential ATO view ▪ delete material which was merely a replication of policy stated elsewhere, ie ▪ the protection afforded by precedential ATO view documents, which is set out now in PS LA 2008/3 more logically reorder material and remove duplication.
10 April 2012	Contact details	Updated.
28 July 2011	Paragraph 6A	Inserted to reflect additional requirement to consider whether previous ATO publications or conduct could have reasonably conveyed a different view on a particular issue – see PS LA 2011/27.
	References	Inserted reference to PS LA 2011/27
11 October 2010	Paragraph 3 and footnotes 2, 3 (deleted), 4, 10, 11 (deleted), 12, 24 and 27	Amended to reflect measures in the *Tax Laws Amendment (2010 GST Administration Measures No. 2) Act 2010* to include indirect tax rulings in the general rulings regime.
23 July 2009	References	Remove reference to PS LA 2001/4 and insert PS LA 2008/3.
29 February 2008	Paragraph 3	Dot points added.
8 June 2007	All	First published.

References

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Related practice statements	PS LA 2011/27
ATOlaw topic	Administration ~~ Other