PS LA 2003/4 (Withdrawn) - Written binding advice - requests for further information

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This practice statement has been replaced by PS LA 2008/5

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ATO Practice Statement Law Administration

PS LA 2003/4

This practice statement has been replaced by PS LA 2008/5

FOI status: may be released

This Practice Statement is issued under the authority of the Commissioner and must be read in conjunction with Law Administration Practice Statement PS LA 1998/1. It must be followed by ATO officers unless doing so creates unintended consequences. Where this occurs ATO officers must follow their Business Line's escalation process.

SUBJECT: **Written binding advice – requests for further information**

PURPOSE: **To provide direction to Tax Office staff about the practices to be followed:**

- **when requesting further information from clients, and**
- **if further information is not provided**

STATEMENT

1. For some applications for written binding advice, it may be necessary to obtain further information from the client in order to provide the advice sought. In these instances, case officers must request the information.

2. In accordance with the Tax Office Service Standard for written binding advice that complements the Taxpayers' Charter, this information is to be requested within 14 days of receipt of the application by the Tax Office.

3. Relatively straightforward requests (for example, a request to supply a copy of a trust deed), may be made by telephone. Where detailed or relatively complex information is required, a request by letter will usually be more appropriate.

4. The client is to be asked to supply the information within 28 days of communication of the request to the client. This timeframe may be extended subject to agreement with the client. Case officers are to use their judgment in agreeing to an extension, taking the client's circumstances into account. The extension of time should only be granted where the client provides a reasonable explanation as to why the information can not be provided within 28 days. Explanations that will be considered reasonable include:

   - The application concerns relatively complex matters;
   - The client is reliant upon third parties to provide the information and cannot compel them to provide the information by a given date; or
   - Information must be obtained from overseas sources.

   An extension of time beyond 28 days must be approved by a team leader or manager.

5. Where the information has not been received within 28 days or within the agreed timeframe, a written or oral reminder is to be given immediately, granting a maximum of a further 14 days for the client to provide the information.

6. Where the further information has not been received at the expiry of this additional time, the case is to be finalised and the relevant IT systems are to be annotated accordingly.

7. The client is to be notified in writing, by way of a standard letter, of the decision to not deal with the application. The standard letter includes notification of the clients' rights of review.

8. In respect of the indirect taxes, Goods and Services Tax (GST), Luxury Car Tax (LCT) and the Wine Equalisation Tax (WET), case officers may provide general advice if they can not provide specific advice. In these instances the general advice is to be provided, where appropriate, and the case finalised, using the timeframes detailed in paragraph 5 (above). The client is to be advised that only general advice can be provided due to insufficient information. Relevant IT systems are to be annotated accordingly. If it is not appropriate to provide general advice, the case is to be finalised in accordance with this Practice Statement.

9. If the client supplies the requested information after the case has been finalised, consideration should be given, having regard to the facts of the particular case and to the provisions of relevant laws (e.g. *Taxation Administration Act 1953* s. 14ZAN) , to providing the advice sought. In order to provide the taxpayer with the rights attaching to the original request, this would require the case officer to revoke the earlier decision to not deal with the application. For the purposes of recording on IT systems, the case is to be treated as a new application for written binding advice.

10. Case officers are to ensure that case records are current, including annotation of relevant IT systems, to reflect actions taken in respect of requests for further information.

11. Managers are to ensure that officers adhere to the standards set out in this law administration practice statement.

EXPLANATION

12. The policy set out in this Practice Statement has been developed to ensure consistent and appropriate treatment of cases that are awaiting further information from clients.

13. The concepts ‘to not deal with an application’ and ‘to finalise a case’ are used in this law administration practice statement for ease of reference to cover the administrative decisions under the various taxation laws and should be considered in the context of the relevant law. For example, the Taxation Administration Act provides that the Commissioner is not required to comply with an application in a range of circumstances including the failure to provide information.

14. For the purposes of this law administration 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
- a private ruling pertaining to an indirect tax law within the meaning of subsection 995-1(1) of the *Income Tax Assessment Act 1997* (ITAA 1997), 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 C to law administration practice statement PS LA 2001/4).

15. In respect of income tax or fringe benefits tax, an application for written binding advice must contain such information and be accompanied by such documents as the Commissioner requires (Taxation Administration Act section 14ZAJ). This requirement is outlined on rulings applications forms. Even where an application meets the requirements of section 14ZAJ, the Commissioner may require further information and is obliged (Taxation Administration Act section 14ZAM) to request that information unless there are other reasons why the application need not be complied with.

16. In respect of income tax or fringe benefits tax, if the requested information is not supplied, the Commissioner is not required to comply with the application (Taxation Administration Act subsection 14ZAN(i)).

17. For the purposes of records management, the case is to be treated as finalised when the client is notified in writing of the decision. The 'good management rule' and section 44 of the *Financial Management and Accountability Act 1997* (efficiency in the use of resources) support the administrative right to finalise the case.

18. In respect of GST, the Commissioner's general administration of indirect tax laws is provided for by section 356-5 of Schedule 1 to the Taxation Administration Act 1953. Reasons for refusal to give a GST private ruling are set out in paragraph 29 of Goods and Services Tax Ruling GSTR 1999/1 and do not include failure of a client to provide further information. However, as a matter of good administrative practice (see paragraph 17 above) it has been decided that GST cases will be dealt with in accordance with this Practice Statement.

19. The administrative decision to not deal with an application for written binding advice is a reviewable administrative decision as defined in the *Administrative Decisions (Judicial Review) Act 1977*.

subject references:	administratively binding advice; private rulings; Provision of Advice project; written binding advice
legislative references:	*Income Tax Assessment Act 1997* Subsection 995-1(1) *Taxation Administration Act 1953* section 14ZAJ; *Taxation Administration Act 1953* section 14ZAM; *Taxation Administration Act 1953* section 14ZAN; *Administrative Decisions Judicial Review Act 1977* section 5; *Financial Management and Accountability Act 1997* section 44.
related public rulings:	Goods and Services Tax Ruling GSTR 1999/1.
related practice statements:	*Taxation Administration Act 1953* PS LA 2001/4; *Taxation Administration Act 1953* PS LA 2002/16.
file references:	2003/006024

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