



# ***PS LA 2004/14 - ATO access to advice for a corporate board on tax compliance risk***

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# ATO access to advice for a corporate board on tax compliance risk

This Practice Statement sets out ATO policy on how we will administer the concession that applies to advice provided to a corporate board on tax compliance risk.

*This Practice Statement is an internal ATO document and an instruction to ATO staff.*

*Taxpayers can rely on this Practice Statement to provide them with protection 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 do not 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.*

## 1. Principles

1A. We recognise the integral role of good corporate governance systems in ensuring companies can properly identify and manage tax compliance risks, and understand that corporate boards need informed independent advice to fully understand the implications of escalated risks.

1B. We accept that obtaining such advice benefits the revenue system by ensuring tax risk is recognised and managed effectively.

1C. While the Commissioner has the legislative power to access relevant information, we accept that advice prepared for a corporate board on tax compliance risk should, in all but exceptional circumstances, remain confidential to the board (including properly constituted sub committees) and their advisers.

1D. We aim to strike a balance between facilitating rigorous corporate governance of tax compliance risk and ensuring we can obtain the information we need for our active compliance activities.

1E. Accordingly, in gathering information for active compliance activities, we provide an administrative concession to the effect that, in certain circumstances, we will not seek access to advice provided to a corporate board on tax compliance risk.

1F. While taxpayers may decide to make documents containing such advice available to us, no adverse inference is to be drawn where taxpayers seek to withhold such documents on the basis that the advice should remain confidential in accordance with the concession.

## 2. Our approach to information gathering

2A. Access to documents and other information is fundamental to our ability to undertake compliance activities and to perform its role as required by law. This is reflected in extensive provisions in the tax law that empower the Commissioner to gather information.

2B. In our compliance work, we will (in the first instance) ordinarily seek information from documents prepared in connection with the conception, implementation, authorisation and formal recording of a transaction or arrangement and which explain the setting, context and purpose of the transaction or arrangement.

2C. We do not, in the first instance, aim to review documents that contain advice to a corporate board on tax compliance risk.

## 3. Conditions under which the concession will apply

3A. The concession applies only to companies that can demonstrate that they have risk management and governance frameworks in place that cover tax. We require comprehensive evidence of good governance, as described in the [Tax risk management and governance review guide](#), before we can accept a claim for the concession.

3B. In this context, compliance activities may include close scrutiny of the tax risk management processes that a board of directors has oversight of to determine if they are operating effectively. This information can help form our view of how well a taxpayer manages tax risk.

### Who can provide advice

3C. The concession extends to advice on tax compliance risk provided to a board by in-house or external advisers (including contractors) who are suitably qualified, that is:

- whose tax advice is bound by the standards of a third-party professional association – for example, a lawyer, accountant or tax agent, or
- who have academic qualifications in a relevant area that would qualify them to provide expert advice – for example, law and accounting.

### ***What qualifies as advice to a corporate board on tax compliance risk***

3D. Advice to a corporate board on tax compliance risk is confined to the information in a document that has been created by advisers for the sole purpose of providing advice or opinion to a corporate board (including properly constituted sub-committees) relating to a major transaction, arrangement, corporate system or process:

- on the likelihood and impact of the tax compliance risk
- as to whether we or an administrative or judicial decision-making authority may take a contrary view or position to that of the taxpayer on the tax compliance issue, or
- on courses of action to effectively manage the tax compliance risk.

3E. Advice that does not have a sole purpose of advising a corporate board on tax compliance risk does not qualify for the concession. For example, tax compliance risk advice for a corporate board that is later used to advise on how to implement an arrangement would have a dual purpose, thereby losing the sole purpose characterisation necessary to claim the concession.

### ***Commissioner's discretion***

#### ***Corporate board discussions***

3F. Minutes directly relating to corporate board discussions on tax compliance risk advice and requests for advice relating to such risks by a corporate board do not qualify as advice for the purposes of this concession.

3G. However, in recognition of the need for candid discussions and communications concerning tax compliance risks, the Commissioner has determined that the concession can also apply to such information unless exceptional circumstances exist or a taxpayer is willing to forego a claim for the concession to assist in resolving an issue.

#### ***Tax risk registers***

3H. Taxpayers may have formal processes in place to identify transactions, arrangements or systems that may have an element of associated tax risk for inclusion on a risk register that is overseen by the board.

3I. While reporting on recognised tax compliance risks to a corporate board does not qualify as advice for the

purposes of the concession, we will allow the concession to apply to those sections of a risk register that directly concern tax risks unless exceptional circumstances exist or a taxpayer is willing to forego a claim for the concession. This does not preclude us from accessing information on a company's risk register about non-tax risks such as commercial or market risks.

3J. However, some ATO compliance products require taxpayers to disclose specific material tax risks for a defined period under review. A taxpayer cannot use the concession for tax risk registers as a reason for not disclosing tax risks in such circumstances.

3K. Furthermore, the concession for tax risk registers cannot be used as a reason for not meeting a legislative or regulatory requirement to report tax risks, such as the requirement to notify us of a tax risk when completing a Reportable tax position schedule.

### ***Exceptional circumstance***

3L. Circumstances that may be taken to be exceptional and require us to seek access to advice or information subject to a claim for the concession include:

- The taxpayer has not been or is not cooperating with us to provide full and complete information in a timely manner, and the advice or information subject to a claim for the concession is considered relevant to the compliance activity (relevance is a matter for us to determine).
- Information important to the compliance activity, including evidence as to the purpose of entering into or carrying out a transaction or arrangement, cannot be sufficiently established from the taxpayer's documents and other enquiries.
- The taxpayer has a history of serious non-compliance involving, for example, fraud or evasion or persistent avoidance of their tax obligations or is under investigation in that regard.
- We have reasonable grounds to believe that an anti-avoidance provision may apply.
- The taxpayer has a demonstrated history of aggressive tax positions that we have significant concerns with.

3M. Where exceptional circumstances exist and the related claim for the concession would otherwise be valid, you should make a submission to a designated senior officer<sup>1</sup> to lift the concession.

3N. The taxpayer will normally be given an opportunity to make their own submission to the designated senior officer as to why the concession should not be lifted.

compliance activity that is subject to a claim for the concession.

<sup>1</sup> A Senior Executive Service officer who does not have leadership responsibility for the compliance team and has not been involved in any matter in relation to the

3O. If the designated senior officer determines that exceptional circumstances exist and that the concession should be lifted, we will inform the taxpayer of the reasons for this decision and the details of the exceptional circumstances.

3P. In limited circumstances, we may seek access to information without giving the taxpayer notice and the opportunity to claim the concession. In this situation, we may copy documents that potentially contain advice or information that falls under the concession. If this occurs and the taxpayer claims the concession, the documents will be quarantined and dealt with in accordance with the procedures outlined in this Practice Statement.

#### **Concession subject to existing laws and policies**

3Q. This Practice Statement is subject to existing laws and policies applying to:

- ATO procedures for seeking access (including access procedures set out in [Our approach to information gathering](#))
- claims for legal professional privilege, and
- claims that a document is a restricted source or non-source document to which access is governed by the guidelines for accessing professional accounting advisers' papers (accountants' concession).

#### **4. How the taxpayer makes a claim under the concession**

4A. If we are seeking access to documents and the taxpayer considers that such access should be limited on the basis that they wholly or partly contain advice or information subject to the concession, the taxpayer should take the following steps:

- (1) Advise us as soon as possible that they intend to make a claim under the concession.
- (2) By the due date to respond to a formal or informal request for information, provide the following details for each document they consider contains advice or information subject to the concession
  - the date of the advice or information (or the date the document was created)
  - the title of the advice or information and a general description of its nature
  - the names and roles of the authors
  - the names and roles of all addressees to whom the advice or information has been circulated

- the reasons for the distribution to each addressee
- the reasons why the document is categorised as containing advice or information subject to the concession
- the dates on which the advice or information was provided to a director of the company, the board or a properly constituted sub-committee of the board.

4B. Note that where a document is to be redacted before being provided to us, the details listed in paragraph 4A(2) of this Practice Statement do not need to be provided to the extent they are evident in the redacted document.

4C. Once a claim for the concession has been received by us, it will be examined by the compliance team and manager they report to.

4D. The taxpayer will be notified in writing within 28 days of the decision whether to accept, reject or set aside a claim. In limited circumstances, such as where there are a large number of claims, this period may be extended.

4E. If the taxpayer wants to dispute any aspect of our decision (referred to in paragraph 4D of this Practice Statement), it will be reviewed and either accepted, rejected or set aside by a designated senior officer. This review may involve a cursory inspection by a representative for both us and the taxpayer who have had no prior involvement in the claim for the concession and are not a party to the audit or review being undertaken.

#### **5. More information**

5A. For more information, see:

- [Tax risk management and governance review guide](#)
- [Claim for concession on ATO access to advice for a corporate board on tax compliance risk](#)
- [Our approach to information gathering](#)
- [Gathering information.](#)

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## Amendment history

### 10 July 2025

Part	Comment
All	Content checked for technical accuracy and currency. Updated to apply current ATO style and accessibility guides.

### 11 March 2016

Part	Comment
Paragraph 3M	Footnote reference link moved from 'ATO officer' to 'designated senior officer'.

### 12 November 2015

Part	Comment
All	Updated to new LAPS format and style.

### 3 September 2014

Part	Comment
Subject and Purpose	Remove documents and replace with advice.
New paragraph 1	To emphasise the importance of good tax corporate governance.
New paragraph 6	Restrict opportunities to make non bona fide claims.
Paragraphs 9 to 12	Deleted.
New paragraph 14	Extended definition of advice included. Sole purpose test to apply to advice and not a document.
New paragraphs 16 and 17	Concession includes discussion of advice, requests for advice and tax risk registers.
New subparagraphs 20(c) and (d)	Modified process for dealing with concession claims.
New subparagraphs 22(d) and (e)	Exceptional circumstances extended.

### 3 September 2013

Part	Comment
Generally	Updated to current ATO corporate publishing style.
Contact details	Updated.

### 1 July 2006

Part	Comment
Paragraph 13	Updated references from sections 65 and 66 of the TAA to sections 353-10 and 353-15 of Schedule 1 to the TAA.

## References

<b>Other references</b>	<a href="#">Claim for concession on ATO access to advice for a corporate board on tax compliance risk</a> <a href="#">Gathering information</a> <a href="#">Our approach to information gathering</a> <a href="#">Tax risk management and governance review guide</a>
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## ATO references

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