PS LA 2005/10 (Withdrawn) - Priority Private Binding Rulings

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This practice statement is withdrawn with effect from 9 April 2009. It has been replaced by PS LA 2009/2

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Practice Statement Law Administration

PS LA 2005/10

This practice statement is withdrawn with effect from 9 April 2009. It has been replaced by PS LA 2009/2

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

SUBJECT: **Priority Private Binding Rulings**

PURPOSE: **To advise the process to be followed for ruling applications that meet the criteria for priority private binding rulings**

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BACKGROUND

1. This practice statement provides directions for staff to follow to ensure that priority private binding rulings (priority PBRs) are delivered in timeframes that are consistent with the applicant's business needs.

2. The process outlined in this practice statement is being put in place to assist corporate boards to identify and manage the taxation risks associated with major transactions and arrangements. Unless otherwise indicated in this practice statement, existing practice statements, business rules and systems will continue to apply.

STATEMENT

3. The key principles of the priority PBR process are:

   - Centralised point of reference (process owner) responsible for marshalling resources and taking remedial action to ensure cases are not delayed
   - Alignment of taxpayer and Tax Office priorities
   - Front-end engagement of all expertise to avoid sequential processing
   - Taxpayers and Tax Office working together to clarify the ruling

Criteria

4. Priority PBRs are those that are associated with a transaction that has the following characteristics:

   - time sensitive
   - prospective
   - major commercial significance and requiring consideration at corporate Board level
   - the tax outcome is a critical element of the transaction, and
   - complex law and facts need to be analysed,

   and where the taxpayer:

   - notifies the Tax Office as soon as practicable after the transaction is first contemplated
   - agrees to provide an application incorporating a full brief with:
     - all relevant information
     - a draft ruling
     - all issues identified
     - position for and against fully argued
     - timeframes identified, and

- nominates a Taxpayer Representative who will be responsible for all interaction with the Tax Office and meeting any information requests quickly.

Process

5. A separate unit in the Large Business & International business line has been established as the corporate Process Owner for priority PBRs. The Process Owner will:

   - be the central point of contact on matters relating to the process for the Taxpayer Representative and Tax Office staff
   - have authority to marshal all necessary resources across lines, and
   - have authority to take remedial action if delays occur or are expected to occur.

6. A taxpayer who is contemplating a transaction that meets the criteria in paragraph 4 will telephone the Process Owner on 02 6216 1125 advising the general nature of the transaction, the relevant areas of tax law and the critical dates.

7. If the Process Owner decides that the transaction does not meet the criteria, the matter will be referred to the relevant business line for appropriate action.

8. Where the Process Owner is satisfied that the transaction meets the criteria in paragraph 4, they will consult with the relevant industry Segment Leader or nominated business line officer to identify and appoint a Case Manager. The Case Manager must be a senior officer, generally at the Executive Level 2 level, who is experienced in written advice work.

Early engagement of all contributors

9. The new process is designed to avoid sequential processing by engaging at the outset all expertise that will be required to deal with the application. The Case Manager will identify and engage any other business line expertise that will be required to contribute. The Process Owner will, in accordance with paragraphs 12 to 14, identify and engage relevant Tax Counsel Network (TCN) and Centre of Expertise (CoE) officers.

10. The Case Manager, business line experts, TCN and CoE officer(s) must all be available to work on the case until its expected completion date. It is important to avoid, as far as practicable, the need for any reallocation at a later date.

11. While the Case Manager will have primary responsibility for contact with the Taxpayer Representative, they may arrange for direct contact between the client and TCN or CoE officers where appropriate. Where this is necessary, the Case Manager will remain actively involved and be kept informed by other participants of all developments. It is expected that all parties will act collaboratively in progressing the case to finalisation. The case manager has responsibility for managing the case to completion, including obtaining authorisation and sign off in the relevant business line.

Engagement of Centres of Expertise and TCN

12. Priority PBR cases contain issues that are of strategic significance, involve a high level of complexity and have large revenue impacts. They give rise to a reputation risk associated with failure to deal with them in timeframes that ensure corporate boards can manage tax risks for significant transactions. Accordingly, each priority PBR case will give rise to a Priority Technical Issue (PTI) to which paragraph 6 of Law Administration Practice Statement PS LA 2003/10 will be applied. That is, appropriate specialists are engaged upfront and the process to document and manage the PTI will be applied at the earliest practical time after that engagement (see paragraph 18).

13. Having regard to the complexity and other characteristics of these cases, expert assistance must be engaged immediately to identify or create the relevant precedential ATO view. The Process Owner will arrange for officer(s) from the relevant Centres of Expertise to be allocated to the case to assist in identifying any precedential ATO view or to create one where none exists.

14. Where appropriate, the Process Owner will also arrange for an officer(s) from TCN to be allocated to the case. TCN and CoE officers will work with the case manager to identify and resolve issues and will assist in determining the information required from the taxpayer.

Pre-lodgment meeting

15. The Case Manager must arrange with the Taxpayer Representative for a pre-lodgment meeting. The purpose of a pre-lodgment meeting is to facilitate the lodgment of a valid ruling application that accurately describes the arrangement to be ruled upon and, as far as practicable, identifies all information that is likely to be required. Officers at the meeting should outline any particular areas of concern to enable these to be addressed in the proposed application. They may discuss the Tax Office's general view in relation to the relevant area of law, but should take care not to give any indication of what the Tax Office's view may be in relation to the proposed application – refer Law Administration Practice Statement PS LA 2002/17.

16. The pre-lodgment meeting should be arranged as soon as possible after the Case Manager is appointed. TCN or CoE officers contributing to the priority PBR will also participate in the meeting. While the taxpayer's (or Taxpayer Representative's) location may be one of the factors taken into account in deciding which Tax Office staff should be allocated to the case, the meeting participants will often be located in different cities. Practical alternatives to face to face conferences, including the use of video-conferencing, should be considered for these meetings.

Case Plan

17. As soon as possible after the pre-lodgment meeting, the Case Manager will prepare a case plan outlining each of the steps in the process and the dates on which those steps are to be completed in order to achieve the anticipated issue date. This plan should include steps to be taken by the taxpayer and therefore

needs to be negotiated with the Taxpayer Representative. The Case Manager will provide the plan to the Taxpayer Representative and the Process Owner. The Case Manager will notify the Process Owner immediately any obstacles are encountered to achieving the milestones set out in the plan. The Taxpayer Representative is to be advised as soon as milestones need to be changed.

PTI proposal

18. The PTI proposal must capture all of the issues in the case regardless of whether a PTI currently exists for a particular issue. The Case Manager will prepare the PTI proposal and the responsibility for the rating and ongoing management of the risk(s) associated with the PTI will remain with the business line.

Further information requests

19. Information further to that identified at the pre-lodgment meeting may be required in some cases, for example additional facts about the transaction or more detailed submissions on specific points. The information should be requested from the Taxpayer Representative by the most efficient means, which will generally be by phone or fax. Information requests after lodgment of the application should be approved by the Process Owner.

ATO Interpretive Decisions

20. An ATO Interpretive Decision (ATO ID) does not need to be published before the issue of a priority PBR. Where the decision meets the criteria listed in paragraph 14 of Law Administration Practice Statement PS LA 2001/8, the ATO ID may be prepared after the issue of the priority PBR. Consistent with the current ATO ID guidelines, the CoE authorising officer will provide the Case Manager with appropriate documentation to confirm the clearance and authorisation of the ATO view.

Agreement on arrangement

21. As soon as the arrangement to be ruled on is established, it should be documented and agreed with the Taxpayer Representative.

Evaluation and appraisal

22. The Process Owner will establish a formal feedback mechanism for all participants to comment on the priority ruling process and the contributions of all other participants. Feedback will be sought during and at the conclusion of priority PBR cases. It will be used to make adjustments to the process as necessary and to assist participants to maintain and improve the quality of their contribution.

EXPLANATION

23. The process outlined in this practice statement is being introduced because ruling applications that meet the specified criteria are at greater risk of being delivered outside timeframes required by the taxpayer, as they invariably require input from

a range of Tax Office specialists and/or involve legal issues that do not have a precedent. Delays can have the effect that corporate Boards are unable to obtain the necessary assurance in relation to the management of the tax risk associated with significant transactions. It is appropriate, therefore, that different processes be put in place for certain categories of rulings to ensure that the Tax Office is able to deliver on our Taxpayers' Charter commitment.

24. Ruling applications that do not meet the specified criteria must also be managed to achieve service standards specified in Taxpayers' Charter booklet 03 and reasonable timeframes required by the taxpayer.

Subject references	Private rulings; TCN; COE; Precedential ATO views; Priority Technical Issues; ATO Interpretive Decisions; written binding advice;
Legislative references	*Taxation Administration Act 1953* Part IVAA
Related public rulings	TR 93/1
Related practice statements	PS LA 2001/8; PS LA 2002/13; PS LA 2003/3; PS LA 2003/10; PS LA 2004/4; PS LA 2008/3; PS LA 2008/4; PS LA 2008/5 PS CM 2003/02 (G)
Case references	
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Other business lines consulted	LB&I, SB, GST, OCTC