PS LA 2007/5 - Settlements

Australian Government

Australian Taxation Office

Practice Statement Law Administration

PS LA 2007/5

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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 officers unless doing so creates unintended consequences or where it is considered incorrect. Where this occurs, tax officers must follow their business line's escalation process.

SUBJECT: **Settlements**

PURPOSE: **To prescribe mandatory use of the Code of Settlement Practice by all tax officers in the settlement of taxation disputes.**

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BACKGROUND

1. A basic duty of the Commissioner of Taxation is to administer revenue laws including superannuation. This duty includes assessing and collecting taxes and determining entitlements arising under taxation law. The general rule therefore is that the Commissioner does not forego tax[1] properly payable and will, with minimal delay, seek to collect as near as practicable that tax.

[1] Tax includes any tax, levy, charge, duty or excise imposed under a law administered by the Commissioner of Taxation.

2. In determining the amount of tax payable or refund due under the law the Commissioner will have regard to the facts and circumstances of a case, and the strength of any different views as to the application of the law to the facts. There are occasions where the Commissioner's preliminary views are changed prior to assessment, for example, in the light of new evidence or where the Commissioner is persuaded to accept a different view of the law. These do not generally constitute settlements but the application of the law to the particular facts. Our processes to ensure proper and sound decision making in these cases are contained in a range of corporately endorsed policies and work procedures for the conduct of an audit. These procedures are made available to staff through the corporate case management system as part of the support process when a case is referred to a case officer.

3. Settlements involve taking into account a range of factors, such as the costs of further enquiries and the risks of litigation and determining that it is in the best interests of the Commonwealth to accept a certain amount in finalising the dispute. The Courts have recognised that settlement of a dispute about the amount of tax payable is an appropriate approach to particular circumstances and at times highly desirable. Nevertheless, it is important to settle only in appropriate circumstances and when settling, officers must be aware of the importance of transparency and accountability in the decision-making process and in the outcomes of that process.

STATEMENT

4. The *Code of Settlement Practice* (Code) provides guidelines on settlement of taxation disputes. The Code is directed at circumstances where, for reasons of good management of the tax system, a decision is taken to settle a disputed liability to tax. The Code is designed to provide assurance about the appropriateness of settlement decisions. A link to the Code is provided in the other references section at the conclusion of this practice statement.

5. Tax officers who make settlement decisions must follow the Code.

6. The power to settle taxation liabilities has been given only to a strictly limited range of senior officers. Tax officers must check the Register of Delegations and Authorisations and the Taxation Authorisations Guidelines (links available at the conclusion of this practice statement) to ensure they are properly delegated or authorised to settle a taxation dispute.

7. A distinction should be drawn between **settling** the amount of the liability and **compromising** a debt. The settlement process aims to establish an agreed tax liability where the taxpayer and Australian Taxation Office (ATO) do not initially agree on the tax liability. Compromise occurs when the ATO and taxpayer agree on the amount of the tax liability but the ATO agrees to accept less than the agreed amount in finalisation of the debt. The delegation to compromise a debt rests with very few Senior Executive Service (SES) officers and an agreement to compromise is extremely rare.

8. Senior officers approving settlements are required to sign a Statement of Compliance (link available at the conclusion of this practice statement) in accordance with paragraph 67 of the Code.

EXPLANATION

Decision making and approval

9. Settlement procedures outlined in the Code make it clear that:

- generally, settlements need to be approved by an SES officer
- there should be no unilateral decision making
- where external counsel has been engaged and understands the substantive issues, the normal expectation is that the advice of counsel would be obtained on the merits of the Commissioner's position and the reasonableness of the proposed settlement
- in relation to a Priority Technical Issue (PTI), the issue should not be settled without the agreement of the PTI owner. In accordance with Law Administration Practice Statement *PS LA 2003/10 Management of Priority Technical Issues*, the PTI owner is an officer from the Tax Counsel Network or a Centre of Expertise, and
- at least two officers should be present during settlement negotiations.

Registration and documentation

10. Details of every settlement, including the justification or underlying reasoning for the settlement, must be recorded on the Siebel case management system. Supporting instructions for recording settlements on Siebel are available for tax officers to consult.

Currency of the Code

11. Prior to entering into any settlement negotiations with taxpayers, tax officers must be familiar with the principles embedded in the Code and must ensure that the taxpayer's circumstances are appropriate for settlement.

12. The online version of the Code is the only current version of the Code. Tax officers must check the online version for updates before finalising a settlement.

13. Tax officers who have any concerns about the guidance provided by the Code should contact the Maintenance and Support team in the Law Practice Support Branch of Law and Practice (L&P).

Settlement home page and other resources

14. Tax officers should refer to the settlement home page on the Intranet (link is available at the conclusion of this practice statement) which provides resources that will help when entering into settlements.

15. The resources available on the settlement home page include information about and links to the Code, relevant practice statements, settlement integrity assurance, settlement delegation and authorisation, settlement procedures and frequently asked questions, and other guidelines. These documents provide help to tax officers with settlement issues, but are not a substitute for the Code. Tax officers must refer to the Code for complete guidelines to the settlement process.

Business line procedures

16. Business lines may have their own additional settlement procedures provided they are consistent with the corporate settlement procedures and the Code. In addition, every business line must:

- publish any additional settlement procedures on the Intranet
- take responsibility for the currency and maintenance of these procedures, and
- link their Intranet settlement site to the settlement homepage.

Outstanding debt

17. Any payment arrangements included as part of a settlement of a taxation dispute must be in accordance with *Law Administration Practice Statement PS LA 2011/14 General debt collection powers and principles*..

Integrated Quality Framework

18. The ATO's Integrated Quality Framework (IQF) process in relation to settlements is designed to provide assurance that officers have complied with the Code.

19. The IQF process is detailed in *Law Administration Practice Statement PS LA 2009/6 Quality improvement and assurance: application of and conformance with the Integrated Quality Framework*. It requires ATO business lines to conduct continuous reviews of the quality of their interpretative decisions, including settlements.

Amendment history

Date of amendment	Part	Comment
8 February 2012	Paragraph 7	Minor Style Guide changes
	Paragraphs 9-11 titles	Amended heading from 'Documentation and registration' to 'Decision making and approval' to properly reflect subject matter of paragraph 9. Removed paragraph 10 and incorporated this in paragraph 11. Amended heading from 'Siebel case management system' to 'Registration and documentation'.
	Paragraph 14	Readers now referred to the Settlement home page where resources are available, instead of providing links to particular documents.
	Paragraph 15	Minor update on settlement documents and guidelines. Removed references to links.
	Paragraph 16	Removed incorrect hyperlink as correct homepage link is included at the end of the practice statement.
	Other references	Removed links to settlement procedures and guidelines.
	Contact Officer	Details updated.
1 July 2011	Throughout	Updated to align with the Corporate Style Guide.
	Throughout	References to 'Technical Quality Reviews' or 'TQR' updated to 'Integrated Quality Framework' or 'IQF'.
	Throughout	Updated references to Law Administration Practice Statements.
	Paragraph 14	Updated 'Settlement Process team' to 'Maintenance and Support team in the Law Practice Support Branch in Law and Practice (L&P)'.
	Other references	Additional hyperlinks to guidelines included
11 September 2008	Contact Officer	Details updated.
	Paragraph 19	References to PS LA 2006/11 removed.

Date of amendment	**Part**	**Comment**
8 February 2008	Related practice statements	Link to the policy added.
1 September 2009	Paragraphs 9, 15, 19 and 21 Contact Officer	Name changes and minor grammatical corrections. Other references and contact details. Details updated.

Subject references	Code of Settlement Practice Settlement
Related practice statements	PS LA 2003/10 PS LA 2007/6 PS LA 2009/6 PS LA 2011/14
Other references	Code of settlement practice Register of Delegations and Authorisations (link available internally only) Settlement homepage (link available internally only) Settlement - Statement of Compliance Taxation Authorisations Guidelines (link available internally only) Review into aspects of the ATO's settlement of active compliance activities Settlements IQF operational Guide (link available internally only)
File references	04/11754 1-384PO26
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Other Business Lines consulted	CS&C, Debt, Excise, GST, LB&I, MEI, S&ME, SNC, SPR