PS LA 2007/5 - Settlements

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This document has changed over time. This version was published on *28 January 2014*

This practice statement was originally published on 21 February 2007. Versions published from 1 July 2011 are available electronically - refer to the online version of the practice statement. Versions published prior to this date are not available electronically. If needed, these can be requested by emailing TCNLawPublishingandPolicy@ato.gov.au .

Generated on: 23 November 2026, 02:34:37 AM

Australian Government
Australian Taxation Office

Practice Statement Law Administration

PS LA 2007/5

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This law administration 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. ATO personnel, including non ongoing staff and relevant contractors, must comply with this law administration practice statement, unless doing so creates unintended consequences or is considered incorrect. Where this occurs, ATO personnel must follow their business line's escalation process.

SUBJECT: **Settlements**

PURPOSE: **To:**

- **outline key elements of the settlement process, and**
- **prescribe mandatory use of the *Code of Settlement Practice* by all ATO personnel 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.

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.

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. It outlines when settlement should be considered and the processes which should be followed when 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. ATO personnel who make settlement decisions must follow the Code.

6. 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 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.[2]

[1] Tax includes any tax, levy, charge, duty or excise imposed under a law administered by the Commissioner of Taxation.
[2] See PS LA 2011/3 *Compromise of undisputed tax-related liabilities and other amounts payable to the Commissioner*.

Decision making and approval

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

   - 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
   - at least two officers should be present during settlement negotiations.

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

9. The power to settle taxation liabilities has been given only to a strictly limited range of senior officers. ATO personnel 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.

10. Senior officers approving settlements are required to sign a Statement of Compliance (link available at the conclusion of this practice statement) affirming compliance with the Code.

Registration and documentation

11. Details of every settlement, including the justification or underlying reasoning for the settlement, must be recorded on the Siebel case management system.

Settlement obligations

12. Business lines must have processes in place to assure adherence by both the ATO and the taxpayers to any obligations set out in a settlement deed.

Currency of the Code

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

14. The online version of the Code is the only current version of the Code. ATO personnel must check the online version before finalising a settlement.

15. ATO personnel who have any concerns about the guidance provided by the Code should contact Review and Dispute Resolution.

Settlement homepage and other resources

16. ATO personnel should refer to the settlement homepage on the Intranet (link is available at the conclusion of this practice statement) which provides resources that will help when entering into settlements.

17. The resources available on the settlement homepage include information about and links to the Code, Siebel procedures, settlement procedures, settlement integrity assurance, settlement delegation and authorisation, settlement coordinators, frequently asked questions, and other guidelines. These documents provide help to ATO personnel with settlement issues, but are not a substitute for the Code. ATO personnel must refer to the Code for complete guidelines to the settlement process.

Business line procedures

18. 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
- link their Intranet settlement site to the settlement homepage.

Integrated Quality Framework

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

20. 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*.

Amendment history

Date of amendment	Part	Comment
28 January 2014	Other references	Update link to the Code of Settlement Practice.
	Contact Officer	Details updated.
12 June 2013	Throughout	Reordered content under headings Minor style changes
	Paragraph 2	Remove specific reference to audit procedures
	Paragraph 4	Align statements regarding the Code to content of the Code
	Paragraph 12	Insert requirement for BSL to assure adherence to any obligations set out in a Settlement Deed
	Paragraph 15	Update contact details
	Paragraph 17	Include further resource information
	Contact Officer	Details updated.
3 August 2012	Paragraph 9	Remove reference to PTIs
	Paragraph 13	Update team name to Corporate Policy and Process
	Related practice statements	Removed reference to PS LA 2003/10
	Contact Officer	Details updated
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.

Date of amendment	Part	Comment
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.
1 September 2009	Paragraphs 9, 15, 19 and 21	Name changes and minor grammatical corrections. Other references and contact details.
	Contact Officer	Details updated.
11 September 2008	Contact Officer	Details updated.
	Paragraph 19	References to PS LA 2006/11 removed.
8 February 2008	Related practice statements	Link to the policy added.

Subject references	Code of Settlement Practice Settlement
Related practice statements	PS LA 2007/6 PS LA 2009/6 PS LA 2011/13 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
Date issued	21 February 2007
Date of effect	21 February 2007
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