PS LA 2007/6 - Guidelines for settlement of widely based tax disputes

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Law Administration Practice Statement

PS LA 2007/6

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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.

SUBJECT:	**Guidelines for settlement of widely based tax disputes**
PURPOSE:	**To set out practical guidance for the settlement of widely based tax disputes including disputes involving taxpayers who have participated in tax planning arrangements (whether subject to the general anti-avoidance provisions or otherwise).**

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STATEMENT

1. This Practice Statement provides guidance about proposals for settlement of widely based tax disputes. It must be read in conjunction with the Code of settlement (Code), which provides general guidance about settlement of taxation disputes.

2. Widely based tax disputes include tax avoidance arrangements, whether considered by us not to be effective by operation of the ordinary provisions of the law or application of a specific or general anti-avoidance rule (such as Part IVA of the *Income Tax Assessment Act 1936* for income tax).

3. A Widely based Settlement Panel (Panel) (link available internally only) has been established to provide advice to decision-makers about offers and proposals to settle widely based tax disputes involving at least 20 taxpayers.

4. The purpose of the Panel is to ensure that the terms and conditions of widely based settlement proposals adopted by us are consistent and appropriate and that the reasons for the adopted proposals are transparent.

5. A widely based settlement proposal means a proposal by us to offer certain terms of settlement to taxpayers or a proposal made to us by or on behalf of taxpayers to settle their disputes.

6. Before making a decision to give effect to a widely based settlement proposal, a decision-maker is required to ensure:

   - that a dispute can be settled in accordance with the Code, and
   - they seek the Panel's advice.

7. This Practice Statement sets out factors to be considered by decision-makers and the principles that the Panel will apply when formulating advice to a decision-maker about a widely based settlement proposal. In formulating its advice, the Panel will also consider the principles and guidelines in the Code, Our Charter and the Compliance model.

8. When deciding whether to make, accept or reject a widely based settlement proposal, the decision-maker must consider the Panel's advice. However, the Panel's advice does not fetter the decision-maker in the ultimate exercise of their delegation or authorisation to make, accept or reject a settlement proposal.

EXPLANATION

General matters

9. The Widely based Settlement Panel is a panel of senior tax officers set up to consider widely based settlement proposals and to advise decision-makers in situations where a widely based settlement proposal may be appropriate.

10. When considering a settlement proposal, the objective of the Panel is to ensure:

    - consistency in the factors taken into consideration when a decision-maker is contemplating whether to make, accept or reject a settlement proposal

- consistency in similar situations about the way factors are applied and the elements, terms and conditions of widely based settlement proposals
- appropriate differentiation and weighting of factors according to differences in the circumstances of the taxpayers involved in the dispute, and
- transparency around the advice and reasons for recommending whether a proposal should be accepted, modified or rejected.

11. These guidelines, the quality of the Panel's advice and the way widely based settlement proposals are managed will be periodically reviewed and this will involve public consultation.

12. Proposals for widely based settlements of tax disputes may arise:

- externally – for example, by one or more participants in a tax planning arrangement proposing a settlement offer to us, or
- internally – for example, by way of a general settlement offer or invitation from us to a group of taxpayers, such as participants in a particular tax planning scheme arrangement.

13. A widely based settlement proposal is one where there are at least 20 taxpayers disputing the ATO view in relation to the same or similar arrangement including tax avoidance arrangements which are not effective because of the operation of the ordinary provisions of the law or the application of a specific or general anti-avoidance provision (such as Part IVA of the *Income Tax Assessment Act 1936*). Also within the scope of this Practice Statement are disputes of a non-scheme nature which nevertheless affect a large number of taxpayers.

14. Decision-makers are also required to seek the advice of the Panel on settlement proposals involving less than 20 taxpayers where the settlement proposal may have broader implications on community confidence in the administration of the tax system or where the case involves issues and factors which may be applicable to settlement of other disputes involving larger numbers of taxpayers. Where there is uncertainty about whether a proposal should be referred to the Panel for advice, decisions-makers are expected to seek clarification from the chair of the Panel (Chair) and to consider the amount of revenue involved as well as the Code – noting that, of itself, the amount of revenue is not a reason for the proposal to be referred to the Panel).

15. For the purposes of this Practice Statement, 'dispute' has a broad meaning. The term 'dispute' includes a reference to a disputed liability or entitlement involving primary tax, penalties, payments, franking credits and debits, foreign tax credits, credits and refunds of indirect taxes, general interest charge (GIC) and interest. A settlement proposal can be considered prior to formal assessments being raised – for example, during the course of an audit after taxpayers involved in the matter have considered a position paper from us or other communication of our thinking.

16. This Practice Statement does not apply to any settlement or any component of a settlement which concerns compensation or similar monetary claims against us, as described in Chief Executive Instruction Making payments (link available internally only).

Code of settlement

17. The Code provides general guidance about settlement of taxation disputes. Settlement, as an alternative to litigation of the substantive issues in dispute, will be appropriate where considerations of sensible administration and good management of the tax system outweigh the general rule that we do not forego tax properly payable (including shortfall penalty and GIC). The 'good management rule' that underpins our approach to settling a dispute also has application to settlement of widely based tax disputes, including marketed tax planning arrangements, although the factors taken into consideration and the elements of the settlement offer can often be different in a widely based dispute to those discussed in the Code.

18. While the terms of a settlement proposal will always turn on the particular facts of the issue, as well as the behaviours or special circumstances of the taxpayers and others involved, scrutiny of our administration of mass-marketed investment schemes and employee benefit arrangements has shown that we also need to give particular attention to questions of fairness, consistency and transparency of widely based settlement proposals across groups of taxpayers and across different kinds of arrangements. The guidelines in this Practice Statement therefore supplement the Code by dealing with the issues relevant in the context of settlement of a widely based dispute.

Decision-makers

19. The power to settle a dispute in accordance with the Code is delegated only to senior officers. While these delegated officers may authorise other officers to carry out their responsibilities, the intention is to limit the exercise of the power to settle taxation disputes to a restricted range of taxation officers.

20. The Panel does not exercise a delegated power to settle disputes. Its role is purely advisory. All decision-makers referring settlement proposals to the Panel for advice must ensure that duly made delegations and authorisations are in place.

21. The basic principle that there should be no unilateral decision-making in relation to settlements applies to widely based tax disputes. This means that a case officer or team leader who is approached with an offer to settle a dispute or who reaches a view that it may be appropriate to make a settlement offer to the participants must refer the matter to an officer at an appropriate level external to the team to decide whether the settlement process should be initiated.

22. Once it is decided that a matter needs to be referred to the Panel for advice, the submission to the Panel must be made by a senior officer who holds a delegation or authorisation to conclude a settlement.

Approach to resolving disputes through a widely based settlement

23. The settlement of a widely based dispute is to be approached in 3 stages:

- identifying the 'base settlement proposal'
- identifying appropriate differentiations from the base settlement proposal, and
- taking a taxpayer's unique individual circumstances into account in his or her individual settlement.

24. The first stage involves taking into account characteristics of the arrangement and circumstances that are common to all individual affected taxpayers. These common characteristics and circumstances are relevant to the formulation of the components of the base settlement proposal that is intended to be common to all participants.

25. The second stage involves taking into account circumstances not common to all individual affected taxpayers, to determine if there should be a differentiation to the base settlement for certain taxpayers or groups of taxpayers involved in the dispute (for example, whether there should be a differentiation between those who merely invested in an arrangement and those who additionally were associated with the promotion or sale of the arrangement to others).

26. The third stage involves giving consideration to any unique individual circumstances raised by a taxpayer when formulating the individual settlement for that taxpayer (for example, the terms of the settlement may involve special payment arrangements in light of a taxpayer's particular financial situation). When there are large numbers of taxpayers involved in a dispute, submissions from decision-makers will need to include appropriate procedures to ensure that taxpayers have the opportunity to raise unique individual circumstances.

Role and operation of the Widely based Settlement Panel

27. The role of the Panel is to assist us in our administration of settlement proposals for widely based tax disputes to:

- ensure that the terms and conditions of widely based settlement proposals are consistent and appropriate
- ensure that the reasons for settling a dispute, including any differentiation to a base settlement for certain taxpayers or groups of taxpayers involved in the dispute are transparent
- provide objective advice to a decision-maker on the above list points, including advice regarding the primary tax matter, appropriate imposition and remission of penalties and remission of interest, and
- ensure that the principles and guidelines set out in this Practice Statement and in the Code have been applied and followed.

28. The Panel will also provide advice to a decision-maker about whether it may be appropriate to enter into a widely based settlement for a particular dispute and, if so, appropriate terms and conditions of a base settlement proposal and appropriate differentiations to the base settlement proposal.

29. Where administrative difficulties arise, or might arise, in implementing a widely based settlement, the decision-maker can obtain the advice of the Chair.

30. Except for individual circumstances as outlined in paragraph 26 of this Practice Statement, if a decision-maker decides not to follow the Panel's advice, they are required to discuss this with the Chair before implementing that decision. A decision-maker is also required to provide the Panel with information about the final settlement, including reasons for any variations from the Panel's advice.

31. Meetings of the Panel, including its conclusions and recommendations, will be documented and stored in accordance with our records management system.

32. We will publish the general terms of widely based settlements and the factors and principles applied at Widely based settlement arrangements.

33. All decisions on widely based settlement proposals, including any variations in individual cases, will also be recorded in the Siebel case management system.

Submissions to the Widely based Settlement Panel

34. A submission to the Panel will be prepared when a decision-maker decides that a widely based settlement proposal should be escalated to the Panel for advice. The submission needs to address the guidelines outlined in this Practice Statement and the Code. If the risk involved in the settlement proposal warrants it, advice on the submission may be sought from the Tax Counsel Network[1] or external legal advice may be sought. Any advice received should form part of the submission.

35. When a matter referred to the Panel is in response to a settlement proposal generated externally, the decision-maker will:

- provide an outline of the nature of the dispute, the steps taken by us to identify the issues in dispute, the number of taxpayers involved in the dispute, the amount of revenue involved and how the matter reached the stage where a settlement proposal was made
- indicate whether the proposal was made on behalf of all of the taxpayers involved in the arrangement subject to dispute, and if the proposal was made on behalf of a particular group of taxpayers, outline whether the settlement proposal should be made available to the other taxpayers involved in the disputed arrangement
- provide copies of external submissions or, where the number of submissions makes this impractical, a representative set of submissions, and
- provide any other papers, submissions and information relevant to the history and conduct of the dispute.

36. If the decision-maker is not in agreement with the settlement proposal, an alternative view on an appropriate basis of settlement or management of the dispute in the absence of a settlement should be included with the submission.

Considerations – overview

37. The decision-maker must take into account the following considerations in preparing a submission to the Panel. These must also be considered by the Panel in formulating its advice about the base settlement proposal and any differentiations to the base settlement:

- the cost to revenue of the settlement proposal, the impact of the settlement on compliance attitudes and behaviours of the parties to the settlement and the community generally
- justifiability of the settlement proposal in terms of consistency in the application of factors and outcomes in similar settlements, appropriate differentiation where circumstances are not comparable, and standards and expectations in the management of widely based tax disputes that reflect community expectations and promote community confidence in the administration of the tax system

[1] Refer to Law Administration Practice Statement PS LA 2012/1 *Engaging Tax Counsel Network on tax technical issues*.

- the circumstances surrounding affected taxpayers involved in the dispute, which, in the case of widely based tax planning arrangements, includes the
  - circumstances surrounding participants' entry into the arrangement
  - manner in which the arrangement was put into practice
  - extent to which participants could have been reasonably expected to rely on the professional advice given, marketed or obtained, and
  - ability of the participants to implement the terms of the settlement proposal
- other considerations relevant to the specific circumstances of the settlement proposal
- litigation issues, including whether there is already a well-established ATO view of the law, whether the disputed arrangement has been subject to litigation in a court and the outcome of that litigation and whether a previous proposal to settle without proceeding to litigation of the issue in dispute has been rejected. The guidelines in the Code must be followed when deciding that settlement is preferable to litigation of the substantive technical issues involved in the dispute. Given that the purpose of a settlement is to not proceed to litigation of a dispute where good management of the tax system makes settlement of the issue justifiable, it is unlikely that second or subsequent proposals, made during the litigation processes, would be accepted on more favourable terms.

Considerations – additional explanation

Revenue cost and compliance impact

38. The impact of the proposed settlement on compliance behaviours of the relevant group of taxpayers and the broader taxpaying community will be considered. The Panel may take into account the loss of revenue, potential litigation savings, whether settlement will lead to ongoing compliance by the taxpayers involved and how the settlement might affect compliance attitudes and behaviours among the community generally.

39. In disputes involving aggressive tax planning, the Panel will also consider whether the settlement proposal effectively deals with the tax mischief underlying the scheme. In forming the settlement terms in these cases, the Panel's advice may include considerations about changes in the compliance behaviours of the affected taxpayers over time up to and including their current income tax assessment.

Consistency with previous settlements of the same or similar matters

40. The Panel will be informed by the facts, circumstances and terms of previous widely based settlements that are similar to the settlement proposal under consideration. The Panel will also seek to ensure that a widely based settlement proposal will broadly apply to all affected taxpayers. This may include taxpayers who have previously negotiated (on less favourable terms) an individual settlement of the dispute that is the subject of the settlement proposal being considered, as well as taxpayers who are awaiting the outcome of test case litigation or a lead case.

41. In considering the terms of a widely based settlement proposal, the Panel will take into account whether there is a clearly articulated ATO view on the issues in dispute, such as a view contained in a public ruling. Also relevant to the Panel's advice will be whether we have issued a Taxpayer Alert or other publication if the dispute arose from a tax avoidance arrangement and whether our earlier actions may be relevant to the matters in dispute.

Impact on community confidence

42. The Panel will consider the likely impact of reaching settlement with a group of taxpayers on the confidence the wider community has in the administration of the tax system. The making of a settlement proposal which pertains to a tax avoidance arrangement would not, unless other factors are present, justify a reduction in tax, penalty, shortfall interest charge or GIC where those outcomes are out of step with community expectations. For example, it cannot be expected that settlements in tax avoidance scheme disputes will be so generous that promoters or participants would see no real downside to promoting or participating in tax avoidance arrangements.

Circumstances of affected taxpayers

43. The decision-maker and the Panel will consider any relevant circumstances for groups of affected taxpayers when considering the base settlement offer. These circumstances may include:

- the method of marketing of a scheme or arrangement to the participants
- the compliance history of affected taxpayers
- whether the taxpayers have been misled in any way by another person
- the timing and nature of our information and enquiries in relation to a scheme or arrangement
- the level of uncertainty surrounding the law with respect to the scheme or arrangement including, for example, whether there is a test case on the issue under the Test Case Litigation Program, and
- the ability of the parties to meet the terms and conditions of the proposed settlement.

44. The decision-maker will include any proposed differentiations to the base settlement for groups of affected taxpayers where the characteristics demonstrate material differences from other taxpayers, or groups of taxpayers. These circumstances may include:

- in relation to the particular arrangement, whether some of the affected taxpayers had a real knowledge of what the arrangement involved
- the compliance history of the taxpayers involved or affected, and
- the level of tax mischief in how they personally implemented the arrangement.

Likelihood of the proposal being accepted by all affected taxpayers

45. The Panel will consider the likelihood of a widely based settlement proposal being accepted by the affected taxpayers. When considering this matter, the Panel will closely consider any external submissions provided with the proposal. A settlement proposal is unlikely to be made or accepted unless

there is sufficient prospect of acceptance by a large proportion of affected taxpayers.

Special terms or conditions that are appropriate to place on the settlement

46. In some circumstances, the Panel may provide advice on special terms and conditions beyond those contemplated in the Model settlement deeds of the Code. Without intending to limit the terms that may be applied, the Panel may provide advice about:

- whether there is to be a comprehensive settlement or a minimum number of participants who must agree before a settlement proposal is made or accepted, and
- the period for which the settlement offer is, or particular terms in the settlement offer are, available, for example
  - where a term of settlement includes a remission of GIC, it may only be available up to a certain date (affected taxpayers would still be able to settle after that date but the GIC remission would not be available to them), or
  - a settlement offer may only be available until a court decision has been handed down in a specified case.

Quality assurance of the process

47. These matters are dealt with in the Code, which all decision-makers are required to apply. However, the Panel will conduct regular reviews of the settlements it has endorsed to determine the success or otherwise of the proposal in order to better inform future decisions.

Application

48. This Practice Statement applies to widely based settlement proposals arising after 18 November 2004.

49. This Practice Statement also applies to widely based settlement proposals that were under consideration as at 18 November 2004.

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Business line: Office of the Chief Tax Counsel

Amendment history

24 April 2025

Part	Comment
Throughout	Content checked for technical accuracy and currency. Updated in line with current ATO style and accessibility requirements.
Attachment 1 and 2	Removed.

13 June 2013

Part	Comment
Contact details	Updated.

19 October 2012

Part	Comment
Contact details	Updated.

21 May 2012

Part	Comment
Paragraph 28	Removed old paragraph 28: role of TCN Network.
Paragraph 35	Updated following the issue of PS LA 2012/1.
Attachment 1: Referral Process	Updated following the issue of PS LA 2012/1.
Contact details	Updated.

15 November 2011

Part	Comment
Contact details	Updated.

30 June 2011

Part	Comment
Paragraph 35	Updated ‘ATO settlement Register’ to ‘Siebel case management system’.
Other references	Additional hyperlinks to guidelines included.

9 November 2010

Part	Comment
Contact details and general update	Updated contact details & changed reference to Tax Officer to ATO throughout the document.

31 May 2010

Part	Comment
Contact details	Updated

20 August 2008

Part	Comment
Contact details	Updated.

6 August 2008

Part	Comment
Contact details	Updated.

8 February 2008

Part	Comment
Contact details	Updated.

References

Legislative references	ITAA 1936 Pt IVA
Related practice statements	PS LA 2015/1
Other references	Chief Executive Instruction Making payments (link available internally only) Code of settlement Compliance model Model settlement deeds Our Charter Test Case Litigation Program Widely based Settlement Panel (link available internally only) Widely based settlement arrangements

ATO references

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