# *PS LA 2008/3 - Provision of advice and guidance by the ATO*

This cover sheet is provided for information only. It does not form part of *PS LA 2008/3 - Provision of advice and guidance by the ATO*

This Practice Statement is being reviewed as a result of a court/tribunal decision. Refer to Decision Impact Statement: Commissioner of Taxation v Hacon Pty Ltd (Published 14 September 2018).

This Pratice Statement is being updated to cover the Pillar Two global and domestic minimum tax. During the interim period while this update occurs, guidance can be obtained at Global and domestic minimum tax or by emailing Pillar2Project@ato.gov.au, if required.

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Australian Government
Australian Taxation Office

# Practice Statement Law Administration

# PS LA 2008/3

This practice statement was originally published on 28 February 2008. Versions published from 22 December 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 obtained from Law Publishing and Policy in the Tax Counsel Network.

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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.*

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**SUBJECT:** **Provision of advice and guidance by the ATO**

**PURPOSE:** **To explain:**

- **the forms of advice and guidance the ATO provides about the application of laws administered by the Commissioner**
- **the level of protection available to taxpayers who rely on each form of advice and guidance, and**
- **where to find further information about procedures in developing and issuing each form of advice and guidance**

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**KEY PRINCIPLES**

Providing assistance in the form of advice and guidance on the application of the laws administered by the Commissioner is central to the role of the ATO. The provision of this assistance enables taxpayers to understand and meet their obligations and be aware of their rights and entitlements in a self-assessment system.

Advice provided by the ATO is binding on the Commissioner. It provides the highest level of protection for taxpayers who rely on it.

Guidance provided by the ATO is not binding on the Commissioner. It provides more general information that assists taxpayers in a wide variety of circumstances to deal with their tax obligations.

**Advice**

Advice on the application of the laws administered by the Commissioner is generally provided in the form of a binding ruling.

There are three types of binding rulings: public, private and oral. The expectation for product and class rulings (which are public rulings) as well as private and oral rulings is that the taxpayer or adviser should make a full and true disclosure of all relevant facts in relation to the matters on which advice is sought.

A ruling does not bind the taxpayer in any circumstance. The taxpayer is entitled to apply the law if it provides a more favourable result for the taxpayer than the ruling, subject to relevant time limits in the tax law. In other words, rulings operate as a shield for the taxpayer, not a sword for the Commissioner.

Advice provides the highest level of protection for taxpayers. This means that if the advice is incorrect and the taxpayer makes a mistake as a result, they are protected from paying tax that would otherwise be payable under the law and also from false or misleading statement penalty or interest charges.

***Public ruling***

A public ruling is a published statement that is intended to contain advice on the way the law applies in defined circumstances that are common to many taxpayers. Public rulings include product and class rulings. A taxpayer can rely on a public ruling if it coincides with their particular circumstances.

The primary audience for public rulings are tax professionals or taxpayers who have a technical understanding of the underlying law. However, the subject matter will influence the level of technical precision necessary, it being greater where the issues are complex at law.

***Private ruling***

A private ruling is provided in writing and applies to a particular taxpayer in relation to their specific circumstances. It is based on the facts relevant to the scheme defined in the taxpayer's ruling application, and on any assumptions that are made. In effect, it allows a taxpayer to be notionally assessed on an existing or proposed transaction.

A taxpayer can choose not to rely on the ruling, and can have the ruling reviewed if they disagree with it.

***Oral ruling***

An oral ruling applies to an individual in relation to their specific circumstances and is generally given on a provision of the law applicable to individuals, such as personal income tax or Medicare levy. Oral rulings cannot be given on indirect tax, excise or Minerals Resource Rent Tax (MRRT) matters.

The taxpayer is advised that the advice constitutes a binding oral ruling. A taxpayer can also choose not to rely on an oral ruling but, unlike private rulings, oral rulings are not reviewable.

***Administratively binding advice***

Some of the laws administered by the Commissioner do not enable advice to be provided in a legally binding form. In the interests of sound administration, the Commissioner will, in very limited circumstances, provide administratively binding advice in relation to these laws and in relation to a very limited range of other circumstances. If taxpayers rely on advice specified as administratively binding advice and it is later found to be incorrect, they will ordinarily not have to pay the tax that would otherwise be payable under the law.

**Guidance**

ATO guidance is provided to help taxpayers understand their obligations and entitlements under the laws administered by the Commissioner. Guidance normally provides general assistance and, especially for published products, is simply expressed, often provides step by step guidance and does not cover all possibilities.

A taxpayer who relies on guidance that is found to be incorrect, or misleading and the taxpayer makes a mistake as a result, will have to pay the tax that would otherwise be payable under the law but will be protected against false or misleading statement penalty, and, if they have relied on the guidance reasonably and in good faith, against interest charges.

In limited circumstances, the ATO may produce documents that do not provide any protection. These documents should be clearly labelled. If a taxpayer relies on statements in these types of documents and they are found to be incorrect, or misleading and the taxpayer makes a mistake as a result, they will not be protected against the tax that would otherwise be payable under the law, nor will they be protected against false or misleading statement penalty or interest charges unless the Commissioner exercises his discretion.

## SCOPE

1. This practice statement provides an explanation of the different forms of advice and guidance the ATO provides about the application of laws administered by the Commissioner.
2. The practice statement also explains the level of protection available to taxpayers who rely on each form of advice and guidance. Attachment A contains a quick reference summary of the level of protection provided for each form of advice and guidance.
3. The practice statement also identifies some sources of further information on developing and issuing different forms of advice and guidance.
4. When providing advice and guidance, ATO personnel[1] also need to ensure that they consider other practice statements such as Law Administration Practice Statement PS LA 2003/3 *Precedential ATO view*, Law Administration Practice Statement PS LA 2003/9 *The Online Resource Centre for Law Administration (ORCLA)* and Law Administration Practice Statement PS LA 2011/27 *Matters the Commissioner considers when determining whether the ATO view of the law should only be applied prospectively.*

## BACKGROUND

5. The *Report on Aspects of Income Tax Self Assessment*[2] produced a number of recommendations for legislative and administrative changes to the provision of assistance by the ATO. The recommendations for legislative change in relation to ATO assistance were enacted in the *Tax Laws Amendment (Improvements to Self Assessment) Act (No. 2) 2005* with effect from 1 January 2006.

[1] ATO personnel includes staff, employees, and officers. ATO personnel also includes contractors where their agreement or contract states that they will comply with ATO policies.

[2] The Treasury 2004 *Report on Aspects of Income Tax Self Assessment Commonwealth of Australia,* Canberra.

6. In 2010, changes were introduced by the *Tax Laws Amendment (2010 GST Administration Measures No. 2) Act 2010* to include indirect tax rulings and excise advice in the general rulings regime. These changes were made in response to the Board of Taxation's *Review of the Legal Framework for the Administration of the GST* in relation to rulings. This practice statement has been revised to reflect those changes.[3]

## EXCLUSIONS FROM THIS PRACTICE STATEMENT

7. This practice statement does not deal with the following matters:

- An actual exercise of a discretion. However, this practice statement provides information on the appropriate form of assistance to be used to respond to a taxpayer's query involving the exercise of a discretion.[4]
- Matters relating to laws over which the Commissioner does not have the power of general administration.
- Matters giving rise to a duty to transfer amounts. For instance, procedural matters relating to the administration of the *Superannuation Guarantee (Administration) Act 1992* and related regulations (but not provisions under which the extent of an employer's liability to superannuation guarantee charge is worked out).
- Matters involving the Commissioner's administration or application of provisions of the *Superannuation Industry (Supervision) Act 1993* and related legislation. These matters are dealt with in Law Administration Practice Statement PS LA 2009/5.[5]
- Matters involving the Commissioner's administration or application of provisions of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* and the *Small Superannuation Accounts Act 1995.*
- Matters involving Self Managed Superannuation Funds Rulings and Determinations, or non binding specific advice in relation to matters arising under the *Superannuation Industry (Supervision) Act 1993,* to Self Managed Superannuation Fund (SMSF) trustees.[6] These matters are dealt with in PS LA 2009/5.
- Australian Prudential Regulation Authority related matters.
- Advance Pricing Arrangements and Forward Compliance Arrangements. These are essentially arrangements between the taxpayer and the Commissioner about how the compliance relationship will be managed for a specified period rather than advice or guidance on the application of the law. However, where a taxpayer requires formal advice about how the law applies to their specific circumstances they may wish to obtain a private ruling.

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[3] This practice statement replaces Law Administration Practice Statement PS LA 2001/4 *Provision of written advice by the Australian Taxation Office.*

[4] A Commissioner's discretion may be exercised under a power conferred by an administrative provision or a provision affecting liability or an anti-avoidance provision. The granting of a substituted accounting period or of an extension of time to lodge a return are examples of discretions exercised under an administrative provision. A determination that a corporate distribution is included in the assessable income of the recipient is an example of a discretion exercised under a provision affecting liability.

[5] PS LA 2009/5 *Provision of advice and guidance by the ATO in relation to the application of the Superannuation Industry (Supervision) Act 1993 and the Superannuation Industry (Supervision) Regulations 1994 to Self Managed Superannuation Funds*.

[6] These products do not come within the rulings regime in Part 5-5 of Schedule 1 to the *Taxation Administration Act 1953*.

- Audit position papers. These generally represent a preliminary view of the relevant facts and law applying to a particular situation.
- Taxpayer Alerts.[7]

Any requests for advice or guidance on the above matters, or on all other matters not dealt with by this practice statement, are to be dealt with in accordance with current ATO business practices and procedures.

## REFERENCES IN THIS PRACTICE STATEMENT

8. Legislative references are to provisions found in Schedule 1 to the *Taxation Administration Act 1953* (TAA), unless otherwise indicated.

9. The following terms are used in this practice statement:

| Term | Explanation |
|---|---|
| Entity | The term 'entity' is defined in section 960-100 of the ITAA 1997. Entity is defined to mean any of the following:<br>(a) an individual<br>(b) a body corporate<br>(c) a body politic<br>(d) a partnership<br>(e) any other unincorporated association or body of persons<br>(f) a trust<br>(g) a superannuation fund, or<br>(h) an approved deposit fund.[8] |
| Excise duty[9] | Means any duty of excise imposed by that name under a law of the Commonwealth. |
| Excise law[10] | Includes:<br>(a) the *Excise Act 1901*<br>(b) any Act that imposes excise duty, and<br>(c) the TAA so far as it relates to any Act covered by (a) and (b).[11] |
| False or misleading statement penalty | Administrative penalty imposed under Subdivision 284-B for false or misleading statements.[12]<br>This penalty applies regardless of whether a tax shortfall arises as a result of the false or misleading statement. |

[7] Refer to Law Administration Practice Statement PS LA 2008/15 *Taxpayer Alerts*.
[8] For a discussion of the meaning of 'entity' see Miscellaneous Taxation Ruling MT 2006/1 *The New Tax System: the meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian Business Number*. The term entity is also defined in section 184-1 of the GST Act and is similar to the definition of entity in section 960-100 of the ITAA 1997. It is intended that the term entity has a common meaning across the *A New Tax System (Australian Business Number) Act 1999*, GST and income tax Acts. See paragraphs 17 and 18 of MT 2006/1.
[9] This term is defined in section 195-1 of the GST Act.
[10] This term is defined in subsection 995-1(1) of the ITAA 1997.
[11] This term also includes (d) any other Act so far as it relates to any Act covered by paragraphs (a) to (c) and (e) regulations under any Act so far as they relate to any Act covered by paragraphs (a) to (d).
[12] This does not include penalty under subsections 284-75(2) regarding statements that are not reasonably arguable and 284-75(3) for failing to give a document to the Commissioner by the required time.

| Term | Explanation |
|---|---|
| | This penalty does not apply where a taxpayer has exercised reasonable care.[13]<br>The penalty also does not apply in relation to a false or misleading statement made by a registered tax agent or BAS agent engaged by the taxpayer if the taxpayer gives the agent all relevant taxation information.[14]<br>Even if this penalty applies, it may be remitted by the Commissioner if it is fair and reasonable to do so. |
| Fuel tax law [15] | Includes:<br>(a) the *Fuel Tax Act 2006*<br>(b) the *Fuel Tax (Consequential and Transitional Provisions) Act 2006*, and<br>(c) the TAA so far as it relates to any Act covered by (a) and (b). |
| GST | Goods and services tax |
| GST law[16] | Includes:<br>(a) the GST Act<br>(b) any Act that imposes GST<br>(c) the *A New Tax System (Goods and Services Tax Transition) Act 1999*, and<br>(d) the TAA, so far as it relates to any Act covered by paragraphs (a) to (c).[17] |
| GST Act | *A New Tax System (Goods and Services Tax) Act 1999* |
| ITAA 1997 | *Income Tax Assessment Act 1997* |
| Indirect tax | Means any of the following:<br>• GST<br>• wine tax<br>• luxury car tax. |
| Indirect tax law | Means:<br>• the GST law<br>• the wine tax law<br>• the luxury car tax law<br>• the fuel tax law. |
| Indirect tax or excise ruling | Public ruling or a private ruling to the extent that the ruling relates to:<br>• an indirect tax law (other than the fuel tax law), or<br>• an excise law. |
| Interest charges | References in this practice statement to interest charges encompass: |

[13] For further information see Miscellaneous Taxation Ruling MT 2008/1 *Penalty relating to statements: meaning of reasonable care, recklessness and intentional disregard* and Miscellaneous Taxation Ruling MT 2008/2 *Shortfall penalties: administrative penalty for taking a position that is not reasonably arguable*.

[14] See subsection 284-75(6). This exemption applies provided the false or misleading statement did not result from intentional disregard by the agent of a taxation law or recklessness by the agent as to the operation of a taxation law.

[15] This term is defined in section 110-5 of the *Fuel Tax Act 2006*.

[16] This term is defined in section 195-1 of the GST Act.

[17] This term also includes (e) any other Act, so far as it relates to any Act covered by paragraphs (a) to (d) (or to so much of that Act as is covered) and (f) regulations under any Act so far as they relate to any Act covered by paragraphs (a) to (d) (or to so much of that Act as is covered).

| Term | Explanation |
|---|---|
| | • the shortfall interest charge which is worked out under Division 280, and<br>• the general interest charge which is worked out under Part IIA of the TAA.[18]<br>Liability for general interest charge may result from late payment of the tax that would otherwise be payable under the law after the ATO notifies the taxpayer of the shortfall. This practice statement does not cover the general interest charge accruing after 21 days of the Commissioner notifying the taxpayer of the correct position.<br>Also, for superannuation guarantee charge matters, the reference to interest charges does not extend to the nominal interest component of a superannuation guarantee shortfall under section 31 of the *Superannuation Guarantee (Administration) Act 1992*.<br>**Note:** to receive protection against interest charges on tax that would otherwise be payable under the law, a taxpayer must act reasonably and in good faith.[19] |
| Legal Database | ATOlaw or http://law.ato.gov.au. |
| Legal personal representative | The term 'legal personal representative' is defined in subsection 995-1(1) of the ITAA 1997 as:<br>• an executor or administrator of an estate of a person who has died<br>• a trustee of an estate of a person who is under a legal disability, or<br>• a person who holds a general power of attorney that was granted by another person. |
| Luxury car tax law[20] | Includes:<br>(a) the *A New Tax System (Luxury Car Tax Act) 1999*<br>(b) any Act that imposes luxury car tax<br>(c) the *A New Tax System (Wine Equalisation Tax and Luxury Car Tax Transition) Act 1999,* and<br>(d) the TAA so far as it relates to any Act covered by paragraphs (a) to (c).[21] |
| Minerals resource rent tax[22] | Means minerals resource rent tax imposed by any of the following:<br>(a) the *Minerals Resource Rent Tax (Imposition-General) Act 2012*<br>(b) the *Minerals Resource Rent Tax (Imposition-Customs) Act 2012*<br>(c) the *Minerals Resource Rent Tax (Imposition-Excise) Act 2012*. |
| MRRT law[23] | Means: |

[18] Law Administration Practice Statement PS LA 2006/8 *Remission of shortfall interest charge and general interest charge for shortfall periods* contains guidelines on the remission of interest charges.
[19] Section 361-5.
[20] This term is defined in section 27-1 of *A New Tax System (Luxury Car Tax) Act 1999*.
[21] This term also includes (e) any other Act so far as it relates to any Act covered by paragraphs (a) to (d) and (f) regulations under any Act so far as they relate to any Act covered by paragraphs (a) to (e).
[22] This term is defined in section 300-1 of the *Minerals Resource Rent Tax Act 2012*.
[23] This term is defined in section 300-1 of the *Minerals Resource Rent Tax Act 2012*.

| Term | Explanation |
|---|---|
| | (a) the *Minerals Resource Rent Tax Act 2012*; and<br>(b) any Act that imposes MRRT, and<br>(c) the TAA so far as it relates to any Act covered by paragraphs (a) and (b),[24]. |
| Misleading statement[25] | A statement is misleading if it creates a false impression, even though the statement is correct. It may be misleading because of something contained in the statement, or because something is omitted from the statement. |
| Net amount | The term 'net amount' is defined in section 195-1 of the GST Act as having the meaning given by sections 17-5, 126-5 and 162-105 of the GST Act. The net amount is also affected by provisions of the *A New Tax System (Luxury Car Tax Act) 1999* and the *A New Tax System (Wine Equalisation Tax) Act 1999*. |
| ORCLA | Online Resource Centre for Law Administration.<br>It contains (or links to) policies and procedures governing the provision of various forms of advice and guidance.<br>See PS LA 2003/9. |
| Oral ruling | An oral ruling is an expression of the Commissioner's opinion made under Division 360 of the way in which the law applies or would apply to an individual. The Commissioner must give the ruling orally. |
| Petroleum resource rent tax (PRRT)[26] | PRRT means tax imposed by any of the following:<br>(a) *the Petroleum Resource Rent Tax (Imposition-General) Act 2012*<br>(b) *the Petroleum Resource Rent Tax (Imposition-Customs) Act 2012*<br>(c) *the Petroleum Resource Rent Tax (Imposition-Excise) Act 2012*<br>as assessed under the *Petroleum Resource Rent Tax Assessment Act 1987*. |
| Private ruling | A private ruling is a written expression of the Commissioner's opinion about the way in which the law applies or would apply to a particular taxpayer in their particular circumstances.<br>Private rulings on relevant provisions are made under Division 359 and they must be in relation to a specified scheme. |
| Private indirect tax ruling | Private ruling, to the extent that it relates to an indirect tax law (other than the fuel tax law). |
| Public ruling | A public ruling is written binding advice, published by the Commissioner for the information of entities generally, on the way in which, in the Commissioner's |

[24] This term also includes (d) any other Act so far as it relates to any Act covered by paragraphs (a) to (c) and (e) regulations under an Act so far as they relate to any Act covered by paragraphs (a) to (d).
[25] Law Administration Practice Statement PS LA 2012/5 *Administration of shortfall penalty for false or misleading statement.*
[26] This term is defined in section 995-1 of the ITAA 1997.

| Term | Explanation |
|---|---|
| | opinion, the law applies or would apply to entities generally, or a class of entities.<br>The legislative basis for public rulings on relevant provisions is Division 358. |
| Relevant provision | See paragraph 14 of this practice statement. |
| Scheme | Any arrangement or any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise.<br>An arrangement is any arrangement, agreement, understanding, promise or undertaking, whether express or implied, and whether or not enforceable (or intended to be enforceable) by legal proceedings.[27] |
| Taxpayer | For ease of expression and comprehension, this practice statement often uses the term 'taxpayer' instead of 'entity'. |
| Tax that would be otherwise payable under the law<br>(Tax shortfall) | • Additional tax representing the difference between the self-assessed[28] liability and the correct liability according to law, or<br>• excess credit, grant or benefit representing the difference between the self-assessed entitlement and the correct entitlement according to law.[29]<br>This concept is also referred to as tax shortfall in this practice statement, where appropriate.<br>For superannuation guarantee purposes, references to a tax shortfall are taken to include a superannuation guarantee charge shortfall. |
| ATO website | www.ato.gov.au |
| Wine tax law[30] | Includes:<br>(a) the *A New Tax System (Wine Equalisation Tax) Act 1999*; and<br>(b) any Act that imposes wine tax; and<br>(c) the *A New Tax System (Wine Equalisation Tax and Luxury Car Tax Transition) Act 1999* so far as it relates to the Acts covered by paragraphs (a) and (b); and<br>(d) the TAA so far as it relates to any Act covered by paragraphs (a) to (c).[31] |

## STATEMENT

10. There are many forms of assistance that the ATO provides, both orally and in writing, about the laws administered by the Commissioner. In accordance with *Taxpayers' Charter* principles, the ATO aims to provide accurate, consistent and clear advice and guidance to help taxpayers understand their rights and entitlements and meet their obligations.

[27] Subsection 995-1(1) of the ITAA 1997.
[28] This includes the calculation of liabilities and entitlements for indirect taxes.
[29] See PS LA 2012/5.
[30] This term is defined in section 33-1 of the *A New Tax System (Wine Equalisation Tax) Act 1999*.
[31] This term also includes (e) any other Act so far as it relates to any Act covered by paragraphs (a) to (d) and (f) regulations under any Act so far as they relate to any Act covered by paragraphs (a) to (e).

11. This practice statement explains each form of advice and guidance provided by the ATO (subject to the exclusions set out in paragraph 7 of this practice statement) and the level of protection provided by each.

## PART A – ADVICE

12. Advice is the Commissioner's opinion on the application of the law that the Commissioner administers. It is binding on the Commissioner and is generally provided in the form of a ruling. It encompasses public, private and oral rulings as well as administratively binding advice.

### Rulings

13. Part 5-5 provides the legislative framework for rulings to be given about the way in which the provisions of certain tax laws apply.

14. Provisions that are relevant to rulings are defined in section 357-55. Relevant provisions are provisions of Acts and regulations administered by the Commissioner that are about any of the following:

- income tax
- Medicare levy
- fringe benefits tax
- franking tax (defined as franking deficit tax, over-franking tax and venture capital deficit tax)
- withholding taxes (including non-resident withholding taxes and mining withholding tax)
- petroleum resource rent tax[32]
- minerals resource rent tax[33]
- indirect tax[34]
- excise duty[35]
- the administration or collection of those taxes, levies and duties
- product grants or benefits mentioned in section 8 of the *Product Grants and Benefits Administration Act 2000* (including energy grants, cleaner fuel grants and product stewardship (oil) benefits) or the administration or payment of such grants and benefits
- net fuel amount,[36] or the administration, collection or payment of a net fuel amount[37]
- a net amount, or the administration, collection or payment of a net amount,[38] and
- a wine tax credit, or the administration or payment of a wine tax credit.[39]

[32] From 1 July 2006.
[33] From 1 July 2012.
[34] From 1 July 2010.
[35] From 1 July 2010.
[36] The term 'net fuel amount' is defined in subsection 995-1(1) of the ITAA 1997 and has the meaning given by section 60-5 of the *Fuel Tax Act 2006*.
[37] From 1 July 2006.
[38] From 1 July 2010.
[39] From 1 July 2010.

15. A ruling is an expression of the Commissioner's opinion of the way in which a provision of a tax law applies, or would apply, to a taxpayer who has obligations or entitlements under those laws. A ruling is a way for a taxpayer to find out the Commissioner's view about how the laws apply, thereby reducing uncertainty when they self-assess their obligations or entitlements.

16. A ruling confers the highest level of protection so that a taxpayer is not liable to pay any more tax or excise duty (or repay any credit, grant or benefit received) than is contemplated in the ruling if the ruling applies to them, and they rely on it, but it is later found to be incorrect. In other words, the Commissioner is legislatively prevented from collecting the tax that would otherwise be payable under the law.

17. Advice in the form of a ruling is to be given in accordance with the procedures relevant to the preparation and authorisation of the respective type of ruling. There are three types of rulings:

- public rulings
- private rulings, and
- oral rulings (however, oral rulings cannot be provided in relation to indirect tax, excise or MRRT matters).

### *Application of rulings and level of protection*

18. A ruling applies to a taxpayer if, at the relevant time (that is, the time they rely on the ruling), the following are satisfied:

- the taxpayer is a member of the class to whom the ruling applies (in the case of a public ruling)
- the ruling is given in response to a ruling application (in the case of a private ruling or oral ruling)
- the facts, assumptions or conditions set out in the ruling are met[40], and
- the law to which the ruling relates remains in force.

19. A ruling binds the Commissioner if it applies to a taxpayer and they rely on it by acting (or omitting to act) in accordance with it.[41] In the case of GST groups, joint ventures and incapacitated entities, an indirect tax ruling binds the Commissioner in relation to both the representative entity and the member entity where both members rely on the ruling by acting (or omitting to act) in accordance with it.[42]

20. The effect of a ruling binding the Commissioner is that there is no tax shortfall even if the ruling is incorrect. The false or misleading statement penalty and interest charges are not applied in these circumstances.

[40] If the scheme is not implemented in the way set out in the private ruling or as used for the basis of an oral ruling, or material facts were omitted from the ruling application, or misleading or inaccurately stated, the ruling does not bind the Commissioner, see paragraph 19 of Taxation Ruling TR 2006/11 *Private Rulings*.
[41] See section 357-60.
[42] See subsections 357-60(5) and (6).

21. For example, a private ruling is issued to a particular taxpayer stating that a certain type of expense is deductible. The taxpayer relies on this ruling and claims a deduction for this expense in their income tax return. Subsequently, a decision is given by a court in another case that this particular expense is not deductible. The Commissioner is bound by the private ruling and as a result cannot amend the taxpayer's assessment to disallow the deduction for this expense. This is so even though other taxpayers had not claimed the particular expense and were subject to the tax that would otherwise be payable under the law.

22. If a taxpayer relies on a ruling and is misled by it, the taxpayer will receive protection from the false or misleading statement penalty and, if they have acted reasonably and in good faith, from interest charges. A taxpayer may be misled by a ruling even if the information contained in it is correct. A ruling may mislead because of something contained in it, or because something is omitted from the statement.

23. Theoretically, a ruling may be so misleading that it is incorrect.[43] Whether this is the case or not depends, in part, on the taxpayer or the class of persons to which it is directed. An assessment that a public ruling is so misleading as to be incorrect needs to be made generally and not on an individual case basis. The misleading nature of the ruling would ordinarily be recognised publicly, for example, by the issue of an addendum or erratum. If a ruling is accepted as being so misleading as to be incorrect then taxpayers who relied on the ruling would be protected from the tax that would otherwise be payable under the law.

24. When the Commissioner is legally bound by a ruling[44] and the correct application of the law is less favourable to a taxpayer than the ruling provides, the ruling protects the taxpayer against the law being applied by the Commissioner in that less favourable way. The ruling does not bind the taxpayer, who retains their entitlements under the law where those entitlements are more favourable to the taxpayer than is expressed in the ruling.[45]

25. If the Commissioner has made a ruling about a relevant provision[46] and that provision is re-enacted or remade, the ruling is taken to be about the re-enacted or remade provision, to the extent that the new law expresses the same ideas as the old law. However, if the law is substantively changed, the part of the ruling dealing with the changed law ceases to apply.[47]

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[43] This situation would only be expected to happen in very limited circumstances. For example, public rulings that are notified on the Public Rulings Program must be examined by the appropriate Public Rulings Panel before they are issued (however, there are some exceptions, for example Taxation Determinations and procedural or annual rulings). Each Rulings Panel comprises several of the most senior ATO staff and external representatives who are respected tax practitioners and/or academics. It is more likely that this could occur in relation to other materials that do not receive the same level of scrutiny and are expressed more generally because they endeavour to provide practical guidance to large numbers of taxpayers to help them meet their tax obligations. See paragraphs 66 to 69 of this practice statement.

[44] Paragraphs 35 and 114 of this practice statement explain when the Commissioner is legally bound by a ruling.

[45] See section 357-70.

[46] The term 'relevant provision' is explained in paragraph 14 of this practice statement.

[47] See section 357-85 and also paragraph 49 of TR 2006/10 for public rulings and paragraph 51 of TR 2006/11 for private rulings.

### *GST payable*

26. There are special rules that apply in relation to the amount of GST payable where a supplier relies on a ruling.[48]

27. Despite anything else in the GST law, if a supplier relies on a ruling, the GST payable on the supply is the amount worked out in accordance with that ruling. Because the input tax credit entitlement of the recipient of the supply depends on the GST payable by the supplier, the reliance on a ruling by the supplier can affect the recipient's input tax credit entitlement.[49]

28. However, this will not be the case if the supplier stops relying on the ruling (for example by acting inconsistently with it)[50] or for the purposes of an objection to the ruling under section 359-60.[51]

### *Public rulings*

29. A public ruling is a published statement of the Commissioner's opinion of how a provision of tax law applies, or would apply, to taxpayers in relation to a class of schemes or to a class of taxpayer generally, rather than in respect of the specific circumstances of a particular taxpayer. Public rulings provide advice for taxpayers, their advisers and ATO personnel on the interpretation of tax laws that affect liability or entitlements under those laws. In addition, public rulings can address administrative and procedural provisions, including those relating to the collection of liabilities. ATO personnel should refer to the intranet version of the *Public rulings manual* for current procedures on producing a public ruling.

30. The ATO primarily issues formal public rulings grouped in different series (for example, the 'TR' series).[52] However, there can also be other publications not in a formal ruling series which are declared to be public rulings.[53] All public rulings are clearly stated to be public rulings**.**[54]

31. Notice of the making of a public ruling is published in the *Commonwealth of Australia Gazette.* Public rulings are accessible via the Legal Database.

32. Topics on which the ATO is preparing public rulings are listed on the 'Public Rulings Program,' which is also accessible to taxpayers on the ATO website. The relevance and performance of the public rulings program is monitored by the National Tax Liaison Group, which consists of representatives of the major tax, law and accounting professional associations and senior members of the ATO. Topics on the program arise from or reflect suggestions made either internally through ATO issue escalation processes, or from external sources such as tax professional and industry representative bodies. These topics are subject to risk assessment and prioritisation according to the ATO's Enterprise Risk Management Framework.[55]

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[48] From 1 July 2010. See subsection 357-60(3).
[49] See subsection 357-60(3) and section 11-25 of the GST Act.
[50] See paragraph 357-60(1)(b) and the note to subsection 357-60(3).
[51] See subsection 357-60(4).
[52] For further information, see paragraphs 22 to 23 of TR 2006/10 and the *Public rulings manual*.
[53] See paragraphs 66 to 67 of this practice statement.
[54] See subsections 358-5(3) and 359-20(1). See paragraph 47 of this practice statement for special rules about indirect tax rulings issued before 1 July 2010.
[55] See Corporate Management Practice Statement PS CM 2003/02 *Risk and issues management*, Law Administration Practice Statement PS LA 2012/1 *Management of high risk technical issues and engagement of officers in the Tax Counsel Network* and the *Public rulings manual*.

33. The ATO's Public Rulings and Superannuation Rulings Panels were established to consider and advise on the proposed interpretation of the law in major rulings. They are comprised of several of the most senior ATO personnel as well as external representatives who are respected tax practitioners and/or academics. The primary role of the rulings panels is to discuss the technical and practical merits of the draft ruling presented to them by the authoring team and to advise on our proposed interpretation of the law. The rulings panels are advisory and not decision making bodies. The rulings panels are one of a number of measures to ensure the highest quality of public rulings.

*Public rulings under Division 358*

34. Division 358 provides for the making, application and withdrawal of public rulings. A public ruling is the written expression of the Commissioner's considered view on the way in which a relevant provision[56] applies, or would apply, to an 'entity' or class of entities including in relation to a defined 'scheme' or class of schemes.[57]

35. A public ruling binds the Commissioner from the time it is published or such earlier or later time as specified in the ruling.[58] Where a new public ruling (other than an indirect tax or excise ruling)[59] changes the Commissioner's general administrative practice about the way in which a relevant provision applies, in a way that is less favourable to entities, the new ruling (that is, the proper operation of the law) applies only in relation to schemes that started after the publication date of the new ruling.[60] The ATO view on when a general administrative practice is established is set out in Taxation Determination TD 2011/19 *Tax administration: what is a general administrative practice for the purposes of protection from administrative penalties and interest charges?*.

36. If there is a change to a general administrative practice[61] the ATO would usually communicate the change by way of a public ruling.[62] However, where there is a change to a general administrative practice that is less favourable for taxpayers and that change is not communicated by way of a public ruling, the ATO will not necessarily amend assessments that were raised consistently with a practice in place at the time of the assessments. As a general rule the ATO will amend assessments only where tax avoidance is involved or the practice has been exploited in an unintended way.

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[56] See paragraph 14 of this practice statement.
[57] Section 358-5.
[58] Subsection 358-10(1).
[59] See subsection 358-10(2). From 1 July 2010 the Commissioner may revise an indirect tax or excise ruling at any time, whether or not the relevant scheme or tax period has commenced: see subsection 357-75(1).
[60] Subsection 358-10(2).
[61] If there is a change to the Commissioner's general administrative practice, ATO personnel must ensure that they follow PS LA 2011/27 to determine whether the ATO should only apply its view of the law prospectively.
[62] In some cases it may not be appropriate or possible for the Commissioner to change a general administrative practice by way of a public ruling. For example, where the general administrative practice concerns an issue beyond the scope of the rulings regime under Division 358. In such cases, some other product would be used to communicate the change.

*Inconsistent rulings*

Public rulings other than indirect tax or excise rulings

37. If a new public ruling (other than an indirect tax or excise ruling) is inconsistent with a previously issued private or oral ruling, the taxpayer can rely on either the new public ruling or the existing private or oral ruling if the relevant income year or scheme specified in that ruling has commenced.[63] In some situations a new public ruling may apply in addition to an existing ruling and in this case an entity may choose which ruling to rely on.[64] Taxation Ruling TR 2006/10 *Public Rulings* addresses this and other aspects of public rulings under Division 358.

Public indirect tax or excise rulings

38. If a new public indirect tax or excise ruling is inconsistent with a previously issued indirect tax or excise private ruling, the new public ruling is taken to apply from the later of:

    - the time it is made, and
    - the commencement time specified in the public ruling.

    The indirect tax or excise private ruling, to the extent of the inconsistency, is taken to cease to apply at the later time set out above.[65]

39. In some situations a new public indirect tax or excise ruling may apply in addition to an existing public ruling and in this case an entity may choose which ruling to rely on to the extent of the inconsistency.[66]

*Withdrawal of a ruling*

40. A public ruling provides protection to taxpayers where it is favourable to them until it is withdrawn at the time specified by notice of the withdrawal published in the *Commonwealth of Australia Gazette*[67] or when it specifies that it ceases to apply.[68] The withdrawal takes effect from the time specified in the notice and that time must not be before the time the notice is published.[69]

41. Details of the withdrawal of a public ruling can also be found on the Legal Database. The Commissioner can have regard to the consequences that an immediate date of withdrawal may have if a replacement ruling provides for different treatment, and may therefore delay the withdrawal to minimise any adverse consequences. The *Public rulings manual* found on the intranet provides ATO personnel with instructions on preparing addenda and withdrawal documents for public rulings.

[63] Item 3 in the table in subsection 357-75(1).
[64] Items 1 and 3 in the table in subsection 357-75(1).
[65] See subsection 357-75(1B).
[66] See subsection 357-75(1A).
[67] Section 358-20.
[68] Subsection 358-15(1). Class Rulings and Product Rulings specify the periods for which the ruling has effect.
[69] Subsection 358-20(2).

*Relying on a ruling*

42. A public ruling may be relied on by anyone to whom it properly applies.[70] An entity does not need to know of the existence of a public ruling to rely[71] on it if, for instance, they have self-assessed in the same way as the ruling provides. An entity may rely on a public ruling at any time unless they are prevented by a time limit imposed by a tax law (such as an entity's period of review for their assessment). It is not necessary to rely on the public ruling at the first opportunity.[72]

43. When self-assessing a liability or entitlement, an entity is not obliged to act in accordance with a public ruling that applies to them. However, if a public ruling applies to an entity and they do not follow it when self-assessing their liability or entitlement, they can expect the ATO to amend their assessment if their assessment is examined later. They then would have the usual rights of objection and appeal against the assessment.[73]

44. Failure to follow a public ruling does not necessarily lead to the application of any shortfall penalties.[74] Such penalties only apply if the taxpayer has failed to take reasonable care,[75] or where a relatively large adjustment is involved in relation to an income tax, PRRT or MRRT matter and the taxpayer does not have a reasonably arguable position (or the penalty relates to certain tax avoidance schemes). MT 2008/2 explains that whether the taxpayer has a reasonably arguable position will depend on whether the view taken by the taxpayer is about as likely as not to be correct (even if the ATO takes a different view).

45. Where a taxpayer does not rely on a public ruling and has a tax shortfall they will not be protected from interest charges. However, some or all of this interest may be remitted depending on the circumstances. In considering any remission, ATO personnel would need to have regard to the principles in PS LA 2006/8.

Existing public rulings under Part IVAAA

46. A public ruling made under (the now repealed) Part IVAAA of the TAA continues in force as if it had been made under Division 358.[76]

Existing public indirect tax rulings before 1 July 2010

47. Only indirect tax rulings in force just before 1 July 2010 and labelled as a public ruling or described as a public ruling in the *Commonwealth of Australia Gazette* are treated as if they had been made under the amended Division 358.[77]

[70] There are special rules that apply to rulings given to GST groups, joint ventures and incapacitated entities. See paragraph 19 of this practice statement for further explanation.
[71] Relying on a ruling means acting (or omitting to act) in accordance with the ruling: see paragraph 357-60(1)(b).
[72] Subsection 357-60(2).
[73] A taxpayer who is dissatisfied with their assessment may object to it – see section 175A of the *Income Tax Assessment Act 1936* (ITAA 1936).
[74] See note to subsection 357-65(1).
[75] MT 2008/1 explains the meaning of reasonable care as well as other behaviours such as recklessness and intentional disregard.
[76] Subitem 29(1), Schedule *2, Tax Laws Amendment (Improvements to Self Assessment) Act (No. 2) 2005.*
[77] See subitem 46(3) in the *Tax Laws Amendment (2010 GST Administration Measures No. 2) Act 2010.*

48. Consequently, Division 358 applies to rulings made before 1 July 2010 issued as part of the Commissioner's formal rulings series for indirect taxes. This includes Goods and Services Tax Rulings (GSTRs), Goods and Services Tax Determinations (GSTDs), some Goods and Services Tax Bulletins (GSTBs), Wine Equalisation Tax Rulings (WETRs), Wine Equalisation Tax Determinations (WETDs) and Luxury Car Tax Determinations (LCTDs).

49. Division 358 also applies to other ATO publications about indirect tax laws that were issued before 1 July 2010 and are labelled as public rulings. This includes some items on industry partnership issues registers which are published on ato.gov.au

50. 'Other advices', a type of advice issued by the ATO before 1 July 2010, were public indirect tax rulings under former section 105-60. They are now written guidance from 1 July 2010.

### *Product rulings*

51. Product rulings are public rulings on the application of relevant provisions[78] of tax law to a scheme in which a number of taxpayers individually enter into substantially the same transactions with a common entity or group of entities.

52. Product rulings enable taxpayers to obtain the Commissioner's public views on the application of tax provisions claimed to be applicable to participants in investment or financial schemes (or 'products').[79] The Commissioner has a discretion whether or not to issue a product ruling in relation to any defined scheme, and may decline to do so in some circumstances.[80] A product ruling does not provide any assurance about the commercial or financial viability of the scheme.

53. A written application is required for a product ruling. The information that should be addressed in an application is detailed in a checklist, which can be downloaded from the ATO website. Providing the information required by the checklist will assist in expediting the issue of the product ruling.

54. A draft product ruling is sent to the applicant to obtain certain agreements and statements.[81] Unlike the final product ruling it is not intended that the draft product ruling be relied upon. It is not a publication approved in writing by the Commissioner. Consequently, there is no protection against liability for any tax shortfall nor, unless the Commissioner's discretion is exercised, against false or misleading statement penalty and interest charges if a taxpayer seeks to rely on statements in the draft ruling.

55. A final product ruling provides protection to potential participants in respect of the tax treatment of a defined scheme, provided the scheme is carried out in accordance with the way it is described in the product ruling. The highest levels of disclosure are therefore expected of the applicant for the ruling. It should be a full and true disclosure.

[78] See paragraph 14 of this practice statement. From 1 July 2010, as a result of the change to the definition of relevant provision a product ruling can now be given on indirect taxes or excise duties.
[79] See paragraphs 9 and 10 of Product Ruling PR 2007/71 *The Product Rulings system* for a discussion of the term 'product'.
[80] See paragraphs 82 to 88 of PR 2007/71.
[81] These include an agreement that the applicant abide by the terms of use of the product ruling and statements that the description of the scheme is accurate, covers all relevant features and that all parties named in the ruling consent to being named. See Chapter 15 of the *Public rulings manual*.

56. If the scheme described in the product ruling differs from the scheme that is actually entered into or carried out, the Commissioner is not bound by the ruling and consequently participants cannot rely on it. This is because it does not apply to the scheme actually entered into or carried out, but to a different scheme. In those circumstances, the Commissioner will consider the nature of the variation found and the ruling may be modified to reflect a difference in the carrying out of the scheme. This may occur by way of an 'addendum' to the product ruling, or by a replacement ruling.

57. The relevant product ruling will be withdrawn if the Commissioner finds that there is a material difference in the carrying out of the scheme from the scheme described in the product ruling. There will be a material difference in circumstances where the scheme has not been entered into or carried out as described in the ruling, and the difference in implementation results in a change in tax outcome for the participants.

58. Prospective participants in a defined scheme may wish to seek assurances from the promoter of the scheme that it will be carried out in the manner described in the product ruling relating to the scheme. They may also seek an independent opinion as to the commercial and financial viability of the product.

59. Further information about product rulings is contained in PR 2007/71.

### *Class rulings*

60. Class rulings are public rulings issued in response to a request from an entity seeking advice about the application of relevant provisions[82] to several taxpayers in relation to a defined scheme (other than an investment or financial product for which a product ruling can be issued). Class rulings prevent the need for a private ruling to be sought by, or on behalf of, each taxpayer within the class of entity affected by the scheme. In such cases, those seeking a class ruling should make a full and true disclosure about the existing or proposed arrangements.

61. The following are examples of situations where a class ruling may be given:

- advice sought by an employer about the income tax consequences of an employee share acquisition plan for employees
- advice sought by a company about the income tax consequences for its shareholders of a demerger by the company, or of a proposed distribution by the company, and
- advice sought by a Commonwealth, state or territory government or agency about a proposed program, for example, an industry restructure which has tax consequences for participants in that industry.

62. Applications for class rulings should be in writing. The information that should be included in the application is outlined on the ATO website.[83] Providing the information required will assist in expediting the issue of the class ruling.

63. Applications for a *priority* class ruling must include a full brief which identifies all relevant information, identifies all the issues and the position for and against each issue fully argued. For more information on the priority rulings process refer to Law Administration Practice Statement PS LA 2009/2 *The priority ruling process*.

[82] See paragraph 14 of this practice statement. From 1 July 2010, as a result of the change to the definition of relevant provision a class ruling can now be given on indirect taxes or excise duties.
[83] See also paragraph 20 of CR 2001/1.

64. A draft class ruling is sent to the applicant to obtain certain agreements and statements.[84] Unlike the final class ruling it is not intended that the draft class ruling be relied upon. It is not a publication approved in writing by the Commissioner. Consequently, there is no protection against liability for any tax shortfall nor, unless the Commissioner's discretion is exercised, false or misleading statement penalty and interest charges if a taxpayer seeks to rely on statements in the draft class ruling.

65. Further information about class rulings is contained in Class Ruling CR 2001/1 *Class Rulings system*.

### *ATO publications, or statements in publications, declared as public rulings*

66. ATO publications not having a public ruling title may nevertheless contain expressions of opinion about the application of relevant provisions of tax law. Such publications, or statements within them, may be declared to be public rulings either for a defined class of entity or more generally.

67. Such a publication has to be declared to be a public ruling, by stating expressly that it is a public ruling, and it should explain the level of protection it provides. As with all public rulings under Division 358, notice of the publication of such a document as a public ruling must be published in the *Commonwealth of Australia Gazette.*[85]

68. However, it should be noted that the scenario mentioned in paragraph 66 of this practice statement is not the Commissioner's usual practice. The information contained in general publications is often simply expressed and provides practical, step by step assistance. In the interests of making them easy to understand, legal language is avoided. The use of simple language and the absence of the rigorous review processes associated with public rulings increases the risk that errors will be made in general publications, and this informs the Commissioner's reluctance to be bound by them.

69. Errors made by the Commissioner, in the taxpayer's favour, in legally binding material impact on the general community. It is the community that forgoes the revenue lost because of the error. In addition, those taxpayers, who are able to rely on that erroneous view of the law, may be able to obtain a benefit that is unavailable to other taxpayers. It is these unfavourable outcomes that the Commissioner is avoiding by not being bound by all general publications.

### *Draft public rulings*

70. A draft public ruling is not a ruling. It is a consultative document which sets out the Commissioner’s preliminary view about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entity, in relation to a defined scheme or class of schemes.

[84] These include a statement that the description of the scheme is accurate and covers all relevant features, that the parties named in the ruling consent to being named and a statement to the effect that the negotiated date for publication is acceptable. See Chapter 16 of the *Public rulings manual*.
[85] Subsection 358-5(4).

71. Unless otherwise stated in the document, reliance on a statement in a current draft ruling provides the same level of protection as written guidance.[86] A taxpayer who relies on a draft ruling that is found to be incorrect, or misleading and makes a mistake as a result, will still be liable for any tax that would be otherwise payable under the law (unless a time limit imposed by the law precludes the liability). However, they are protected against false or misleading statement penalty and, if they have relied on the draft ruling reasonably and in good faith, against interest charges.[87]

72. Where a draft ruling sets out a view on how a relevant provision applies, and that view represents the Commissioner's general administrative practice, then that can affect the commencement date of the final ruling. In such a case, if the final public ruling (other than an indirect tax or excise ruling) takes a position that is less favourable to the taxpayer than the draft ruling, the view of the law taken in the final ruling can only be applied to schemes begun to be carried out after the final ruling is published.[88]

### *Publicly issued rulings that are not legally binding (IT, MT, SGR and SCR series)*[89]

73. In the interests of sound administration, the Commissioner has provided advice, in the form of public rulings, about the application of certain laws which do not form part of a legally binding rulings framework.

74. The Income Tax (IT) and Capital Gains Tax (CGT) Determination series were published prior to 1 July 1992 which is before any legislative framework for public rulings was established. Therefore, these two series are not legally binding on the Commissioner.

75. Publicly issued rulings in the Superannuation Guarantee Rulings (SGR), and Superannuation Contributions Rulings (SCR) series are not covered by any current legislative framework. Therefore, the SGR and SCR series of rulings are also not legally binding on the Commissioner.[90]

76. Rulings that are published within the MT series generally deal with tax laws that do not fit easily within any of the other series. However, some or all of a ruling in the MT series may be legally binding on the Commissioner as there may be a discussion of the administration or collection of a relevant provision for a ruling. In these circumstances, this section of the MT ruling is a public ruling under Division 358.

77. When the time comes to assess liability, the law as it then exists must be applied to the facts as established at that time.[91] Where the ruling is not legally binding, the basic administrative policy of the ATO is to stand by what is said in these rulings and to depart from them only if there are good and substantial reasons. Any departure would be confined to situations where:

- there have been legislative changes since the ruling issued

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[86] The level of protection for written guidance is explained in paragraphs 214 to 217 of this practice statement.

[87] See former section 284-215, sections 298-20 and 361-5 and section 8AAG of the TAA. For statements made after 3 June 2010 see also subsection 284-75(5) and section 284-224.

[88] Subsection 358-10(2). From 1 July 2010 the Commissioner may revise an indirect tax or excise ruling at any time, whether or not the relevant scheme or tax period has commenced: see subsection 357-75(1).

[89] Income tax, miscellaneous tax, superannuation guarantee and superannuation contributions ruling series.

[90] For more information on rulings relating to superannuation issues see PS LA 2009/5 *Provision of advice and guidance by the Australian Taxation Office (ATO)* in relation to the application of the *Superannuation Industry (Supervision) Act 1993* and the *Superannuation Industry (Supervision) Regulations 1994* to Self Managed Superannuation Funds.

[91] *Federal Commissioner of Taxation v. Wade* (1951) 84 CLR 105; (1951) 25 ALJ 626; (1951) 9 ATD 337; [1951] ALR 962 at 117.

- a tribunal or court decision has affected the ATO's interpretation of the law since the ruling issued, or
- for other reasons, the ruling is no longer considered appropriate.

For example, if commercial practice has changed, the ruling has been exploited in an abusive and unintended way, or the ruling is found on reconsideration to be wrong in law.

78. In the case of a legislative change, the timing of a departure from previous practice will depend on the date of effect of the legislation. In other cases, any such departure would be announced by issuing public advice or guidance, and would normally apply to transactions entered into after the issue of that public advice or guidance, unless particular circumstances warrant another approach.

79. In the event of a departure from a ruling of this kind, a taxpayer who relies on the ruling before its withdrawal will be protected from any false or misleading statement penalty that might otherwise arise. In addition, if relying on the ruling would otherwise give rise to an interest charge under a relevant provision,[92] the taxpayer will be protected from interest charges if they relied on the ruling reasonably and in good faith.

### *Private rulings*

80. A private ruling is a written expression of the Commissioner's opinion on how a relevant provision applies, or would apply, to a particular entity in relation to a specified scheme, arrangement or transaction.[93] It provides the taxpayer with advice on how the Commissioner will apply the tax law (which includes its administration or collection) to their particular circumstances. The taxpayer or their agent, may apply for a private ruling under Division 359 in the form approved by the Commissioner. Information about applying for private rulings can be obtained from ATO shopfronts and on the ATO website.

81. One of the basic requirements for taxpayers is to provide a full and true disclosure of the material facts. Otherwise the ruling may not be made in relation to the scheme that is actually proposed or that actually occurred. While not mandatory, for ruling requests made through tax professionals (including in-house tax professionals), applicants are encouraged to also provide a summary of the research and analysis of the technical issues. This ensures that the ATO takes into account the issues the taxpayer considers to be the most relevant to the case and assists with the timeliness of the response.

82. Applications for a *priority* private ruling must include a full brief, which identifies all issues and fully states the position for and against each issue. For more information on priority rulings process refer to PS LA 2009/2.

83. ATO personnel must refer to ORCLA as well as the relevant public rulings and law administration practice statements for guidance in preparing a private ruling, including the approval for issue by authorising officers.[94]

[92] See paragraph 14 of this practice statement.
[93] Section 359-5. See also TR 2006/11.
[94] See Law Administration Practice Statement PS LA 2002/13 *Authorisation of written binding advice*. See also TR 2006/11.

*Private rulings under Division 359*

84. Section 359-5 provides that a private ruling under Division 359 is a ruling made by the Commissioner on the way in which a relevant provision[95] of tax law applies, or would apply, to an entity in relation to a specified scheme.

85. A private ruling may cover any matter involved in the application of a relevant provision to the specified scheme, including an ultimate conclusion of fact. For example:

- the status of an individual as a resident of Australia for income tax purposes
- whether an activity constitutes the carrying on of a business or an enterprise, or
- the value of a CGT asset.

TR 2006/11 addresses this and other aspects of private rulings under Divisions 357 and 359.

Applying for a private ruling under Division 359

86. Subsection 359-10(1) provides that an applicant for a private ruling can be an 'entity', their 'agent', or a 'legal personal representative'. An agent is any person to whom the entity has given authority to apply for a private ruling on their behalf.

87. Usually the ruling applies only to the entity in respect of whom the application was made. However, a private ruling given to a trustee in respect of the tax affairs of a trust continues to apply where a new trustee is appointed. In situations where the trustee is replaced, the private ruling continues to apply to the new trustee, or any trustee replacing the new trustee, provided the ruling would have applied to the former trustee.[96] A ruling (other than an indirect tax or excise ruling) given to or for the trustee of a trust relating to the affairs of the trust also applies to the beneficiaries of the trust.[97]

88. An application for a private ruling must be made in the approved form and must contain such information relating to the ruling as required by the form.[98]

89. To facilitate this, the ATO provides two standard *Private ruling application* forms (one form for tax professionals and another form for others) specifying the requirements of an application.[99] These documents are available from the ATO website. In most cases, all that taxpayers are required to do is add their query, provide the relevant facts and sign the form.

[95] See paragraph 14 of this practice statement.
[96] Section 359-30.
[97] Paragraph 359-30(a). Ensuring that a private ruling given to a trustee of a trust also applies to a beneficiary of a trust is not appropriate in the indirect tax context as the trust and beneficiaries are separate entities for indirect tax purposes. It is also not appropriate in the excise context as the excise legislation imposes the relevant obligations on the entity that manufactures/deals with excisable goods. If the trust is this entity then there will be no obligations on the beneficiaries.
[98] Sections 359-10 and 388-50.
[99] A separate approved form is available for applications for a private ruling on the exercise of the Commissioner's discretion for non-commercial business losses under section 35-55 of the ITAA 1997. Separate approved forms dealing with other matters may be developed as required.

90. Tax professionals (including in-house tax professionals) are encouraged to use these standard forms and follow their requirements. However, the Commissioner does not insist on the use of these standard forms. The application will be in the approved form[100] provided it is in writing and contains all the necessary information, including copies of all relevant documents, the checklisted items and declaration referred to in the relevant standard form. While not mandatory, for ruling requests made through tax professionals (including in-house tax professionals), applicants are encouraged to also provide a summary of research and analysis of the technical issues.[101]

91. A tax agent, BAS agent or business entity that is registered as a user of the Tax Agent Portal, BAS Agent Portal or the Business Portal may lodge their private ruling application via the relevant portal. The portals are secure online environments for communicating with the ATO.

92. If a written request for advice is not in the approved form, the case officer should contact the taxpayer or their agent to ascertain the type of assistance required. If their needs can only be satisfied by a private ruling, they should be invited to supply the necessary information and be given guidance in making a valid application. If another form of assistance could satisfy their needs – for instance, an oral ruling, or guidance (including an ATO publication) – the case officer must explain the alternatives available (and their respective levels of protection). They must then invite the taxpayer to choose the form of assistance they prefer, provided the form of assistance is appropriate for the request. For example, oral guidance is generally inappropriate in relation to complex legal or factual matters.[102]

Requirements for a private ruling under Division 359

93. A private ruling can only be given on a specified scheme. The applicant must describe the scheme on which they are seeking a ruling. The ruling is made on the basis of:

- information (including documents identifying that information) provided in the application and by the applicant after the application (such as in response to any request by the ATO for further information)[103]
- any assumptions made by the Commissioner on which the correctness of the ruling might depend, such as about unknowable facts, including for example, about future events[104] (see paragraph 97 of this practice statement), and
- any relevant information from another source (see paragraph 95 of this practice statement).[105]

94. Importantly, if an applicant provides information indicating that the proposed scheme will be entered into or carried out in a way that is materially different from that described in the original application, this is to be treated as a new application for a private ruling. ORCLA provides procedural instructions for actioning such cases including amending the existing application in certain circumstances. Whichever procedure is followed the case is to be actioned so that work proceeds without any discontinuity.

[100] Subsection 388-50(1A).
[101] See paragraph 81 of this practice statement.
[102] Note that tax agents cannot obtain an oral ruling on behalf of a taxpayer. However, an oral ruling may be obtained by a taxpayer's legal personal representative – see subsection 360-5(1).
[103] Section 357-115.
[104] Section 357-110.
[105] Section 357-120.

95. Generally, if additional information is necessary to make a private ruling it must be requested from the applicant.[106] The Commissioner can take into account information provided by an entity other than the applicant, provided that the Commissioner tells the applicant what the information is and that the Commissioner intends to take the information into account.[107] The applicant must be given a reasonable opportunity (ordinarily 28 days) to comment on the use of that information before the ruling is made.[108]

96. Where disclosing information obtained from third parties to the applicant would breach the tax secrecy provisions, privacy legislation or the confidentiality of the entity providing the information, the Commissioner:

- must not use the information in making the private ruling, or
- should decline to rule where the information is material to the outcome of the private ruling.

97. An assumption should not be made if the applicant could reasonably be expected to have knowledge of the relevant fact. If making a private ruling would depend on a fact that may not occur, for instance about a future event, the Commissioner may either decline to make the ruling or make the ruling on the basis of an assumption. If the Commissioner proposes to make an assumption in making the ruling, the applicant must be informed of the assumption proposed to be made and given a reasonable opportunity (ordinarily 28 days) to respond.[109]

98. The *Notice of private ruling* may consist of a number of separate rulings, each stating the Commissioner's opinion of how a relevant provision applies. Ordinarily, private rulings should only be given on the issue(s) raised in the application. However, where a related issue is not directly raised in the application, but is crucial to providing an accurate ruling on the issue(s) raised in the application, a related ruling can be made without first seeking the applicant's consent to rule on the related issue.[110] The important consideration is that the taxpayer should not be misled by the private ruling and its scope should be clear on its face.

99. Where a related issue is not crucial to providing an accurate ruling on issues raised, a private ruling may be made on the related issue if:

- a ruling on the related issue would benefit the recipient of the ruling by informing them of their wider tax obligations in respect of the scheme set out in the application, and
- the applicant consents to those related issues being addressed in the private ruling.

In the absence of that consent, and in accordance with ORCLA procedures, the case officer should insert a note in the *Notice of private ruling* warning the recipient that some related issues have been identified that may be relevant to their scheme. The recipient should be advised that a further application would need to be made to obtain private rulings on those issues. It is important, however, that this process should not unduly delay the provision of advice on the particular matters requested.

[106] Section 357-105.
[107] Paragraph 357-120(a).
[108] Section 357-120.
[109] Section 357-110.
[110] Section 359-45.

100. When considering a request for a private ruling, case officers must consider the application of any general anti-avoidance rules (for example, Part IVA of the ITAA 1936 or Division 165 of the GST Act). Case officers should follow the instructions in Law Administration Practice Statement PS LA 2005/24 *Application of General Anti-Avoidance Rules*[111] and the procedures in ORCLA.

Declining to make a private ruling under Division 359

101. The Commissioner must comply with a private ruling application unless there is a basis to decline to make the ruling. Without attempting to provide an exhaustive set of circumstances, the Commissioner may decline to make a private ruling if:

- making the ruling would prejudice or unduly restrict the administration of a taxation law,[112] for example if:
  - the application is frivolous or vexatious
  - the applicant's liability or entitlement would not be affected by the outcome of the ruling because the assessment review period has ended
  - making the private ruling would require an unreasonable diversion of resources, for instance, if it would require the allocation of resources disproportionate to the subject of the ruling
  - the scheme is speculative, or not developed sufficiently for it reasonably to be considered in serious contemplation at the time of the application
  - the applicant has refused to pay an amount charged for valuation services where a valuation is required to make the private ruling[113]
  - further information necessary to make the ruling has been requested from the applicant and the applicant has not responded within a reasonable time,[114] or
  - information provided by an entity other than the applicant is material to the outcome of the ruling, but conveying that information to the applicant would breach the tax secrecy provisions, privacy legislation or the confidentiality of the person providing the information,[115]
- the correctness of a private ruling would depend on an assumption about a future event or some other matter and it is considered inappropriate to make a private ruling on the basis of that assumption[116]
- the matter sought to be ruled on is already being (or has been) considered by the Commissioner for the entity, for example, in the

[111] In particular, case officers should have regard to paragraphs 9 to 13 of PS LA 2005/24 which concern the situation where the taxpayer has not requested a private ruling on Part IVA.
[112] See paragraph 359-35(2)(a).
[113] See paragraphs 3.81 and 3.90 of the Explanatory Memorandum to the Tax Laws Amendment (Improvements to Self Assessment) (No. 2) Bill 2005.
[114] See Law Administration Practice Statement PS LA 2008/5 *Written binding advice (private) – requests for further information, notification of assumptions and intended use of information from sources other than the applicant.*
[115] Section 359-35, section 3C of the TAA and paragraph 3.44 of the Explanatory Memorandum to the Tax Laws Amendment (Improvements to Self Assessment) (No. 2) Bill 2005.
[116] Section 357-110.

course of an audit or in deciding an objection against an assessment, or

- the matter sought to be ruled on is about how the Commissioner would exercise a power under a relevant provision[117] when the Commissioner actually exercises the power or decides that it is not appropriate to do so.

102. Therefore, the Commissioner may decline to rule on a matter relating to the exercise of a discretion if, in the circumstances of the applicant's case, it would be more appropriate to exercise the discretionary power under that provision, or to inform the applicant that the discretionary power will not be exercised. Generally, applicants seeking the exercise of a discretionary power should request the exercise of that power rather than apply for a private ruling on how that power might be exercised. For example, in relation to a discretion to defer the time for payment of tax, the Commissioner may just decide to defer the time at which an amount is payable by the applicant rather than make a private ruling.

103. A decision to decline to make a private ruling must be authorised by an authorising officer.[118] The applicant must be provided with reasons in writing if the making of the private ruling is declined.[119]

Making a private ruling under Division 359

104. A private ruling is made by recording it in writing and giving a copy of it to the applicant.[120]

105. ATO personnel should not generally provide pre-ruling opinions, draft private rulings or any other written expressions or written endorsements of informal assistance that may mislead taxpayers if that preliminary view is subsequently changed.[121] File notes of telephone conversations or minutes of interviews may be provided to the taxpayer if they do not contain advice, or if the risk of misleading taxpayers is properly managed. This does not mean that ATO personnel cannot undertake discussions with the applicant to establish the particulars of the scheme and its purpose. Nor does this mean that a tax officer is precluded from general discussions with a taxpayer in relation to an issue. These discussions are encouraged. The tax officer must ensure that the taxpayer is not misled and must clearly explain that any comments made will not be binding on the Commissioner.

106. When making a private ruling, ATO personnel must follow relevant corporate policy[122] and business line procedures for applying or creating the precedential ATO view.

107. A private ruling must:

- state that it is a private ruling[123]
- identify the entity to which it applies[124]

[117] The term 'relevant provision' is explained in paragraph 14 of this practice statement.
[118] See PS LA 2002/13.
[119] Section 359-35.
[120] Section 359-15.
[121] Paragraphs 177 to 182 of this practice statement discuss the circumstances when indicative advice may be provided prior to the issue of a private, class or product ruling.
[122] See PS LA 2003/3.
[123] Subsection 359-20(1).
[124] Subsection 359-20(2).

- specify the scheme and the relevant provision to which the ruling relates,[125] and
- detail any assumptions made.[126]

108. A private ruling should specify the time it begins to apply and the time it ceases to apply, for example, a particular income year.[127] This can be any time in the future or the past.[128]

109. If a private ruling does not specify the date from which it begins, then the ruling applies from the time the ruling is made.

110. If a private ruling (other than a private indirect tax or excise ruling) does not specify an end time, it ceases to apply at the end of the income year or other accounting period in which it started to apply.[129]

111. If a private indirect tax or excise ruling does not specify an end time it continues to apply until it is overridden by a later indirect tax or excise ruling.[130]

112. ORCLA provides guidelines about the time of application for private rulings and on ruling for extended periods.

113. The *Notice of private ruling* given to the applicant displays an authorisation number[131] and is accompanied by an explanatory note setting out its level of protection.

Relying on a private ruling under Division 359

114. A private ruling binds the Commissioner (not the taxpayer) if the ruling applies to the entity and that entity relies on the ruling (by acting, (or omitting to act), in accordance with it).[132] In other words, taxpayers who follow a ruling that applies to them can ensure that the Commissioner is bound to assess them as set out in the ruling in relation to a particular matter.[133] However, even if a taxpayer does follow a private ruling, the Commissioner may apply a relevant provision of the law in a way that is more favourable for them than is set out in the ruling if the Commissioner subsequently comes to the view that the ruling is incorrect and that it disadvantages the taxpayer (provided the Commissioner is not prevented from doing so by a time limit imposed by the law).[134]

115. A private ruling applies to an entity if it is given in response to an application by, or on behalf of, that entity and the facts, assumptions and conditions set out in the ruling are met.

[125] Subsection 359-20(2).
[126] Section 357-110.
[127] Subsection 359-25(1).
[128] Subsection 359-25(2).
[129] Subsections 359-25(3) and (4).
[130] Subsection 357-75(1B) and the note to subsection 359-25(4). A private indirect tax or excise ruling may also cease to apply to the extent of any inconsistency if there is a later indirect tax or excise public ruling. See paragraph 35 of this practice statement for further explanation.
[131] See ORCLA.
[132] However, this is subject to the special rules about GST groups, joint ventures and incapacitated entities. See subsection 357-60(5) and subsection 357-60(6).
[133] Section 357-60.
[134] Section 357-70.

116. The benefit derived by the entity having a private ruling is that the Commissioner must not apply the law in a way that is inconsistent with the ruling to the entity's detriment. However, if the scheme is not implemented or carried out in the way set out in the ruling, or if material facts were omitted from the ruling application, or were misleadingly or inaccurately stated, the ruling does not bind the Commissioner.

117. An entity is not obliged to act in accordance with a private ruling and is not subject to any special sanction if they fail to follow the ruling.[135] The entity can always take a more favourable position if that is open under the tax law.

118. The entity is not liable for the false or misleading penalty merely because they have not followed a private ruling applicable to them in relation to a particular matter. Such penalties only apply if the taxpayer has failed to take reasonable care.[136] A penalty may also be imposed where a relatively large adjustment is involved in relation to an income tax. PRRT or MRRT matter and the taxpayer does not have a reasonably arguable position[137] (or the penalty relates to certain tax avoidance schemes).[138]

119. Where a taxpayer does not follow a private ruling they will not be protected from interest charges. However, some or all of this interest may be remitted. In considering any remission ATO personnel would need to have regard to the principles in PS LA 2006/8.

*Inconsistent rulings*

Private rulings other than indirect tax or excise rulings

120. In the event of an inconsistency between a public ruling and a later private ruling, an entity may choose to rely on the public ruling that applies to them or the private ruling that specifically addresses their circumstances and applies to them, notwithstanding the inconsistency with a prior public ruling.[139]

121. However, there are special rules which limit the ability to rely on a private ruling where it is inconsistent in some respect with a later public or private ruling.[140] A private ruling that is inconsistent with a later public ruling is taken not to have been made if, when the public ruling is made, the following two conditions are met:

- the income year or other period to which the rulings relate has not begun, and
- the scheme to which the rulings relate has not begun to be carried out.

122. The recipient of a private ruling may also check or clarify the ruling by applying for a new ruling. If the recipient informed the Commissioner about the earlier private or oral ruling when they applied for the new ruling then the new ruling applies. However, if the recipient did not inform the Commissioner about the earlier private or oral ruling when they applied for the new ruling then the earlier private or oral ruling applies.[141]

[135] Section 357-65.
[136] See former subsection 284-215(2). For statements made after 3 June 2010 see subsection 284-75(5) and section 284-224. MT 2008/1 explains the meaning of reasonable care.
[137] Subsections 284-75(2) and 284-90(1). See MT 2008/2 which explains the meaning of reasonably arguable position.
[138] Section 284-145.
[139] Section 357-75.
[140] Section 357-75.
[141] See item 2 in the table in subsection 357-75(1).

Private indirect tax or excise rulings

123. Special rules apply where there are two inconsistent indirect tax or excise rulings that apply to an entity and at least one of the rulings is not a public ruling. In these circumstances, the later ruling is taken to apply from the later of:

- the time it is made, and
- the commencement time specified in the later ruling.

The earlier ruling, to the extent of the inconsistency, is taken to cease to apply at the time set out above.[142]

*Special procedures relating to private rulings under Division 359*

Existing private rulings under Part IVAA

124. A private ruling made under (the now repealed) Part IVAA of the TAA continues in force as if it had been made under Division 359.[143]

Existing private indirect rulings issued before 1 July 2010

125. A private indirect tax ruling that is in force just before 1 July 2010 has effect as if it had been made under the amended Division 359.[144]

Application for private indirect tax ruling made before 1 July 2010

126. An application for a private indirect tax ruling is taken to have been made under the amended Division 359 if:

- the application was made before 1 July 2010, and
- just before that time the Commissioner had neither made the ruling nor declined to make the ruling and the taxpayer had not withdrawn the application.[145]

General anti-avoidance rules

127. ATO personnel must consider the application of the relevant general anti-avoidance rules in accordance with PS LA 2005/24. This instruction applies irrespective of whether a private ruling application expressly seeks a ruling on the applicability of a general anti-avoidance rule. ORCLA contains procedural instructions to ATO personnel in considering the application of general anti-avoidance rules.

[142] See subsection 357-75(1B).
[143] Subitem 29(2), Schedule 2, *Tax Laws Amendment (Improvements to Self Assessment) Act (No. 2) 2005.*
[144] See subitem 46(2) in the *Tax Laws Amendment (2010 GST Administration Measures No. 2) Act 2010*. Note: it was not possible to extend this to excise advice as only administratively binding advice and not rulings were able to be provided on these matters before 1 July 2010.
[145] See subitem 46(4) in the *Tax Laws Amendment (2010 GST Administration Measures No. 2) Act 2010*.

Revising a private ruling (other than an indirect tax or excise ruling)

128. The Commissioner may revise a private ruling but only if the scheme to which the original private ruling relates and the relevant income year or accounting period have not begun.[146] After this time, if the Commissioner concludes that the ruling was wrong, the Commissioner may adopt the correct position if it is more favourable to the taxpayer than was set out in the ruling.[147]

Revising a private indirect tax or excise ruling

129. The Commissioner may revise a private indirect tax or excise ruling at any time. The revised private ruling only applies to the extent that it is inconsistent with an earlier private ruling, and applies from the date it is issued or such later time as specified in the private ruling.[148] This provides the Commissioner with the flexibility to allow taxpayers a reasonable period to take into account the new ruling.

Timeframes – ATO service standards

130. In accordance with the ATO service standards we aim to provide a response to an application for a private ruling within 28 days of receiving all the necessary information. If all the necessary information has not been supplied in the application, the ATO aims to contact the applicant within 14 days of receiving the application to ask for the information or where the issues are complex, contact the applicant to negotiate a suitable timeframe to request the information. If the application raises a valuation matter or a complex matter that will take more than 28 days to resolve after receiving all the required information, the ATO aims to contact the applicant within 14 days of receiving all necessary information to negotiate an extended reply date.[149]

Timeframes – legislation

131. If the ruling has not been made (or the Commissioner has not declined, with reasons, to issue the ruling requested) within the statutory period, an applicant may notify the Commissioner in writing requiring the private ruling to be made. The statutory period is 60 days from the time the application was made, extended in the following circumstances (but ignoring any overlap) by:[150]

- the number of days between the day on which additional information was requested and the day on which it was received by the Commissioner
- the number of days between the day on which the Commissioner tells the applicant about an assumption proposed to be relied on in making

[146] Subsections 359-55(1) and (2).
[147] Section 357-60 and 357-70.
[148] Subsection 357-75(1B). Note also the specific rule in subsection 359-55(5) which states that if a private indirect tax or excise ruling is revised and it specifies the time from which the revision begins to apply (which is a time after the revision is made) then the ruling in its initial form stops applying to you at the specified time.
[149] The ATO has put in place the priority private ruling process to manage the provision of advice for certain significant commercial transactions that meet particular criteria. The process is intended to mitigate the risk of being unable to provide advice in timeframes consistent with taxpayers' business needs around those transactions. In those cases, the requested timeframe for response is part of a case plan agreed with the applicant. The applicant is notified as soon as possible of any additional information requirements or changes to the case plan. See PS LA 2009/2.
[150] Subsection 359-50(2).

the ruling and the day on which the applicant's response about the assumption is received by the Commissioner

- the number of days between the day on which the Commissioner tells the applicant about information from another source proposed to be relied on in making the ruling and the day on which the applicant's response about that information is received by the Commissioner, and
- the number of days between the day on which the Commissioner tells the applicant that a valuation matter has been referred to a valuer and the day on which the Commissioner informs the applicant that the valuer's work on the matter has been completed.

132. If the Commissioner has neither made the ruling nor declined to make the ruling within 30 days of the applicant's notice, the applicant may exercise a right of objection against the failure to make the ruling. To do so, the applicant must lodge the objection within 60 days after the end of that 30 day period, in the approved form, together with a draft private ruling.[151]

133. If, within the specified time period, the Commissioner does not issue a private ruling, either in the form of the applicant's draft or in some other form, the objection is taken to have been disallowed by the Commissioner.[152] The specified time period is the later of 60 days:

- after the objection was lodged with the Commissioner, or
- the day on which a decision was made to agree to a request to deal with the objection as if it had been lodged within time.

134. Rights of review by the Administrative Appeals Tribunal, or appeal to the Federal Court, against a disallowed objection are then available to the applicant.[153]

Valuation matters

135. If a private ruling application requires the value of something to be determined,[154] the Commissioner may seek a valuation from a valuer. If a valuation is provided by the applicant, the Commissioner may seek a review of the valuation. The Commissioner may charge the applicant for the valuation, or review of the valuation, by a valuer.[155]

136. The applicant must be informed, initially, that the valuation matter has been referred to a valuer, and later, when the valuer's work in relation to the matter has been completed.[156]

137. ATO personnel should follow the procedures in ORCLA that deal with valuation matters.

[151] Subsection 359-50(3) and paragraph 14ZW(1)(ba) of the TAA. An entity may make a written request that a late objection be dealt with as if it had been lodged within the objection period – see subsection 14ZW(2) and section 14ZX of the TAA. See also paragraphs 25 and 130 to 134 of Taxation Ruling TR 2011/5 *Income tax: objections against income tax assessments* and Law Administration Practice Statement PS LA 2003/7 *Taxation objections – late lodgment*.
[152] Section 14ZYB of the TAA.
[153] Section 14ZZ of the TAA.
[154] Other than the valuation of a gift or contribution for the purposes of Division 30 of the ITAA 1997.
[155] Section 359-40.
[156] Subsections 359-40(2) and (3).

Withdrawal of application

138. An applicant may withdraw their application, either orally or in writing, at any time before the ruling is made and the Commissioner must provide written confirmation of the withdrawal.[157]

*Review of a private ruling under Division 359*

139. If an entity is dissatisfied with their private ruling, they may object against it in the manner set out in Part IVC.[158] From 1 July 2010 this includes private indirect tax and excise rulings. There are time limits associated with lodging an objection against a private ruling.[159]

140. However, objections against the private ruling must be lodged before an assessment is made for the income year or accounting period to which the ruling relates, or before the tax is due and payable in the case of a withholding tax matter.[160] If the objection against the private ruling is not lodged before the assessment is issued, the objection must be lodged against the relevant assessment.[161] Rights of review by the Administrative Appeals Tribunal, or appeal to the Federal Court, are available if the objection is disallowed.[162]

141. In addition, an objection against a private ruling cannot be lodged if the ruling relates to excise duty or another amount payable in relation to the goods under an excise law where:[163]

- the Commissioner has made a decision about the excise duty or other amount payable in relation to those goods, and
- the decision is reviewable under an excise law.

142. If a taxpayer objects to a private ruling then their right of objection against an assessment or other decision is limited to matters that were not able to be raised as grounds for objection against the private ruling. This is to ensure that there is a single avenue for objections and to prevent duplicate objections being made.[164]

143. In the case of an objection to an excise private ruling in relation to the rate of duty or the liability to duty there is also a rule that prevents duplication of review avenues. If a taxpayer has already obtained a private ruling concerning the amount of duty payable on excisable goods, and has objected against the ruling, their ability to commence legal action under section 154 of the *Excise Act 1901* is limited to grounds that neither were, nor could have been, grounds for objecting against the ruling.[165]

144. A private ruling has effect as altered by an objection decision if:

- a decision has been made to allow the objection in whole or part, and
- the period for appeal has ended without an appeal being made.[166]

[157] Subsection 359-10(3). See also paragraphs 34 and 196 to 197 of TR 2011/5.
[158] Subsection 359-60(1). Appendix 1 to TR 2011/5 may provide guidance in relation to the right to object in the manner set out in Part IVC.
[159] See subsections 14ZW(1AAB) and (1A) of the TAA. An entity may make a written request that a late objection be dealt with as if it had been lodged within the objection period – see subsection 14ZW(2) and section 14ZX of the TAA. See also paragraphs 25 and 130 to 134 of TR 2011/5 and PS LA 2003/7.
[160] Section 359-60. The reference to a withholding tax matter also includes mining withholding tax.
[161] See paragraphs 28 and 150 to 151 of TR 2011/5.
[162] Section 14ZZ of the TAA.
[163] See paragraph 359-60(3)(c) of Schedule 1 to the TAA.
[164] See section 14ZVA of the TAA.
[165] See section 155 of the *Excise Act 1901*.
[166] Section 359-70.

### *Oral rulings under Division 360*

145. An oral ruling is a form of legally binding advice that the ATO can provide in response to a taxpayer's oral application. If a taxpayer[167] relies on an oral ruling the Commissioner is bound to assess the taxpayer's liability in accordance with the oral ruling that is given and applies to them.

146. However, if the oral ruling is incorrect and disadvantages the taxpayer, then the law may be applied in a way that is more favourable for the taxpayer, provided the Commissioner is not prevented from doing so by a time limit imposed by the law.[168]

#### *Applying for an oral ruling*

147. The Commissioner may make an oral ruling on how a relevant provision[169] (other than a provision about MRRT) applies or would apply to an individual in relation to a specified scheme. In practice this means that oral rulings are generally given on a provision of the law relating to personal income tax or Medicare levy. This is because other provisions on which oral rulings may be given (such as withholding tax and fringe benefits tax) usually relate to obligations that generally fall on employers (in a business context) rather than on an individual. Oral rulings cannot be given on indirect tax or excise matters.

148. A 'legal personal representative' can also apply for an oral ruling on an individual's behalf. A parent can apply for an oral ruling on behalf of a minor if they are a legal personal representative, for example, if they are the trustee of a trust that holds shares in a company for the minor's benefit.

149. A taxpayer must apply for an oral ruling orally, in the manner approved by the Commissioner.[170] This means contacting the ATO to request advice in the form of an oral ruling about the application of a relevant provision of tax law to a specified scheme, and satisfying proof of identity requirements. If a taxpayer does not actually request an oral ruling but the request satisfies the requirements, an authorised tax officer[171] handling the call can ask the taxpayer if they would like the response to be recorded as an oral ruling.

150. If a taxpayer has made a written request for advice which could be satisfied by providing an oral ruling, the tax officer handling the written request can telephone the taxpayer and ask if they would like the request to be handled as an oral ruling. Before an oral ruling can be given, the taxpayer must indicate their willingness to withdraw their written advice request.

#### *Requirements for an oral ruling*

151. Not all oral enquiries can be satisfied with an oral ruling. An entity must not apply for an oral ruling in relation to:[172]

- an MRRT provision
- an indirect tax law (other than the fuel tax law), or

[167] A reference to 'taxpayer' in this section about oral rulings under Division 360 means the individual or their legal personal representative.
[168] Section 357-70.
[169] See paragraph 14 of this practice statement.
[170] Subsection 360-5(2) and section 360-15.
[171] In this context 'authorised tax officer' means an officer with the requisite skill set that specifically includes the providing of oral rulings.
[172] Subsections 360-5(1) and 360-5(2A).

- an excise law.

152. To be eligible for an oral ruling:

- the advice sought must not relate to a business matter
- the advice must not be complex, and
- the matter sought to be ruled on must not be one that is already being, or has been, considered by the Commissioner for that taxpayer.[173]

153. The term 'business' is defined as including any profession, trade, employment, vocation or calling, but does not include occupation as an employee.[174] Consequently, taxpayers eligible for oral rulings will generally be employees or retired persons. However, an individual conducting a business may seek an oral ruling on a non-business matter.

154. Matters will be 'complex' and ineligible for an oral ruling if, for example:

- the decision turns on the interpretation of facts that require examination of documents
- the facts and circumstances on which the answer is to be based are open to a number of possible interpretations and therefore require further consideration and/or research
- the decision turns on a chain of conclusions to reach the final decision and therefore is not easily answered orally
- the relevant law is complex and would require considerable research or analysis, or
- it involves a calculation that is not covered by an online calculation tool.

155. For oral ruling purposes, a matter will not be considered to be complex if there is an approved response which clearly applies to the case and the question can be fully answered from the response.[175]

156. If the query concerns a business or complex matter, ATO personnel should advise the taxpayer to apply for a private ruling and, as appropriate, provide guidance in making a valid application.

157. A taxpayer should have all relevant information (that is, all the facts necessary to make an oral ruling) at the time they apply for an oral ruling. If the taxpayer cannot provide all the relevant information at the time of the application, they should be advised to call back when they have the necessary information and request an oral ruling at that time.

158. The Commissioner may decline to give an oral ruling if further information necessary to make the ruling has been requested from the taxpayer and it has not been supplied.[176]

159. If the taxpayer still wants some immediate assistance, it must be clearly explained to them that any assistance given can only be of a general nature, and is not an oral ruling, because they have not provided all the information necessary for a legally binding ruling.[177]

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[173] Subsection 360-5(3).
[174] Subsection 995-1(1) of the ITAA 1997.
[175] See paragraphs 167 to 170 of this practice statement for further information on the approved response.
[176] Section 357-105.
[177] See paragraphs 249 to 261 of this practice statement for further information about oral guidance.

160. If the matter does not satisfy the criteria for an oral ruling, the taxpayer should be advised that any oral assistance given to them can only be in the nature of guidance (with the corresponding level of protection).[178] The taxpayer should also be advised that, if they want the Commissioner to provide binding advice they should apply for a private ruling.

*Providing an oral ruling*

161. An oral ruling may only be given by an appropriately 'authorised tax officer'.[179]

162. ATO personnel must follow the relevant instructions contained in ORCLA and in SMART.[180]

163. If an application is valid, the tax officer must confirm with the taxpayer all the facts and any assumptions that are made and, if appropriate, give the taxpayer an opportunity to respond before providing an oral ruling.

Assumptions

164. Although an oral ruling can be given on the basis of an assumption, an assumption should not be made if the taxpayer could reasonably be expected to provide the required information.

165. If it is considered that correctly making an oral ruling would depend on an assumption, this should be explained to the taxpayer who should then be asked whether they know of anything that might negate that assumption. If there is doubt about the reliability of the assumption, the tax officer should decline to give an oral ruling.

166. The Commissioner may decline to give an oral ruling if the correctness of the ruling would depend on an assumption, for instance, about the occurrence of a future event, which it would not be appropriate to make in an oral ruling context.[181]

Approved response

167. ATO personnel should only provide an oral ruling if the question posed is covered by an approved response that fully answers the query. Generally, an approved response will be in the form of an existing client contact script. Where an approved response does not exist and an oral ruling is appropriate, the response will need to be cleared by a technical specialist based on the specific facts of the case.[182]

168. The approved response must be consistent with the precedential ATO view in relation to any interpretative issue raised by the taxpayer. PS LA 2003/3 identifies the ATO documents that contain those views.

169. For the purpose of providing an oral ruling, ATO personnel may also refer to the following ATO documents that either reflect precedential ATO views or contain a clear, unambiguous interpretation of the relevant legislation:

- online reference materials (for example, client contact scripts)

[178] See paragraphs 249 to 261 of this practice statement for further information about oral guidance.
[179] In this context 'authorised tax officer' means an officer with the requisite skill set that specifically includes the providing of oral rulings.
[180] SMART (Script Manager and Reference Tool) is an intranet reference tool for frontline contact ATO personnel.
[181] Section 357-110.
[182] The procedures for obtaining clearance of the response by a technical specialist are set out in SMART.

- current ATO publications (not otherwise included in the *Schedule of documents containing precedential ATO views*), and
- ATO website material (other than that produced by external publishers).

170. A judgment on whether a matter can be fully answered from an approved response may depend on the expertise and experience of the tax officer handling the enquiry. The ATO has procedures in place for escalating matters to specialist advisers. For example, call centre officers can seek the assistance of a technical specialist. In appropriate cases, call centre officers can refer enquiries in accordance with business line escalation procedures.

Issuing an oral ruling

171. An oral ruling must be accompanied by a registration identifier for the ruling.[183]

172. A taxpayer who receives an oral ruling is not entitled to a written record of the ruling. If they prefer advice in a written form they may apply for a private ruling.[184]

173. An oral ruling provided under the former Division 360 continues in force as if it had been provided under the present Division 360.[185]

Inconsistent rulings

174. The rules concerning inconsistent rulings (which are explained in paragraphs 120 to 123 of this practice statement) apply equally to oral rulings.

*Withdrawing an application for an oral ruling*

175. A taxpayer may withdraw their oral ruling application at any time before the oral ruling is given. The withdrawal must be given orally and in a manner determined by the Commissioner.[186] They may choose to withdraw their oral ruling application if they decide a private ruling or oral general guidance would better suit their needs.[187] Oral general guidance may include a reference to a public ruling that could apply to the taxpayer's circumstances.

*Review of an oral ruling*

176. A taxpayer can also choose not to rely on an oral ruling but, unlike private rulings, oral rulings are not reviewable.[188]

[183] Subsection 360-5(4).
[184] Subsection 360-5(5).
[185] Subitem 29(3), Schedule 2, *Tax Laws Amendment (Improvements to Self Assessment) Act (No. 2) 2005.*
[186] Section 360-15.
[187] Section 360-10.
[188] There is no provision in Division 360 that provides objection rights in relation to an oral ruling.

**Providing indicative advice prior to issuing a private, class or product ruling**

177. In the course of preparing a private, class or product ruling, ATO personnel may be asked to provide an indication of the likely ATO view of the law in relation to a scheme. Subject to paragraph 179 of this practice statement, ATO personnel are not to provide indicative advice. This is to ensure that no binding advice is provided unless the actual details of the proposed scheme and its purpose have been firmly established, and the ATO has finalised its view about the tax consequences of the scheme, so as not to mislead taxpayers. However, ATO personnel can undertake informal discussions with taxpayers raising, for example, areas of possible concern.[189]

178. Providing indicative advice before, say, the actual details of the proposed scheme and its purpose have been firmly established may create expectations that the ATO will adopt a particular view in relation to a particular scheme that may not subsequently be met. This has the potential to undermine confidence in the ATO's administration of the tax system.

179. Nevertheless, there may be occasions (where the ATO has established the details of the proposed scheme, but has not finalised the position on the tax consequences) that call for the provision of indicative advice. For example, the provision of favourable indicative advice could occur where all the following conditions are met.

- There is:
  - a substantial and time dependent business need
  - a very low risk of a different view being taken
  - appropriate documentation and transparency, and
  - involvement of appropriate ATO personnel, including the case manager as well as relevant technical specialists.
- The taxpayer is fully aware and acknowledges that:
  - the matter is still under consideration and therefore the advice is preliminary only, and
  - the advice is not binding on the Commissioner and should not be relied on as representing the ATO view of the law on the matter.

There must be no undue delay by the tax officer in providing the final ruling, and the taxpayer must be kept informed of the progress of the ruling at appropriate intervals.

180. Where the indicative advice is provided to an applicant for a class or product ruling, and that advice may be conveyed to third parties, the tax officer must request the applicant to ensure that the conditions on which the ATO's advice is provided are also explained to the third parties.

181. Indicative advice will not provide protection from tax that would otherwise be payable under the law, false or misleading statement penalties or interest charges.

[189] The discussion about indicative advice in this section applies generally to private, class and product rulings. However, there are special procedures in the *Public rulings manual* which must be followed when issuing draft class or product rulings to the taxpayer. See Part 15 (for product rulings) and Part 16 (for class rulings).

182. Consistent with corporate record keeping requirements, accurate and complete notes must be made of all discussions prior to, and in the course of dealing with, an application for a private, class or product ruling. Where indicative advice is provided in connection with a request for written advice, a record of the indicative advice must be attached to the case record on the relevant case management system.

### Informal discussions

183. As mentioned in paragraph 177 of this practice statement, ATO personnel can have informal discussions with taxpayers and/or their advisers on technical matters. ATO personnel are encouraged to do so, especially where there is an opportunity to clarify matters or to better understand the taxpayer's position.

184. Informal discussions can be undertaken with a taxpayer or their adviser about a particular scheme, either prior to or following the receipt of a written request for advice. Such discussions may reveal the need for a written request for advice, and shed light on the information and material that should be provided with the request, or is needed to answer an existing request.[190]

185. If the ATO receives a request for a private, class or product ruling involving complex matters, general discussions around ambiguity in the law or its application are often a necessary part of ensuring that all relevant material is provided and considered, to enable the facts to be correctly established. Such discussions may also highlight to the taxpayer or adviser those areas where the ATO has concerns.

186. Where a case officer, in consultation with the case manager and any relevant technical specialists, believes that those concerns may lead to an unfavourable response from the ATO, it is often appropriate to inform the taxpayer or their adviser accordingly. In these circumstances, the case manager and, if appropriate, the relevant technical specialist, are to explain the basis of the concerns to the taxpayer or their adviser. It must be made clear to them at the time of this discussion that:

- these concerns are being communicated so that they can take the possibility of a final unfavourable view into account in deciding whether to continue to expend time and money preparing to implement the proposed scheme, and
- communicating concerns in this informal way does not constitute an indication of the ATO's view of the law in relation to the scheme.

187. In undertaking these discussions, the tax officer must ensure that the taxpayer is not misled, and must clearly explain that any comments made will not be binding on the Commissioner. Relevant documentation is to be prepared and, where appropriate, captured on the relevant case management system.

188. Should the taxpayer or their adviser submit material changes to the scheme upon which the ruling is sought following the discussions, the revised scheme should be treated as a new application. However, the priority already afforded to the original request is to be maintained.[191]

[190] See the discussion under the *Pre-lodgment meeting* heading of PS LA 2009/2 which may also apply, as appropriate, to ruling applications other than priority cases.
[191] See paragraph 94 of this practice statement.

189. If after providing indicative advice, or following informal discussions about a particular scheme, the taxpayer or their adviser withdraws their request, and considerable effort has gone into developing a precedential ATO view, consideration should be given to preparing a public ruling or an ATO ID on the proposed scheme.[192]

**Administratively binding advice**

190. The ATO is not obliged to provide written advice addressing an entity's specific circumstances other than in the form of a private ruling under Division 359.

191. However, in the interests of sound administration, the ATO's practice has been to provide administratively binding advice in a limited range of circumstances in response to a taxpayer's request for advice. In addition, the ATO provides a substantial amount of guidance through publications, its website and its client contact areas.

192. Attachment B contains an exhaustive list of those circumstances in which the ATO can provide administratively binding advice to a taxpayer.

193. If a taxpayer requests written advice on any of the listed topics in connection with their own particular circumstances, it must be treated as a request for administratively binding advice. The request must be in writing. It must fully and accurately identify the parties to the arrangement and disclose all relevant facts.

194. Furthermore, no fundamental assumptions can be made about the arrangement. The arrangement must be in such serious contemplation that its material elements are settled and clearly stated by the taxpayer.

195. In cases where the taxpayer is:

- a company which is still to be incorporated
- the trustee or beneficiary of a trust which is still to be settled, or
- a company intending to launch a takeover or reversing takeover and the arrangement will follow after success of that takeover

the arrangement will not have eventuated. Administratively binding advice can be given where it would be reasonable to expect these future events to be in serious contemplation and the material elements have been substantially worked out.

196. The provision about which administratively binding advice is given need not be a provision referred to in section 357-55 of Schedule 1 to the TAA. It can be about a superannuation or any other law administered by the Commissioner under which extent of liability is worked out and is a law which does not have a legally binding rulings system (for example superannuation guarantee charge).

[192] See paragraph 24 of Law Administration Practice Statement PS LA 2001/8 *ATO Interpretative Decisions*.

197. Administratively binding advice may also be given to an entity other than that to which the provision applies. For example, in relation to corporate restructuring, takeovers and arrangements that would be undertaken by a company when it is incorporated.[193] However, in these circumstances, the entity requesting advice may not be in a position to provide detailed information about the entity to which the advice is to apply, so ATO personnel will need to ensure that there are sufficient facts on which to base the advice.

198. The ATO's administrative practice for administratively binding advice where a provision has been re-enacted or remade is to adopt the same approach as is taken for legally binding rulings.[194] That is, if the Commissioner has provided administratively binding advice about a provision and that provision is re-enacted or remade, the advice is taken to be about the re-enacted or remade provision, to the extent that the new law expresses the same ideas as the old law. However, if the law is substantively changed, the part of the advice dealing with the changed law ceases to apply.

199. Administratively binding advice is not legally binding on the Commissioner. When the time comes to assess liability to tax, the law as it then exists must be applied to the facts as established at that time.[195] However, the ATO will stand by what is said in such advice and will not depart from it unless:

- there have been legislative changes since the advice was given
- a tribunal or court decision has affected our interpretation of the law since the advice was given, or
- for other reasons, the advice is no longer considered appropriate. For example, if the advice has been exploited in an abusive and unintended way.

200. Where the ATO departs from its earlier administratively binding advice because of a legislative change, it will apply the change from the date of effect of the amending legislation. If the ATO departs from its earlier advice for other reasons, normally departure from that advice would be on a prospective basis only, unless particular circumstances warrant another approach (for example, if the advice has been exploited in an abusive and unintended way).

201. The outcome of an arrangement may also be different from that detailed in the advice request. If the underlying facts change in a material way, the advice cannot provide any protection to those who seek to rely on it.

202. Where the Commissioner stands by the administratively binding advice, the taxpayer who relies on the advice will be protected against the tax that would otherwise be payable under the law, false or misleading statement penalty and interest charges.

203. Where the Commissioner is unable to stand by the advice, the taxpayer who relies on the advice will be liable for any tax that would otherwise be payable under the law (unless a time limit imposed by the law precludes the liability). However, they are protected against false or misleading statement penalty and, if they have relied on the advice reasonably and in good faith, against interest charges.[196]

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[193] This should be distinguished from a situation where the request for advice is about the application of a relevant provision to a large number of persons who would be affected by the arrangement proposed by the entity requesting the advice – in which case the entity should request a class ruling.

[194] See paragraph 25 of this practice statement.

[195] *Federal Commissioner of Taxation v. Wade* (1951) 84 CLR 105; (1951) 25 ALJ 626; (1951) 9 ATD 337; [1951] ALR 962 at 117.

[196] See former section 284-215 and sections 298-20 and 361-5 and section 8AAG of the TAA. For statements made after 3 June 2010 see also subsection 284-75(5) and section 284-224.

204. If a taxpayer disagrees with the ATO's decision in relation to administrative binding advice, they can ask the ATO to review that decision.[197]

## PART B – GUIDANCE

205. Assistance provided in a form other than a ruling may fulfil a taxpayer's need for information without them having to satisfy the conditions that apply to the making of a binding ruling. Guidance may be given in writing or orally, including by way of an ATO publication.

206. ATO guidance is provided to help taxpayers understand their obligations and entitlements under the laws administered by the Commissioner. Guidance is not binding on the Commissioner.

207. If a taxpayer wants the Commissioner to provide binding advice about the applicability of the law to their individual circumstances, they should apply for a private ruling or an oral ruling.[198]

208. It may sometimes be difficult to draw a distinction between requests for guidance and binding advice. That is, whether a taxpayer has a specific transaction in mind and is expecting binding advice or whether they are only expecting general guidance or just broadly considering a course of action and are only expecting general guidance. For example, where a history teacher simply asks if self-education deductions are available for travel to places of historical significance and provides no other information about their specific circumstances.

209. If there is any doubt whether the request is for guidance or binding advice, the taxpayer should be contacted, the difference in protection levels explained, and their needs ascertained. If their needs can only be satisfied by a private ruling, they should be given information about how to make a valid application for a private ruling. ATO personnel should also consider whether it would be appropriate, in the taxpayer's circumstances, to offer an oral ruling.[199]

### Written guidance

210. Written guidance is issued to help taxpayers understand their obligations and entitlements under the laws administered by the Commissioner. It normally provides only general assistance and cannot cover all possibilities or the circumstances of every taxpayer. Written guidance may also be in the form of an ATO publication.[200]

211. Written guidance is usually provided if the taxpayer has enquired about the broad operation of the law and has not provided details of their specific circumstances. A taxpayer who receives written guidance must decide how the guidance applies to their circumstances.

212. Written guidance may also be provided to taxpayers who do not wish to request a private ruling, or for whom an oral ruling is not appropriate, on how the relevant tax law may apply to their own specific circumstances. This would include situations where a taxpayer needs assistance in understanding a notice, letter or other document given to the taxpayer by the ATO.

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[197] See *Taxpayers' Charter - Respecting your right to a review*.
[198] Except for indirect tax, excise or MRRT matters for which oral rulings cannot be provided.
[199] See paragraphs 145 to 176 and footnote 198 of this practice statement.
[200] Written guidance includes the sections of a public or private ruling that do not form part of the binding ruling. The non-binding sections of a private ruling only provide guidance for the limited entities to which it applies.

213. ATO personnel should refer to ORCLA for further information about providing written guidance.

### *Protection level*

214. A taxpayer who relies on written guidance, including a statement in an approved publication, will remain liable for the tax that would otherwise be payable under the law where the guidance is incorrect, or misleading and the taxpayer makes a mistake as a result (unless prevented by a relevant time limit in the law). However, they will be protected against the false or misleading statement penalty that might otherwise arise.[201]

215. In addition, if a shortfall arises under a relevant provision,[202] a taxpayer will be protected against any interest charges if they relied on the guidance reasonably and in good faith.[203]

216. If the shortfall does not arise under a relevant provision, the level of protection against interest charges from reliance on written guidance depends on the exercise of the power to remit interest charges under section 280-160 and section 8AAG of the TAA.[204]

217. Taxpayers should not rely on publications that are out of date. If they do, they may not be protected against any interest charges. This is because generally reliance on an earlier document at a given point in time where a later publication that correctly reflects the law is available would not be reasonable and in good faith. Nevertheless, they will still be protected from the false or misleading statement penalty. However, if a taxpayer can demonstrate that in their circumstances reliance on the out of date publication was reasonable and in good faith, they will be protected from both the false or misleading statement penalty and interest charges.[205]

### *Published speeches and minutes of consultative forums*

218. Speeches by senior ATO personnel and minutes of consultative forums reflect our current thinking on particular issues. Minutes are a record of proceedings at a consultative forum and reflect the discussion between the ATO and the other attendees. They are published for transparency reasons.

219. Speeches and minutes that are published on the ATO website would ordinarily be publications approved in writing by the Commissioner. To be such a publication the approval by the Commissioner, delegate or authorised officer must be in writing. If they are so approved, and provided that they are not stated to be non-binding,[206] they provide the same level of protection as written guidance.[207]

220. A taxpayer who needs formal advice about the applicability to their own specific circumstances of information contained in published speeches or minutes should apply for a private ruling.

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[201] See former subsection 284-215(1) or for statements after 3 June 2010 section 284-224 and section 298-20.
[202] See paragraph 14 of this practice statement.
[203] See section 361-5.
[204] PS LA 2006/8 contains guidelines on the remission of interest charges.
[205] See former subsection 284-215(1) and section 361-5. For statements made after 3 June 2010 see subsection 284-75(5), section 284-224 and section 361-5.
[206] See paragraphs 242 to 243 of this practice statement for the level of protection for publications stated to be non-binding.
[207] See paragraphs 214 to 217 of this practice statement.

*Media releases*

221. Media releases are used to communicate to taxpayers what our intention is in relation to certain issues. As such media releases may contain statements intended to be relied on. If they do, they will provide the same level of protection as written guidance.[208]

222. Media releases may also refer to some other ATO publication such as a public ruling, draft public ruling or law administration practice statement that would have a more detailed explanation of the subject matter. In this case a taxpayer may rely on a statement in the other publication. If the statement in the other publication is later found to be incorrect or misleading and the taxpayer makes a mistake, they will receive the level of protection that is applicable to the other publication.[209]

223. Although a media release reflects the ATO's position at the time of its publication, updated information on the topic may be contained in a subsequent ATO publication. If a taxpayer relies on a media release in these circumstances, they will still be protected from any false or misleading statement penalty[210] that may apply and consideration will be given to the particular facts and circumstances in relation to remitting interest charges.[211] For example, they may not be protected against all interest charges where a subsequent ATO publication that correctly reflects the law was readily available and accessible to them at that time.

*Decision impact statements*

224. Decision impact statements[212] are published on the Legal Database to communicate to the community the ATO reaction to adverse and other significant court or tribunal decisions. They include a summary of the case details, a summary of the facts and issues decided, and they note any consequences in relation to public rulings. They set out how the law will be administered as a consequence of the decision, pending any change to existing ATO rulings, but are not normally expected to contain advice. They are not public rulings for the purposes of Part 5-5.[213]

225. A taxpayer who relies on a decision impact statement and makes a mistake as a result of the statement being incorrect or misleading, will receive the same penalty and interest protection as for written guidance.[214]

[208] See paragraphs 214 to 217 of this practice statement.
[209] Taxpayer alerts are excluded from the scope of this practice statement – see paragraph 7 of this practice statement.
[210] See former subsection 284-215(1) and section 361-5. For statements made after 3 June 2010 see subsection 284-75(5), section 284-224 and section 361-5.
[211] Section 361-5.
[212] See Law Administration Practice Statement PS LA 2009/9 *Conduct of ATO litigation and engagement of Legal Services Branch.*
[213] There is an exception for decision impact statements issued before 1 July 2010 concerning indirect taxes. Where the relevant decision impact statement, or parts of it, are labelled as a public ruling that decision impact statement, or the parts so labelled, will be treated as a public ruling under Division 358 from 1 July 2010.
[214] See paragraphs 214 to 217 of this practice statement.

### *Published materials produced for internal ATO purposes*

*ATO Interpretative Decisions (ATO IDs)*

226. An ATO ID is an edited and summarised decision on an interpretative matter that is indicative of how a provision of the law might be applied. ATO IDs do not provide advice to taxpayers and are not rulings under Part 5-5 and therefore the tax that would otherwise be payable under the law remains payable. ATO IDs represent a precedential ATO view that ATO personnel must apply in resolving interpretative issues or, if they consider the application of the precedent will result in an incorrect decision or unintended outcome, escalate the matter for review.[215]

227. An ATO ID provides authority for a private ruling or other advice to be given to a taxpayer in relation to the interpretative matter it covers, and for dispute resolution and compliance activity by ATO personnel, but do not in themselves represent any established general administrative practice.[216] Further information about ATO IDs is contained in PS LA 2001/*8.*

228. ATO IDs are produced for the purpose of facilitating consistent and timely interpretative decision making by ATO personnel. However, they may not always contain a complete statement of all the facts in summarising the application of the law to complex circumstances. For transparency reasons, they are made publicly available through the Legal Database.

229. ATO IDs state the date of the decision and are withdrawn if a review finds that they are no longer accurate.

230. If a taxpayer relies on a current ATO ID where their own circumstances are not materially different from those described in the ATO ID, but the ATO ID is later found to be incorrect or misleading and the taxpayer makes a mistake as a result, they will receive the same penalty and interest protection as for written guidance.[217]

*Law administration practice statements*

231. Law administration practice statements are produced principally to provide direction and assistance to ATO personnel on approaches to be taken in performing duties involving the application of laws administered by the Commissioner.

232. They are published primarily for transparency and accountability reasons. They are not intended to provide interpretative advice but may provide guidance on the law in the course of providing directions to ATO personnel.

233. Law administration practice statements (general administration) derive their authority from the Commissioner's powers of general administration as set out in the various Acts administered by the Commissioner. These practice statements focus on practical administration of the tax system and aim to help reduce compliance costs for taxpayers.

234. ATO personnel are required to follow law administration practice statements unless they consider that the application of a particular practice statement would have unintended consequences or is otherwise incorrect. Where this occurs ATO personnel must follow their business line's escalation process.

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[215] See PS LA 2003/*3.*

[216] This is approach is consistent with Taxation Determination TD 2011/19, which outlines the circumstances in which a general administrative practice is established.

[217] See paragraphs 214 to 217 of this practice statement.

235. A taxpayer who relies on a law administration practice statement that is incorrect, or misleading and makes a mistake as a result, will receive the same penalty and interest protection as for written guidance.[218]

236. Law administration practice statements are not rulings under Part 5-5, and therefore the tax that would otherwise be payable under the law remains payable. Further information about law administration practice statements is contained in Law Administration Practice Statement PS LA 1998/1 *Law Administration Practice Statements.*

*Technical skilling materials*

237. The ATO produces educational material for the purpose of enhancing the knowledge and skills of ATO personnel engaged in technical decision making. Some of this material is published to assist tax practitioners who have corresponding educational needs. Technical skilling materials are not public rulings under Part 5-5 as they do not constitute advice given or published by the Commissioner.

238. Technical skilling materials are often prepared at the time of legislative change and may not reflect developments in the law that have emerged since the time they were prepared. Furthermore, the coverage of this material is unlikely to address the less common and more complex issues that actually occur. Ordinarily, taxpayers seeking general guidance on the topic covered by this material should refer to other ATO publications covering the same topic. Publications other than skilling materials are more likely to reflect the current ATO position on a particular topic.

239. If a taxpayer does rely on a statement in the technical skilling material that is later found to be incorrect or misleading and the taxpayer makes a mistake as a result, they will receive the same penalty and interest protection as for written guidance.[219]

240. If at the time the taxpayer seeks to rely on the statement, there is available an ATO publication that correctly reflects the law, they may not be protected against all interest charges depending on the facts and circumstances. However, if a taxpayer can demonstrate that in their circumstances reliance on the earlier release was reasonable and in good faith, they will be protected from both false or misleading statement penalty and interest charges.[220]

### *ATO communications not intended to be relied on*

241. In limited circumstances the Commissioner may publish documents that are specifically labelled as non-binding or not intended to be relied on. Accordingly, these publications cannot be described as guidance. For example, a Public Ruling compendium of comments published with all final public rulings.

[218] See paragraphs 214 to 217 of this practice statement.
[219] See paragraphs 214 to 217 of this practice statement.
[220] See former subsection 284-215(1) and section 361-5. For statements made after 3 June 2010 see subsection 284-75(5), section 284-224 and section 361-5.

*Non-binding publications*

242. Where a taxpayer relies on a statement in an ATO publication that expressly states that it is non-binding they will be liable for any tax that would otherwise be payable under the law where the statement is incorrect or misleading and the taxpayer makes a mistake as a result.

243. Subject to the exception explained in paragraph 244 of this practice statement, no false or misleading statement penalty will be imposed. However, there is no protection against interest charges under section 361-5. Although, consideration should be given to remitting any interest charged under section 280-160 or section 8AAG of the TAA, either in whole or in part.

*Documents not intended to be relied on*

244. No penalty or interest protection is provided where an ATO publication, or a statement in an ATO publication states that it is not intended to be relied on. Such communications should state that they are not a publication approved in writing by the Commissioner so that readers are not misled.

Edited versions

245. Edited versions of private rulings and other written binding advice are published in the *Register of private binding rulings* to improve the integrity of ATO advice. They constitute a historical record of the written binding advice issued. Consequently they remain on the register even where, for example, later changes to the law may make them inaccurate, until they are archived.

246. They should not be relied on by taxpayers or their advisers in any way. They are not intended to convey advice and are not rulings under Part 5-5. They are not publications approved in writing by the Commissioner and no penalty or interest protection is provided.[221]

*Technical discussion papers*

247. Where appropriate, the ATO may issue a technical discussion paper to facilitate consultation between the ATO and the community as part of the process of developing a precedential ATO view on an aspect of the taxation or other laws administered by the Commissioner.

248. The procedures for issuing a technical discussion paper and their status are explained in Law Administration Practice Statement PS LA 2010/5 *Technical discussion papers*. Taxpayers are not provided with protection from primary tax, false or misleading statement penalty, or interest should they rely on a technical discussion paper for any purpose.

## Oral guidance

249. ATO personnel may provide oral guidance about the application of tax laws when the taxpayer does not require an oral ruling or a request for an oral ruling does not satisfy the requirements for an oral ruling.[222]

[221] Refer to Law Administration Practice Statement PS LA 2008/4 *Publication of edited versions of written binding advice.*

[222] See paragraphs 151 to 160 of this practice statement about the requirements for an oral ruling to be given.

250. Oral guidance is to be provided only on matters of a general, straightforward or simple nature.

251. Oral guidance must be consistent with the precedential ATO view in relation to any interpretative issue raised by the taxpayer.[223]

252. Reference may also be made to the following ATO documents that either reflect precedential ATO views or contain a clear, unambiguous interpretation of the relevant legislation:

- online reference materials (for example, client contact scripts)
- current ATO publications (not otherwise included in the *Schedule of documents containing precedential ATO views*), and
- ATO website material (other than that produced by external publishers).

### *Procedures for providing oral guidance*

253. ATO personnel provide oral guidance by phone or in person where guidance is orally requested and it is appropriate to respond orally. This form of assistance is ordinarily provided through ATO call centres and shopfronts. It may also be provided when enquiries are referred by client contact officers in accordance with business line escalation procedures.

254. ATO personnel must take care in providing oral guidance. Before ATO personnel give any oral guidance, they must take all reasonable steps to ensure that all relevant information has been obtained from the taxpayer.

255. Where a taxpayer seeks assistance on a matter that is not of a general, straightforward or simple nature, the tax officer should suggest that they apply for a private ruling[224] or otherwise request written guidance[225] and, as appropriate, provide information about making a valid application. This ensures that the taxpayer receives a properly considered opinion on the application of the law to the taxpayer's circumstances.

256. A judgment on whether a matter is general, straightforward or simple, and whether a relevant ATO view applies, may depend on the expertise and experience of the tax officer responding to the enquiry. ATO personnel must refer requests for oral guidance that are not appropriate for them to provide, or requests for an oral ruling, to the relevant ATO call centre or shopfront. Alternatively, a tax officer may note the query and provide a timely response after researching the matter, or arrange for a call back by a specialist adviser or other tax officer who can more appropriately provide the guidance.

257. For ATO personnel in ATO call centres or shopfronts, a matter may be considered complex if:

- it is not covered by a call centre script
- the facts of the arrangement are such that they are not easily compiled or understood, or
- in depth consideration should be given to the matter.

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[223] 'Precedential ATO view' is defined in PS LA 2003/3. This practice statement also identifies the ATO documents that contain those views.

[224] See paragraphs 86 to 92 of this practice statement, which explain the requirements for a valid application for a private ruling.

[225] This would include administratively binding advice (see paragraphs 190 to 204 of this practice statement) and written guidance (see paragraphs 210 to 217 of this practice statement).

258. It is important that oral guidance on a particular topic is provided by an appropriate officer, that is, an officer who, by virtue of their position, is able to provide advice on that topic in the normal course of their duties.

259. It would not be appropriate for ATO personnel to provide oral guidance if:

- the query concerns an area of law beyond their capability
- they are unable to identify the relevant law or the precedential ATO view, or
- the facts of the relevant arrangement are such that they are not easily compiled or understood.

In these circumstances, ATO personnel should either refer the issue to an appropriate officer, or assist the taxpayer in seeking the form of assistance which best suits their needs.

260. The ATO has procedures in place for escalating matters to specialist advisers. For example, call centre officers can seek the assistance of a technical specialist or escalate the matter within their business line to ascertain whether oral guidance can be provided.

261. If ATO personnel are asked a question on a matter beyond the normal scope of their duties, they should refer the taxpayer to the appropriate area.

### *Level of protection*

262. A taxpayer who relies on oral guidance that is later found to be incorrect, or misleading and the taxpayer makes a mistake as a result, will still be liable for any tax that would otherwise be payable under the law (unless prevented by a relevant time limit in the law). Where a taxpayer has made a full and true disclosure of the material facts relevant to their enquiry, no false or misleading statement penalty will be payable.[226] Also, interest charges will not be payable if they relied on the guidance reasonably and in good faith.[227]

## Guidance about proposed changes to laws administered by the Commissioner

263. Broadly, ATO personnel do not have the authority to provide indicative advice or guidance about legislation prior to its Royal Assent, or on regulations prior to their registration on the Federal Register of Legislative Instruments.

264. Any guidance provided to taxpayers about announced proposed changes to the laws or regulations should be limited to the public announcement and other publicly released information in the source documents that announced the proposed law change, for example, a minister's media release or the Explanatory Memorandum to the Bill.

265. ATO personnel should refer to Law Administration Practice Statement PS LA 2004/6 *The ATO role in providing information or advice on the potential application of announced changes to the tax law, or where legislative change is contemplated but not announced*[228] for instructions on responding to taxpayers who enquire about the potential effect of proposed legislative changes announced by the government.

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[226] See former subsection 284-215(1). For statements made after 3 June 2010 see subsection 284-75(5) and section 284-224.

[227] See section 361-5 and section 8AAG of the TAA.

[228] The ATO's role in providing information or advice on the potential application of announced changes to the tax law, or where legislative change is contemplated but not announced, is explained in PS LA 2004/6.

## ATO assistance – level of protection summary

Various levels of protection against tax shortfall, false or misleading statement penalty and interest charges exist if ATO assistance is incorrect.

| CATEGORIES | LEVELS OF PROTECTION | | | |
|---|---|---|---|---|
| | Protection from tax shortfall? | Protection from false or misleading statement penalty?[1] | Protection from interest charges? | Related practice statement paragraph numbers |
| **Legally binding advice** | | | | |
| • Public Ruling – Division 358 | YES | YES | YES[2] | 29 – 45 |
| • Product Ruling | YES | YES | YES[2] | 51 – 59 |
| • Class Ruling | YES | YES | YES[2] | 60 – 65 |
| • Private Ruling – Division 359 | YES | YES | YES[2] | 80 – 123 |
| • Oral Ruling – Division 360 | YES | YES | YES[2] | 145 – 182 |
| **Administratively binding advice** | ^ Level of protection is subject to conditions set out in paragraph 199 of this practice statement | | | |
| • Administratively binding advice | YES^ | YES | YES[2] | 190 – 204 |
| **Guidance** | * Statement penalty and interest charges may be remitted in individual cases for reasons unrelated to the guidance relied on | | | |
| • Published speeches and minutes of consultative forums | NO | YES | YES[2] | 218 – 220 |
| • Decision impact statements | NO | YES | YES[2] | 224 – 225 |
| • Media releases | NO | YES | YES[2] | 221 – 223 |
| • Internal publications: | | | | |
| - ATO interpretative decisions | NO | YES | YES[2] | 226 – 230 |
| - Law administration practice statements | NO | YES | YES[2] | 231 – 236 |
| - Technical skilling material | NO | YES | YES[2] | 237 – 240 |
| • ATO communications not intended to be relied on | NO | NO* | NO* | 241 – 244 |
| • Edited versions | NO | NO* | NO* | 245 – 246 |
| • Technical discussion papers | NO | NO* | NO* | 247 – 248 |
| • Oral guidance | NO | YES[3] | YES[3] | 249 – 262 |

[1] Notwithstanding that a publication is labelled non-binding; protection against false or misleading statement penalty will be available if it is a publication that has been approved in writing by the Commissioner.

[2] Protection against interest on the shortfall is available where the taxpayer acted reasonably and in good faith. It does not cover the general interest charge for late payment of the tax shortfall; that is after 21 days of the Commissioner notifying the taxpayer the correct position. For superannuation guarantee charge matters, the protection does not extend to the nominal interest component of a superannuation guarantee shortfall under section 31 of the *Superannuation Guarantee (Administration) Act 1992*.

[3] Only if taxpayer has made a full and true disclosure of the material facts relevant to their enquiry.

**Misleading statement** Sometimes a statement in an ATO publication might be correct, but a particular taxpayer may have been misled by it on reasonable grounds. Taxpayers who rely on ATO publications (except those labelled as non-binding) that are relevant to their circumstances but are misleading to their intended audience, and who make a mistake by relying on that publication, will be protected from false or misleading statement penalty and interest charges.

**Genuine effort to follow ATO assistance** Taxpayers that take reasonable care to follow ATO assistance but make an honest mistake will be protected from false or misleading statement penalty and interest charges.

**Attachment B**

## ADMINISTRATIVELY BINDING ADVICE[229] – EXHAUSTIVE LIST OF TOPICS

Where the requirements of this practice statement have otherwise been met administratively binding advice can continue to be provided on the following topics.

- Advice on a superannuation[230] or any other law administered by the Commissioner under which the extent of liability is worked out and is a law which does not have a legally binding rulings system (for example, superannuation guarantee charge and excess contributions tax).
- Advice on an arrangement where a company intends to launch a takeover of a target company and the first company wants advice (without getting consent from the target company) on the tax consequences for the target company.
- Advice on a proposed scheme that would be undertaken by a company, (including a corporate trustee) when it is incorporated or a trust when it is settled.
- Advice to a Commonwealth, state or territory government or one of their agencies about the tax consequences for a taxable purchaser under a proposed privatisation.
- Advice to a Commonwealth, state or territory government or one of their government authorities about a proposed transaction, for example, an industry restructure which has tax consequences for any new entity to be created as part of the restructure.
- Advice on a scheme where private or public infrastructure matters are raised and there are no entities presently in existence capable of requesting a private ruling.
- Advice on a proposed commercial-in-confidence product to prospective investors, where no suitable private ruling applicants can be identified.
- Advice on the legislation and associated regulations (of which the Commissioner has general administration) which form part of the Coronavirus Economic Response Package

[229] Paragraphs 190 to 204 of this practice statement explain when administratively binding advice may be provided to a taxpayer.

[230] Self Managed Superannuation Fund advice and guidance the ATO provides about the application of the *Superannuation Industry (Supervision) Act 1993* and *Superannuation Industry (Supervision) Regulations 1994* is not legally or administratively binding on the Commissioner. For more information see PS LA 2009/5.

**Amendment history**

| Date of amendment | Part | Comment |
|---|---|---|
| 7 May 2020 | Attachment B | Addition to the list of topics on which ABA can be provided. |
| | Various | Updated contact details and Chief Executive Instruction title. |
| 20 February 2014 | Attachment B<br><br>File references | Addition to the list of topics on which ABA can be provided.<br>Updated to include Siebel number. |
| 24 October 2013 | Generally | Updated to current ATO corporate publication style.<br>Reference to PS LA 2006/2 replaced with PS LA 2012/5.<br>PS LA 2003/10 replaced with PS CM 2003/02 and PS LA 2012/1.<br>Change of references to ATOlaw and law.ato.gov.au to Legal Database. |
| | Footnote 1 and throughout | Application of practice statement widened to ATO personnel. |
| | Paragraph 9 | Definitions of Legal Database added; changes to MRRT, PRRT and Wine tax law made consistent with format and language of other definitions. |
| | Footnotes 22, 25, 27 & 32 | New footnotes provide where terms are defined. |
| | Footnote 31 | Amended to provide consistency. |
| | Paragraphs 17, 147 151, Footnote 201 | Included reference to MRRT. |
| | Paragraph 32 | Replaced ‘priority technical issues procedures’ with ‘ATO’s Enterprise Risk Management Framework’. |
| | Paragraphs 44 & 118 | Included PRRT. |
| | Paragraph 48 | Included GSTBs. |
| | Paragraph 53 | Removal of discussion of product ruling notification of intention to lodge. |
| | Paragraph 62 | Deletion of sentence stating there is no specific form for lodging a class ruling application. |
| | Paragraph 68 | Removal of TaxPack as an example of a public ruling. |
| | Paragraph 130 | Include complex case scenario, to bring that sentence in line with current policy for requests for further information. |
| | Footnote 201 | Updated to include additional exceptions for excise and MRRT for which oral rulings cannot be provided. |

| Date of amendment | Part | Comment |
|---|---|---|
| | Paragraphs 208, 209 and 212 and 213 | Insertions of material and new paragraphs to explain when taxpayers can be provided with written guidance on specific circumstances or issues and refers ATO personnel to ORCLA on how to provide written advice. |
| | Contact business line and section | Updated. |
| 18 April 2013 | Contact details | Updated. |
| 11 July 2012 | Paragraph 9 | Insert the definition of MRRT and PRRT. |
| | Paragraph 14 | Updated to recognise that public and private rulings can be issued for MRRT purposes |
| | Paragraphs 44 and 118 | Updated to recognise that reasonably arguable position penalty applies to MRRT. |
| | Paragraph 106 | Updated as a result of TTTDM. |
| 22 December 2011 | Various | Amendments to reflect the changes made by the *Tax Laws Amendment (2010 GST Administration Measures No. 2) Act 2010* and the *Tax Laws Amendment (2010 Measures No. 1) Act 2010.* |
| 8 April 2011 | Various | 'Tax Office' updated to 'ATO' as per Style Guide recommendations. |
| | Contact details | Updated. |
| 22 October 2008 | Footnote 4 and references | Updated. |

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| Subject references | advice, administratively binding advice; advice about proposed changes to tax laws; class ruling; guidance, indirect tax ruling; oral general advice; oral ruling; publications; private ruling; product grants and benefits ruling; product ruling; public ruling; written general advice |
| Legislative references | A New Tax System (Australian Business Number) Act 1999<br>A New Tax System (Goods and Services Tax Transition) Act 1999<br>A New Tax System (Luxury Car Tax) Act 1999<br>A New Tax System (Luxury Car Tax) Act 1999 27-1<br>A New Tax System (Wine Equalisation Tax) Act 1999<br>A New Tax System (Wine Equalisation Tax) Act 1999 33-1<br>A New Tax System (Wine Equalisation Tax and Luxury Car Tax Transition) Act 1999<br>GST Act<br>GST Act 11-25<br>GST Act 17-5<br>GST Act 126-5<br>GST Act 162-105<br>GST Act Div 165<br>GST Act 184-1<br>GST Act 195-1<br>Fuel Tax Act 2006<br>Fuel Tax Act 2006 60-5<br>Fuel Tax Act 2006 110-5<br>Fuel Tax (Consequential and Transitional Provisions) Act 2006<br>Excise Act 1901<br>Excise Act 1901 154<br>Excise Act 1901 155<br>ITAA 1936 175A<br>ITAA 1936 Pt IVA<br>ITAA 1997 Div 30<br>ITAA 1997 35-55<br>ITAA 1997 960-100<br>ITAA 1997 995-1<br>ITAA 1997 995-1(1)<br>TAA 1953 3C<br>TAA 1953 Pt IIA<br>TAA 1953 Pt IVAA<br>TAA 1953 8AAG<br>TAA 1953 Pt IVAAA<br>TAA 1953 Pt IVC<br>TAA 1953 14ZVA<br>TAA 1953 14ZW(1)(ba)<br>TAA 1953 14ZW(1AAB)<br>TAA 1953 14ZW(1A)<br>TAA 1953 14ZW(2)<br>TAA 1953 14ZX<br>TAA 1953 14ZYB<br>TAA 1953 14ZZ<br>TAA 1953 Sch 1 105-60<br>TAA 1953 Sch 1 Pt 5-5<br>TAA 1953 Sch 1 Div 280<br>TAA 1953 Sch 1 280-160 |

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| | TAA 1953 Sch 1 Subdiv 284-B<br>TAA 1953 Sch 1 284-75(2)<br>TAA 1953 Sch 1 284-75(3)<br>TAA 1953 Sch 1 284-75(5)<br>TAA 1953 Sch 1 284-75(6)<br>TAA 1953 Sch 1 284-90(1)<br>TAA 1953 Sch 1 284-145<br>TAA 1953 Sch 1 284-215<br>TAA 1953 Sch 1 284-215(1)<br>TAA 1953 Sch 1 284-215(2)<br>TAA 1953 Sch 1 284-224<br>TAA 1953 Sch 1 298-20<br>TAA 1953 Sch 1 Div 357<br>TAA 1953 Sch 1 357-55<br>TAA 1953 Sch 1 357-60<br>TAA 1953 Sch 1 357-60(1)(b)<br>TAA 1953 Sch 1 357-60(2)<br>TAA 1953 Sch 1 357-60(3)<br>TAA 1953 Sch 1 357-60(4)<br>TAA 1953 Sch 1 357-60(5)<br>TAA 1953 Sch 1 357-60(6)<br>TAA 1953 Sch 1 357-65<br>TAA 1953 Sch 1 357-65(1)<br>TAA 1953 Sch 1 357-70<br>TAA 1953 Sch 1 357-75<br>TAA 1953 Sch 1 357-75(1)<br>TAA 1953 Sch 1 357-75(1A)<br>TAA 1953 Sch 1 357-75(1B)<br>TAA 1953 Sch 1 357-85<br>TAA 1953 Sch 1 357-105<br>TAA 1953 Sch 1 357-110<br>TAA 1953 Sch 1 357-115<br>TAA 1953 Sch 1 357-120<br>TAA 1953 Sch 1 357-120(a)<br>TAA 1953 Sch 1 Div 358<br>TAA 1953 Sch 1 358-5<br>TAA 1953 Sch 1 358-5(3)<br>TAA 1953 Sch 1 358-5(4)<br>TAA 1953 Sch 1 358-10(1)<br>TAA 1953 Sch 1 358-10(2)<br>TAA 1953 Sch 1 358-15(1)<br>TAA 1953 Sch 1 358-20<br>TAA 1953 Sch 1 358-20(2)<br>TAA 1953 Sch 1 Div 359<br>TAA 1953 Sch 1 359-5<br>TAA 1953 Sch 1 359-10<br>TAA 1953 Sch 1 359-10(1)<br>TAA 1953 Sch 1 359-10(3)<br>TAA 1953 Sch 1 359-15<br>TAA 1953 Sch 1 359-20(1)<br>TAA 1953 Sch 1 359-20(2)<br>TAA 1953 Sch 1 359-25(1)<br>TAA 1953 Sch 1 359-25(2)<br>TAA 1953 Sch 1 359-25(3) |

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| | TAA 1953 Sch 1 359-25(4)<br>TAA 1953 Sch 1 359-30<br>TAA 1953 Sch 1 359-30(a)<br>TAA 1953 Sch 1 359-35<br>TAA 1953 Sch 1 359-35(2)(a)<br>TAA 1953 Sch 1 359-40<br>TAA 1953 Sch 1 359-40(2)<br>TAA 1953 Sch 1 359-40(3)<br>TAA 1953 Sch 1 359-45<br>TAA 1953 Sch 1 359-50(2)<br>TAA 1953 Sch 1 359-50(3)<br>TAA 1953 Sch 1 359-55(1)<br>TAA 1953 Sch 1 359-55(2)<br>TAA 1953 Sch 1 359-55(5)<br>TAA 1953 Sch 1 359-60<br>TAA 1953 Sch 1 359-60(3)(c)<br>TAA 1953 Sch 1 359-70<br>TAA 1953 Sch 1 Div 360<br>TAA 1953 Sch 1 360-5(1)<br>TAA 1953 Sch 1 360-5(2)<br>TAA 1953 Sch 1 360-5(2A)<br>TAA 1953 Sch 1 360-5(3)<br>TAA 1953 Sch 1 360-5(4)<br>TAA 1953 Sch 1 360-5(5)<br>TAA 1953 Sch 1 360-10<br>TAA 1953 Sch 1 360-15<br>TAA 1953 Sch 1 361-5<br>TAA 1953 Sch 1 388-50<br>TAA 1953 Sch 1 388-50(1A)<br>Product Grants and Benefits Administration Act 2000 8<br>Small Superannuation Accounts Act 1995<br>Superannuation Guarantee (Administration) Act 1992 31<br>Superannuation Industry (Supervision) Act 1993<br>Superannuation Industry (Supervision) Regulations 1994<br>Superannuation (Unclaimed Money and Lost Members) Act 1999<br>Minerals Resource Rent Tax Act 2012<br>Minerals Resource Rent Tax (Imposition-Excise) Act 2012<br>Minerals Resource Rent Tax (Imposition-Customs) Act 2012<br>Minerals Resource Rent Tax (Imposition-General) Act 2012<br>Tax Laws Amendment (Improvements to Self Assessment) Act (No. 2) 2005<br>Tax Laws Amendment (Improvements to Self Assessment) Act (No. 2) 2005 Sch 2 29(1)<br>Tax Laws Amendment (Improvements to Self Assessment) Act (No. 2) 2005 Sch 2 29(2)<br>Tax Laws Amendment (Improvements to Self Assessment) Act (No. 2) 2005 Sch 2 29(3)<br>Tax Laws Amendment (2010 GST Administration Measures No. 2) Act 2010<br>Tax Laws Amendment (2010 GST Administration Measures No. 2) Act 2010 46(2)<br>Tax Laws Amendment (2010 GST Administration Measures No. 2) Act 2010 46(3) |

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| | Tax Laws Amendment (2010 GST Administration Measures No. 2) Act 2010 46(4) |
| Related public rulings | CR 2001/1; PR 2007/71; MT 2006/1; MT 2008/1; MT 2008/2; TD 2011/19; TR 2006/10; TR 2006/11; TR 2011/5 |
| Related practice statements | PS LA 1998/1; PS LA 2001/4; PS LA 2001/8; PS LA 2002/13; PS LA 2003/3; PS LA 2003/7; PS LA 2003/9; PS LA 2004/6; PS LA 2005/24; PS LA 2006/8; PS LA 2008/4; PS LA 2008/5; PS LA 2008/15; PS LA 2009/2; PS LA 2009/5; PS LA 2009/9; PS LA 2010/5; PS LA 2011/27; PS LA 2012/1; PS LA 2012/5 |
| Other references | Risk Management CEI (link available internally only)<br>Explanatory Memorandum to the Tax Laws Amendment (Improvements to Self Assessment) (No. 2) Bill 2005<br>Commonwealth of Australia Gazette<br>Report on Aspects of Income Tax Self Assessment<br>Commonwealth of Australia, The Treasury 2004, Canberra<br>Review of the Legal Framework for the Administration of the GST, The Board of Taxation 2008, Canberra<br>Edited private advice<br>Schedule of documents containing precedential ATO views<br>Taxpayers' Charter<br>ORCLA (link available internally only)<br>Public rulings manual (link available internally only) |
| Case references | Federal Commissioner of Taxation v. Wade (1951) 84 CLR 105; (1951) 25 ALJ 626; (1951) 9 ATD 337; [1951] ALR 962 |
| File references | 05/13223; 06/4284; 06/8967; 06/12189; 1-5AD59XW |
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| Other business lines consulted | ATO Relations, Excise, GST, Large Business & International, Debt, Client Account Services, Micro Enterprises and Individuals, Small & Medium Enterprises, Superannuation |
| Business Line | Tax Counsel Network |

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