PS LA 2009/2 - How the priority ruling process works

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PS LA 2009/2

How the priority ruling process works

This Law Administration Practice Statement explains how the priority ruling process works.

This practice statement is an internal ATO document, and is an instruction to ATO staff.

Taxpayers can rely on this practice statement to provide them with protection from interest and penalties in the following way. If a statement turns out to be incorrect and taxpayers underpay their tax as a result, they will not have to pay a penalty. Nor will they have to pay interest on the underpayment provided they reasonably relied on this practice statement in good faith. However, even if they don't have to pay a penalty or interest, taxpayers will have to pay the correct amount of tax provided the time limits under the law allow it.

1. What is this practice statement about?

This practice statement outlines how the priority ruling process works.[1] The priority ruling process can apply to applications for either a class ruling or private ruling.

Specifically, this practice statement:

- describes the process to have a ruling application considered for acceptance into the priority ruling process and the factors taken into account when we make our decision, and
- provides directions to ensure applications accepted into the priority rulings process are delivered in timeframes that meet the applicant's business needs.

2. Why do we need a priority rulings process?

The priority rulings process exists to assist corporate boards manage the taxation risks associated with significant transactions in a timely way. Such transactions typically require input from a range of ATO specialists and/or involve issues without a precedent.

The principles that underpin the priority ruling process have been incorporated into the way that the ATO manages private and class ruling applications that are received from members of the large market.

3. What is the priority rulings process?

The priority rulings process is not a 'fast-track' ruling process, rather it focuses on creating alignment between the priorities of the entity and our own priorities in the ATO. Its objective is to ensure that both parties work together to clarify the arrangement to be ruled on and the issues to be addressed in the ruling.

4. What criteria are taken into account when assessing whether to accept a ruling application into the priority ruling process?

To be accepted into the priority ruling process, transactions that are the subject of the ruling application must:

- be time sensitive – with the prime focus on the extent to which the timeframe for the transaction is outside the control of the entity
- be prospective – because the priority rulings process is designed to support decisions as to whether or not to proceed with a particular transaction
- be of major commercial significance and require consideration at corporate board level – transactions which have the following features are more likely to be accepted:
  - high value or likely to affect large numbers of taxpayers
  - high impact on the industry sector
  - a need to be endorsed at the shareholder or investor level
  - outside 'business as usual'
  - novel, innovative or unique characteristics, and
  - higher degree of certainty required by the corporate Board before their approval is given to proceed.
- have the tax outcome as a critical element of the transaction – that is, the tax outcome is a major factor in the decision as to whether or not to proceed with the transaction
- have complex law and/or facts that need to be analysed – that is, the tax outcome is not reasonably clear, because no precedential ATO view exists or clearly applies.

[1] Unless otherwise indicated in this practice statement, existing practice statements, business rules and systems in relation to rulings and other processes will also continue to apply.

5. What are the responsibilities of the applicant?

The applicant must:

- notify the ATO as soon as practicable after the transaction is first seriously contemplated, and
- agree to provide an application incorporating a full brief with:
  - all relevant information
  - all issues identified
  - position for and against fully argued, and
  - timeframes identified.

The applicant must also:

- nominate a representative responsible for all interaction with the ATO and meeting any information requests quickly, and
- agree to provide the ATO with an overview of the proposed transaction (including any high level tax analysis) no later than three working days prior to the pre-lodgment meeting outlined in section 12 of this practice statement.

Where the case requires the Commissioner to rule on the possible application of anti-avoidance provisions, the applicant need not make a full submission concerning the application of these provisions. However, the applicant's submission should identify the key features that might be relevant to the identification of a scheme, tax benefits and dominant purpose.

6. What is the process to apply for a priority ruling?

The application process for a priority ruling is as follows:

- the applicant emails their contact details to the PGIAdvice@ato.gov.au[2]
- the process owner in PGI will contact the applicant within 24 hours to discuss the request and request a brief outline of why it is considered that the potential ruling application qualifies for the process.

7. Where the application does not meet the criteria

If, following the discussion with the applicant, the process owner does not consider that the matter meets the criteria for inclusion in the priority ruling process, they will refer the potential ruling application to the relevant business line for appropriate action in the standard manner.

8. Where the application does meet the criteria

If the process owner considers that the matter potentially does qualify for inclusion into the priority ruling process, they will request the following information:

- formal identification of the applicant and/or the entity
- confirmation that the appropriate authorisations are in place in relation to the ruling request
- brief description of the transaction and the relevant areas of tax law to be covered by the ruling request
- indication of preferred timing and location of the pre-lodgment meeting
- confirmation that the applicant will, if the matter is accepted into the priority rulings process, satisfy the process requirements on the entity, including those criteria outlined in section 6 of this practice statement, and
- briefly outline why the entity considers that the transaction satisfies each of the eligibility criteria identified in section 4 of this practice statement.

If they are satisfied that the transaction meets the criteria for inclusion into the priority rulings process, they will consult with the relevant business line to identify and appoint a Case Manager for the ruling application.

9. The role of the Process Owner

The Process Owner of the priority rulings process is in the Public Groups and International business line. The Process Owner

- is the central contact point on matters relating to the process for both the taxpayer's representative and ATO staff
- determines what matters are accepted into the priority ruling process
- has authority to marshal all necessary technical resources across business lines and Tax Counsel Network[3] if the level of risk warrants, and
- has authority to take remedial action if delays occur or are expected to occur.

[2] Even if the applicant makes early contact with known contacts in the ATO, to access the priority ruling process, they must contact the process owner.

[3] See PS LA 2012/1 *Engagement of Tax Counsel Network on high risk technical issues.*

10. The role of the Case Manager

The Case Manager is:

- responsible for managing the ruling application to completion, including obtaining all required authorisations and sign-off in the relevant business line, and
- the primary contact with the Taxpayer Representative.

The Case Manager must be a senior officer, generally at the Executive Level 2 level, who is experienced in interpretative assistance work.

11. The role of other participants in the priority ruling process

One of the aims of the priority rulings process is to avoid sequential processing of issues involved in a ruling. Technical experts involved in progressing the ruling application must work collaboratively with each other and with the Case Manager to resolve the issues to finalisation in accordance with the timeframes for completion.

12. The process for a priority ruling

Who arranges the pre-lodgment meeting and when?

Pre-lodgment meeting

To ensure lodgment of a valid ruling application that incorporates all necessary information, the Case Manager must arrange with the Taxpayer Representative for a pre-lodgment meeting, as soon as possible.

This will normally take place by video conference, and all who will be involved in progressing the ruling may attend.

The meeting should outline any particular areas of concern to enable these to be addressed in the proposed application. The ATO's general view in relation to the relevant area of law may be discussed, but should not give verbal assurances or other indications of what the ATO's view may be in relation to the particular arrangement or the proposed application.[4]

Record-keeping

The Case Manager and the Taxpayer Representative should agree, in advance, on who will record the key issues, substantive outcomes and action items from meetings involving the Taxpayer Representative and the ATO.

If the Taxpayer Representative prepares the record of meeting, the Case Manager, after consultation with other ATO attendees, must provide the Taxpayer Representative with comments that indicate whether the ATO agrees that the record is accurate.

Where the ATO acts as record taker, the same process of consultation prior to finalisation applies.

Case plan

The Case Manager should prepare a case plan as soon as possible after the pre-lodgment meeting, in consultation with others involved in progressing the ruling.

The case plan outlines the steps in the process and when they should be completed to achieve the anticipated ruling issue date.

Steps to be taken by the applicant must be negotiated with the Taxpayer Representative who must ensure that the applicant is able to comply with set dates. The case plan must also be provided to the Process Owner.

If, during completion of the ruling, any obstacles arise to meeting the plan, the Case Manager will need to notify both the Taxpayer Representative and the Process Owner. A new date will need to be agreed between the Case Manager and the Taxpayer Representative. If they cannot agree, the Process Owner will set the anticipated ruling issue date.

Requests for further information

Sometimes, information further to that identified at the pre-lodgment meeting may be required. This should be requested in the most efficient manner available. If there is disagreement about whether or not the information is truly required, the Process Owner will make the decision.

Agreeing on the arrangement

As soon as the arrangement to be ruled on is established, you should document and agree it with the Taxpayer Representative.

13. What happens if circumstances change during the priority rulings process?

If the circumstances that resulted in a matter being accepted into the priority rulings process change such that it no longer meets the criteria, the Process Owner may decide to finalise it using business as usual processes, rather than continuing with the priority process.

[4] Refer to paragraphs 194 to 204 of Law Administration Practice Statement PS LA 2008/3 *Provision of advice and guidance by the ATO*.

This will not change case ownership, and the ruling will still be expected to be completed within corporate service standards and within reasonable timeframes expected by the taxpayer.

14. Is the process different if the applicant has entered into an Annual Compliance Arrangement?

No. Entities who have entered into an Annual Compliance Arrangement with the ATO may still apply to have certain matters accepted into the priority ruling process if those matters meet the criteria listed in section 5 of this practice statement.

15. Providing feedback on the process

A formal feedback process exists for the priority ruling process to ensure the quality of contributions and the process in general. Feedback may be sought either during or at the end of the process.

All participants can provide feedback.

16. More information

For more information on the process to be followed by the applicant see:

- Private rulings

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