PS LA 2015/1 - Code of settlement

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PS LA 2015/1
Code of settlement

This Law Administration Practice Statement is the ATO policy on settlements.

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

If taxpayers rely on this practice statement, they will be protected 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 this code is about

This code sets out the ATO policy on the settlement of taxation and superannuation disputes, including disputes involving debt.

The ATO is committed to working with taxpayers to resolve disputes as early and cooperatively as possible.

At all times ATO officers involved in settlements will act with integrity.

2. What is a settlement

A settlement involves an agreement between parties to resolve matters in dispute where one or more parties make concessions on what they consider is the legally correct position.

3. Settlement is part of good administration

The ATO has an obligation to administer the taxation and superannuation laws through assessing, collecting taxes and determining entitlements. The ATO also has an obligation to administer the taxation system in an efficient and effective way balancing competing considerations and applying discretion and good sense.

Settlement is an important element of the administration of the tax system.

4. Settlement negotiations

Settlement negotiations or offers can be initiated by any party to the dispute. They can occur at any stage including prior to assessments being raised.

The nature of the dispute will determine who will participate in negotiations on behalf of the ATO.

Alternative dispute resolution approaches, including mediation, may be used during settlement negotiations.

Where there are multiple taxpayers involved in the same or similar arrangement the ATO would seek to ensure consistency of treatment for taxpayers in comparable circumstances. This may include developing a widely based settlement position.

Statements made during settlement negotiations are not to be construed as an admission of liability and cannot be given in evidence. This is to ensure that, in the event that negotiations break down, parties are not prejudiced as a result of a position taken in the course of trying to resolve the matter.

5. Settlement considerations

When deciding whether or not to settle, **all** of the following factors must be considered:

- the relative strength of the parties' position
- the cost versus the benefits of continuing the dispute
- the impact on future compliance for the taxpayer and broader community.

Settlement would generally not be considered where:

- there is a contentious point of law which requires clarification
- it is in the public interest to litigate
- the behaviour is such that we need to send a strong message to the community.

6. Settlement decision

The ATO decision to settle or not must be a fair, effective and efficient means of resolving the matters in dispute.

A decision will be based on an informed understanding of the relevant facts and issues in dispute and any advice of a settlement advisory panel, or legal or other expert opinions relevant to the matter being considered.

A settlement can only be approved by an officer who has delegation or authorisation to do so.

7. Responsibilities

During settlement negotiation parties are expected to **both**:

- act fairly, honestly and in good faith
- disclose to their best knowledge and belief, relevant and material facts which relate to the matters in dispute.

Parties must adhere to the terms of the settlement agreement unless it emerges that relevant and material facts were not disclosed.

8. Settlement deed

Settlements must be finalised by the parties signing a written agreement which sets out the terms. The usual form of the agreement is a deed of settlement. A settlement agreement must reflect the final agreed position between the parties (including any payment or future obligations).

Settlement agreements are intended to resolve the matters in dispute for both parties. A settlement agreement will only be varied in exceptional circumstances if requested by the taxpayer who is party to the agreement.

The ATO has model deeds available to use as a basis for a deed of settlement.

9. Future years

A settlement agreement provides a reasonable basis for treating similar issues in future years unless it is specifically stated that it is not to apply to future years or transactions, or:

- the taxpayer's circumstances change materially
- the application of the law remains unclear
- there have been subsequent amendments to the law
- a taxation ruling has been subsequently released on the issue
- there has been a subsequent court or tribunal decision on the issue.

The ATO can provide greater certainty to a taxpayer for future years if required.

10. More information

A practical guide to the ATO code of settlement provides examples and illustrations of how the code operates.

For more information, see:

- ATO Disputes policy
- ATO Dispute management plan 2013-14

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Amendment history

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15 January 2015	All	First published.

References

Subject references: *Code of settlement* *Settlement*		
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Legislative references	**Case references**	**File references** *1-5FOPDDW*
Related public rulings	**Related practice statements** PS LA 2013/3 *Alternative dispute resolution (ADR) in ATO disputes* PS LA 2007/6 *Guidelines for settlement of widely-based tax disputes* PS LA 2009/9 *Conduct of ATO Litigation and engagement of ATO Dispute Resolution*	**ATOlaw topic** *Administration ~~ Internal ATO processes*

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