LCR 2015/1 - Law companion rulings: purpose, nature and role in ATO's public advice and guidance

Australian Government
Australian Taxation Office

Law Companion Ruling

LCR 2015/1

Status: legally **binding**

Law companion rulings: purpose, nature and role in ATO's public advice and guidance

Relying on this Ruling

This publication is a public ruling for the purposes of the *Taxation Administration Act 1953*.

This Law Companion ruling explains the nature of law companion rulings within the public rulings framework and how they can be relied upon by taxpayers.

If you rely on this Ruling in good faith, you will not have to pay any underpaid tax, penalties or interest in respect of matters it covers if it does not correctly state how a relevant provision applies to you.

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What this Ruling is about

1. This Ruling outlines the purpose, nature and role of Law Companion Rulings (LCRs) in the Commissioner's administration of the tax system.

2. This Ruling explains:

- the nature of LCRs and their relationship to the legislative process
- how LCRs fit into the ATO's delivery of public advice and guidance
- the status and binding effect of LCRs.

Date of effect

3. This Ruling applies before and after its date of issue.

What is a law companion ruling?

4. An LCR is a public ruling, in whole or in part. The principles that apply to public rulings also apply to LCRs.[1] An LCR expresses the Commissioner's view on how recently enacted law applies to a class of taxpayers, or to taxpayers generally. Often, LCRs will apply only to a particular class of persons, being taxpayers who rely on them in good faith (see paragraphs 27 to 34A of this Ruling).

5. Typically, an LCR can be expected to have gone through the following stages:

- a draft LCR discussing aspects of unenacted law is published at the time a Bill is introduced into Parliament, or soon after
- further consultation on the draft LCR may be undertaken whilst the Bill is in Parliament
- the draft LCR is finalised, taking into account feedback from consultation and any amendments to the Bill
- an LCR is published as a public ruling (in whole or in part) soon after the Bill receives Royal Assent and obtains the force of law.

6. We expect to issue a final LCR that is consistent with the draft when:

- the Bill passes into law without material change, and
- we have already undertaken effective consultation prior to issuing the draft. (see paragraphs 19 to 22A of this Ruling.)

7. In the ordinary course, the date of effect of an LCR as a public ruling will complement the application date of the new law to which it relates (see paragraphs 35 to 37 of this Ruling).

Purpose

8. The purpose of an LCR is to provide an insight into the practical implications or detail of recently enacted law in ways that may go beyond mere questions of interpretation. Its content may be wide-ranging.

[1] See Divisions 357 and 358 of Schedule 1 to the *Taxation Administration Act 1953*. This Ruling should be read together with Taxation Ruling TR 2006/10 *Public rulings*.

9. A public ruling may deal with any matter involved in the application of a relevant provision, including the Commissioner's approach to discretions, risk management and safe harbours.[2] We expect that such material will routinely form part of an LCR.

10. For example, an LCR may:

- set out the Commissioner's view on the meaning of an expression or concept in the new law
- set out practical examples of how the new law will or will not apply
- identify factors we may use to assess the risk of certain activities or transactions not being compliant with the new law, and examples of high and low risk scenarios
- contain general information about the new law and our approach to it, such as links to other useful material, and what we are planning to do to implement the new law and foster willing compliance
- address practical considerations, such as documentation requirements and how they can be met
- explain how the new law interacts with existing tax law
- note issues that might emerge in the future.

11. Taxpayers that apply an LCR in good faith will be able to rely upon such material but with the knowledge that the law is intended to accommodate changing circumstances (see paragraphs 27 to 34A and 38 to 40 of this Ruling).

Relationship to Explanatory Memorandum

12. The content in an LCR is usually prepared contemporaneously with the development of the policy and the drafting of the Bill and Explanatory Memorandum. Throughout the legislative process, the ATO typically consults with Treasury and industry, and often this continues after introduction. In this way, an LCR will often represent the considered views of the Commissioner, informed by a reasonable understanding of the intended policy and the compliance realities facing taxpayers at the very time that the law itself is shaped.

13. The draft LCR, the Bill and the Explanatory Memorandum will typically form a package that sets out what the new measure will mean in practice for affected taxpayers.

14. The LCR can provide a contemporaneous account of the state of the law existing at the time of the development of the Bill, the context that gave rise to the measure, and how it is anticipated that the new law would apply in practice. However, unlike an Explanatory Memorandum, an LCR is an expression of the Commissioner's view about how a taxation law would apply.

When we will prepare a law companion ruling

15. Not every new tax law measure will be accompanied with an LCR. For example, LCRs may not be prepared where the new law is limited in its application, does not affect a taxpayer's obligation to pay tax, penalties or interest, or is largely straightforward.

16. LCRs are designed to:

- provide taxpayers with useful guidance about what the new law means, and about how to comply with it

[2] See paragraph 5 of TR 2006/10.

- support general principles-based drafting of new law, allowing it to be expressed in simpler and clearer language without a loss of precision, because much of the practical detail is found in a public ruling that is binding on the Commissioner
- result in policy and administrative outcomes that are expressed in, and supported by, the words of the new law.

17. Some LCRs may establish a contemporaneous record of how key stakeholders in the tax design process (including ATO, Treasury and industry) envisaged the new law operating.

18. The need for an LCR is most likely to be present where the new law introduces a regime or unfamiliar concepts, or encourages or requires many taxpayers to take additional action to comply with the law, or respond to an inducement.

Consultation

19. We intend that in most cases LCRs will be 'on foot' and binding on the Commissioner from the time that new law applies (see paragraphs 35 to 37 of this Ruling).

20. As a species of public ruling, an LCR should be the product of effective consultation with key stakeholders, including taxpayers, industry and Treasury. Ideally, consultation will take place in conjunction with the development of the policy and the law itself, and have been completed by the time the Bill is introduced.

21. In this way, the LCR can increase taxpayers' certainty about the application of new law at the earliest time practicable.

22. Where it is not possible to draft an LCR or consult on it effectively before the Bill is introduced, any necessary consultation will take place while the Bill is in the Parliament. We expect that a draft LCR prepared this way will nevertheless be finalised in time for it to become a public ruling upon commencement of the new law, or soon after.

22A. Where appropriate in the context of the particular consultation process, a compendium may be prepared for an LCR in the same manner that they are prepared for any other sort of public ruling.

Law companion rulings usually issued as 'draft'

23. Ordinarily, an LCR can be expected to be finalised in a manner consistent with the draft upon the new law coming into force. This will not be the case where there are good and substantial reasons to depart from the draft LCR. 'Good and substantial reasons' include where significant changes are made to the Bill, or matters are raised in further consultation.

24. In the usual case, a 'draft' will issue, notwithstanding that consultation between relevant stakeholders (including industry, taxpayers, Treasury and ATO) has, wherever possible, been undertaken contemporaneously with the development of the policy and legislation.

25. The main reasons for this are:

- The marking as 'draft' clearly indicates that the underlying law may not yet have come into force, and that the views expressed are incapable of being a public ruling at the time of publication.
- Further stakeholders may come forward and raise additional, relevant matters after the Bill is introduced into Parliament.
- Further issues may arise from wider consultation than that carried out during the legislative process, which may have occurred under time constraints, or

have focused primarily on developing the law. In these circumstances, issues that should be addressed in an LCR may only come to light after introduction.

- Where the Bill is significantly amended in the Bill's passage through Parliament, then:
  - (i) some views expressed may be no longer relevant, and
  - (ii) further consultation may be undertaken in respect of the draft LCR.

26. An LCR may be issued as a final in appropriate circumstances, notwithstanding that it was not issued first as a draft, such as when adequate consultation has already occurred.

Binding nature of law companion rulings

Reliance

27. Sometimes only parts of an LCR will have the status of a public ruling. Where this is the case, it will be clear on the face of the LCR which parts are binding (in the sense of offering protection for underpaid tax, penalties or interest) and which parts are not.

28. LCRs are a different species of public ruling because they provide binding advice at such an early time. However it is recognised that often they will have been prepared, and consulted on, in very short timeframes. LCRs are prepared in good faith, and are not informed by observed real world experiences of the new law operating in practice.

29. A typical preamble of an LCR is:

> This publication is a public ruling for the purposes of the *Taxation Administration Act 1953*.
>
> This Ruling describes how the Commissioner will apply the law as amended by [Tax Laws Amendment Act 2016] to entities that rely on this Ruling in good faith.
>
> If you rely on this Ruling in good faith, you will not have to pay any underpaid tax, penalties or interest in respect of matters covered by the Ruling if it does not correctly state how a relevant provision applies to you.

30. For those parts of an LCR that have the status of a public ruling, typically that ruling will only apply to the class of taxpayers that rely on it in good faith (as stated in the 'typical preamble' shown above).[2A] This recognises the early stage at which LCRs are prepared.

Example 1

31. *The Commissioner expresses the view in an LCR that a hovercraft is a vehicle for the purposes of a new law. A court later decides that this view is not correct. Michaela is able to rely on the statement made in the LCR, notwithstanding that it is not correct. In this case, the Commissioner would not amend or withdraw the LCR with retrospective effect.*

Example 2

32. *The Commissioner publishes an LCR indicating that a transaction with features A, B and C are low risk for non-compliance with the new law. Ursyn Co enters a transaction with features A, B, C and an additional feature D. The Commissioner is not prevented from applying the new law to Ursyn Co.*

[2A] Refer also to paragraphs 6–8 of TR 2006/10, which discuss the concept of 'good faith' in the context of a public ruling.

Example 3

33. *An LCR is published with three examples of transactions that the Commissioner considers high risk for non-compliance with the new law. Bernard enters into a transaction without those features. Bernard challenges the Commissioner's application of the law on the grounds that the LCR does not consider his transaction as one that is at risk of non-compliance. Bernard is not relying on the LCR in good faith and is not protected.*

Example 4

34. *The Commissioner publishes an LCR that reflects the position under new law that certain expenditure is not deductible. One example in the LCR contains an obvious omission of the word 'not', concluding that such expenditure is deductible. Although aware of the position in the new law, Armel Ltd deducts that expenditure in reliance on the example. Armel Ltd is not relying on the LCR in good faith and is not protected.*

Example 5

34A. *The Commissioner publishes an LCR on a new law that creates a deduction. It is clear on reading the LCR as a whole that the Commissioner's view is that Veronica is not entitled to the deduction. However, Veronica relies on a single sentence in the LCR to support her claim for a deduction. Reliance on a single sentence in isolation is not relying on the LCR in good faith and Veronica is not protected.*

Date of effect

35. An LCR is intended to provide as much advice and guidance as possible on new law. It follows from this principle that the date of effect of an LCR will be driven by the date from which the new law applies.[3]

36. A new law usually comes into force in one of these four ways:

(a) new law commences (usually upon receiving Royal Assent), and has an earlier application date:

For example, a Bill is introduced into Parliament on 1 November 2015 and passed in its original form. Royal Assent is given on 3 February 2016. The new law is stated to apply retrospectively from 1 July 2014.

The LCR applies from 1 July 2014.

(b) new law commences from the day of receiving Royal Assent:

For example, a Bill is introduced into Parliament on 1 November 2015 and passed in its original form. Royal Assent is given on 3 February 2016. The new law is stated to apply from the date Royal Assent is received, without any other application date specified.

The LCR applies from 3 February 2016.

(c) new law commences and has an application date in the future:

For example, a Bill is introduced into Parliament on 1 November 2015 and passed in its original form. Royal Assent is received on 3 February 2016. The new law is stated to apply from 1 July 2016.

[3] An LCR (whether denoted as draft or not) cannot become a public ruling prior to the new law coming into force because unenacted law is not a 'relevant provision' for the purposes of the public ruling provisions (section 357-55 of Schedule 1 to the *Taxation Administration Act 1953)*. This is consistent with paragraph 63 of TR 2006/10 (public rulings dealing with legislative amendments).

The LCR applies from 1 July 2016.

(d) the Bill does not become new law:

For example, a Bill is introduced into Parliament but is not passed by the Senate.

The draft LCR does not become finalised as a public ruling, and is withdrawn.

37. This reinforces the link between the substantive new law and the Commissioner's view in a public ruling on that law. However, this does not preclude the LCR applying from a different date where appropriate.

Other matters

Responding to change

38. LCRs are intended to be stable public rulings that illustrate the principles expressed in the new law (and as explained in the Explanatory Memorandum) as understood at the time that the new law was being developed.

39. Over time, supplementary advice or guidance will often be required to respond to actual experiences of taxpayers in applying the new law, other changes that may occur after its passage (for example, regulatory changes and changes in commercial practices) and consideration of the new law by the courts. This may take the form of a later taxation ruling or determination or other public advice product, based on the level of risk involved.

40. Where a statement in an LCR is later found to be incorrect, that part of the LCR may be withdrawn or amended.[4] Where the change is less favourable to taxpayers, this would usually be done with prospective effect only.

Relationship with Practical Compliance Guidelines

41. The ATO also publishes practical compliance guidelines.[5] These are a form of guidance that contain practical compliance solutions and often the ATO's view of relative levels of tax compliance risk across a spectrum of behaviours or arrangements. Practical compliance guidelines can provide useful insights into the practical implications of tax laws and associated ATO administrative approaches.

42. LCRs may also have similar content in respect of recently enacted law. For example, an LCR may set out high risk and low risk scenarios that enable taxpayers to position themselves within a range of behaviours, activities or transaction structures that the ATO indicates as anticipated to be low risk and unlikely to require scrutiny. Such statements will apply on their own terms and should not be taken to be incapable of responding to later developments.

Commissioner of Taxation
3 June 2016

[4] See paragraph 43 of TR 2006/10.

[5] See PCG 2016/1 *Practical Compliance Guidelines: purpose, nature and role in ATO's public advice and guidance*.

References

ATOlaw topic(s)	Administration ~~ Rulings ~~ Other
Legislative references	TAA 1953 TAA 1953 Sch 1 Div 357 TAA 1953 Sch 1 357-55 TAA 1953 Sch 1 Div 358
Related Rulings/Determinations	TR 2006/10
Other references	PCG 2016/1
ATO references	Siebel ID
BSL	TCN