

# ***PS LA 2001/8 - ATO Interpretative Decisions***

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! This practice statement was originally published on 31 March 2001. Versions published from 2 September 2009 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 requested by emailing [TCNLawPublishingandPolicy@ato.gov.au](mailto:TCNLawPublishingandPolicy@ato.gov.au) .



### This Law Administration Practice Statement explains the policy for ATO Interpretative Decisions.

*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 an ATO ID?

An ATO ID is a summarised version of a decision we have made on the application of the law<sup>1</sup> to a particular situation.

#### 2. Why do we have ATO IDs?

ATO IDs set out a precedential ATO view. The precedential ATO view system is explained in PS LA 2003/3 *Precedential ATO view*. Precedential ATO views are produced to ensure we provide consistent interpretative decision making and you are required to search for existing precedential ATO views and those being prepared as part of your resolution of interpretative issues.

You must follow an ATO ID where:

- in your judgment, there is no material difference between the facts of the issue you are making a decision on and the facts of an existing ATO ID, and
- you are satisfied that the application of the precedential ATO view set out in the ATO ID will result in a correct decision.<sup>2</sup>

An interpretative issue is one where the application of the law is not straightforward. An exercise of a discretion, a conclusion of fact or the determination of a value for example, would not be an interpretative issue.

#### 3. When might an ATO ID be prepared?

When deciding whether to prepare an ATO ID, you need to give serious consideration as to whether or not another form of precedential ATO view, for example a public ruling or determination is not more appropriate.

<sup>1</sup> Law administered by the Commissioner includes law governing income tax, indirect taxes, fringe benefits tax, withholding taxes, resource rent taxes, superannuation and excise.

<sup>2</sup> If following the ATO ID would result in an incorrect decision, you should escalate the issue.

As these products offer a high level of protection to taxpayers and provide more certainty, they are preferred. This is particularly so if there are multiple related issues for which a precedential ATO view is required. You should also be aware that if necessary, another form of precedential ATO view, for example a public ruling or determination, can be prepared over timeframes similar to that of an ATO ID on the same matter. That is, the question of timing should not of itself influence your consideration of what product is most appropriate.

All proposals to prepare an ATO ID should first be discussed with the Public Advice and Guidance Unit in your business line.

If it is agreed to be the right product, an ATO ID may be prepared for each decision on an interpretative issue where:

- there is no precedential ATO view on the issue, or
- there is an existing precedential ATO view however an ATO ID will improve the clarity or certainty of the ATO's interpretation of the particular area of the law.

An ATO ID might arise from any aspect of our work where an interpretative issue emerges, for example a private ruling, an audit, correspondence or a dispute. They can also arise from an interpretative issue where we are not yet required to make an actual decision, but we are aware that a scheme or transaction exists or is in serious contemplation.

#### 4. Can taxpayers rely on ATO IDs?

ATO IDs are publications approved in writing by the Commissioner, and therefore offer penalty and interest protection to any taxpayer who might rely on them.<sup>3</sup>

<sup>3</sup> See sections 361-5 and 298-20 of Schedule 1 to the *Taxation Administration Act 1953*.

## 5. The process for preparing an ATO ID

The requirements of, and process for preparing, an ATO ID, are set out in the processes for public advice and guidance. These guidelines are available via the link in the More Information section of this practice statement.

## 6. Maintaining the currency of ATO IDs

In line with the requirements for precedential ATO view documents, business lines have the primary responsibility for maintaining the currency of ATO IDs.

The ATO ID Guidelines provide guidance on making changes to ATO IDs. In general terms, if an ATO ID is incorrect or requires substantial change, it should be withdrawn and replaced by a taxation ruling or determination. However, if the updates are minor, and do not affect the decision or reasons for decision, then the ATO ID can be amended rather than being withdrawn.

## 7. More information

For more information, see:

- Public advice and guidance – [reference materials and processes](#)

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