

# ***PS LA 2007/14 (Withdrawn) - Gathering and use of information from foreign agencies or sources in relation to goods and services tax, wine tax and luxury car tax administration***

! This cover sheet is provided for information only. It does not form part of *PS LA 2007/14 (Withdrawn) - Gathering and use of information from foreign agencies or sources in relation to goods and services tax, wine tax and luxury car tax administration*

! Practice Statement Law Administration PS LA 2007/14 is withdrawn and has been replaced by PS LA 2016/6 *Exchange of information with foreign revenue authorities about indirect taxes*

! This document has changed over time. This version was published on 9 December 2016



# Practice Statement Law Administration

**PS LA 2007/14**

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*Practice Statement Law Administration PS LA 2007/14 is withdrawn and has been replaced by [PS LA 2016/6](#) Exchange of information with foreign revenue authorities about indirect taxes*

*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:** Gathering and use of information from foreign agencies or sources in relation to goods and services tax, wine tax and luxury car tax administration

**PURPOSE:** To advise of the process for requesting indirect tax information from foreign agencies or sources by way of voluntary disclosure of that information by the foreign agency or source

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## SCOPE

1. This practice statement provides direction to ATO personnel on the process to adopt when requesting information from foreign agencies or sources, other than foreign revenue authorities, that assists in the application of a domestic indirect tax law. This practice statement applies to the voluntary giving of information by foreign agencies or sources, once requested by the Australian Taxation Office (ATO), as opposed to information exchanged under an international tax agreement. Direction is also provided where a foreign agency requests voluntary information from the ATO.
2. This practice statement applies to all business lines within the ATO requesting indirect tax information from foreign agencies or sources.
3. This practice statement does not apply to requests for indirect tax information from foreign revenue authorities under international tax agreements. Nor does this practice statement apply to sending indirect tax information to foreign revenue authorities under international tax agreements. These kinds of exchanges of information (EOI) are covered by Law Administration Practice Statement PS LA 2007/13 Exchange of information with foreign revenue authorities in relation to goods and services tax, under international tax agreements.

## STATEMENT

4. Where information relevant to an Australian indirect tax transaction is believed to be held overseas, staff should first request the information from the taxpayer, their resident agent or a third party<sup>1</sup>. This approach should be taken unless circumstances exist where cooperative consultation is not warranted.
5. All reasonable enquiries by ATO personnel to obtain information to ensure acceptable compliance with Australian indirect tax law must take place prior to escalating a request to the GST Exchange of Information Section (GST EOI). More details are available on the GST Exchange of Information Section intranet page.
6. When ATO personnel needs to request indirect tax information from a foreign agency or source, and that information is not publicly available, that officer must consult with GST EOI.
7. The *Access and information gathering manual* contains the ATO policy for conducting access and information gathering activities. Chapter 3 refers to International Evidence Gathering. A hyperlink to this Manual is provided in the Other References section at the conclusion of this document.
8. Gathering of information on a taxpayer may require the disclosure of specific taxpayer information to other agencies; therefore, this practice statement must be read in conjunction with PS CM 2004/07 (G) *Secrecy and privacy obligations of ATO employees*. A link to this corporate management practice statement is provided in the Other References section at the conclusion of this document.

## Indirect Tax Information Request Register

9. Once an Indirect Tax Information Request has been authorised, it will be recorded on the Indirect Tax Information Request Register for corporate reporting purposes.

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<sup>1</sup> As per Taxpayers' Charter Booklet 10 If you're subject to an enquiry or audit.

## **EXPLANATION**

### **Indirect tax**

10. Indirect tax means any of these:
  - (a) GST
  - (b) wine tax, and
  - (c) luxury car tax.<sup>2</sup>

### **International indirect tax transactions**

11. The international trade in goods and services is substantial and continues to increase as does cross border business structuring. This means the ATO needs to be flexible and responsive to new opportunities to facilitate compliance.
12. Most of Australia's current international tax agreements do not incorporate provisions for the exchange of indirect tax information. However, Australia is gradually including indirect taxes into information exchange provisions within existing and proposed international tax agreements and specialised information exchange agreements.
13. It is essential ATO personnel do not individually approach domestic or foreign agencies to request foreign information but make the request through GST EOI. The consequences from a breach of international tax agreement obligations could damage the reputation of the Australian Government, Ministers, overseas representatives and the ATO. ATO personnel could face significant penalties if they share information for an indirect tax purpose where the information was gathered under an international tax agreement for direct tax purposes.
14. Information obtained under an international tax agreement that does not cover indirect taxes cannot be shared with, or used by ATO personnel administering indirect taxes.

### **Identification**

15. During enquiries or compliance activities, ATO personnel may identify issues that demonstrate a need to gather information held outside Australia to assist in the application of a domestic indirect tax law. In these circumstances staff should discuss with their manager and, where necessary an Access Specialist, the critical elements of the information, its relevance to the issues of the case and ultimately the information's value in the making of an assessment or other decision. A hyperlink to a list of Access Specialists is contained in the Other References section at the conclusion of this document.
16. Where ATO personnel, their manager and, where necessary Access Specialist, agree offshore information is required the officer should consult a GST EOI contact. A link to a list of GST EOI contacts is provided in the Other References section at the conclusion of this document. Offshore information is deemed to be required when it will assist with or establish the Commissioner's position in the making of a sound assessment, or will otherwise assist in the administration of the tax laws, and all reasonable enquiries have been followed where appropriate.

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<sup>2</sup> Section 995-1 of the *Income Tax Assessment Act 1997*.

17. GST EOI will advise on what information can be sought from foreign agencies or sources, including commercial and publicly available sources.
18. Information requested by referring ATO personnel may be known to be publicly available in a foreign jurisdiction by the GST EOI authorising officer, for example, land transfer records. If this is the case, relevant details on the central source of information will be provided to the referring ATO personnel who will then be responsible for seeking the information from that source.
19. If the information is not publicly available, a request for assistance in gathering this information can be made to GST EOI using the Indirect Tax International Information Gathering Referral Form available on the GST Exchange of Information Section intranet page.

### **Information request**

20. When ATO personnel send a request for information to GST EOI, sufficient detail must be included to provide a sound understanding of the situation, the relevant transactions and the parties involved.
21. The Indirect Tax International Information Gathering Referral Form should clearly state:
  - details of the requesting officer
  - details of the entity – where the entity is the subject of a compliance activity
  - summary of case compliance activity
  - details of avenues already undertaken to gather the relevant information
  - details of the other agency or source who may hold the requested information and the foreign jurisdiction involved
  - why the information is reasonably necessary
  - Manager and, where necessary, Access Specialist sign-off
  - exact information requested
  - if an urgent answer is requested, details and explanation of time constraints
  - a supporting statement from the relevant Executive Level 2 manager, or member of the Senior Executive Service (SES) as appropriate. In exceptional circumstances, a supporting statement by a manager at a lower level than Executive Level 2 will be accepted, and
  - a clear nexus between the information and/or documents requested and how it will assist in establishing the Commissioner's position in issuing a sound assessment or otherwise serve the purpose of administering Commonwealth tax laws.

### **Disclosure**

#### ***By the foreign agency or source***

22. Disclosure of the information by the agency or source providing the information to the ATO will be regulated by the secrecy and privacy obligations **of that agency or source.**

## **By the ATO**

23. The capacity of the ATO to disclose taxpayer specific information to other agencies or sources when an indirect tax information request is made must be within the performance of duties of the ATO personnel. A disclosure within the performance of duties or expressly permitted by a statutory secrecy provision<sup>3</sup> would be considered a disclosure 'authorised by or under law' and permitted under Information Privacy Principle 11 of the *Privacy Act 1988*.

## **Approval**

24. On receipt and consideration of the referral, the GST EOI authorising officer will contact the referring ATO personnel to confirm receipt and discuss any details that are still required or to suggest changes to enhance the request.
25. If during consultation with GST EOI the request is considered to be not appropriate for any reason, the request will be returned by GST EOI to the requesting ATO personnel with an explanation of this result.
26. Authorised requests for information from foreign agencies will be forwarded by GST EOI to the most suitable agency or source to gather the information.

## **Consultation and finalisation**

27. When the information request is made to the foreign agency or source, the GST EOI authorising officer will:
- inform the requesting ATO personnel of the date the information was requested from the foreign agency or source
  - provide an expected timeframe for the receipt in the ATO of the requested information, and
  - provide periodic progress reports if available and applicable.
28. The GST EOI authorising officer will receive the requested information from the foreign agency or source, verify the taxpayer identification and then forward the information to the requesting ATO personnel.
29. Where the information requested cannot be provided by the other agency or source, the authorising officer will communicate this to the requesting ATO personnel and manager as soon as possible.

## **Recording on register**

30. The ATO is required to report on relevant risks that may impact on the integrity of the tax system as part of its corporate governance reporting requirements.<sup>4</sup>
31. GST EOI will update the Indirect Tax Information Request Register
- when a request is received;
  - when the activity is undertaken for that request; and
  - when a request is finalised. The finalisation note will contain the details of the outcome of the request.

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<sup>3</sup> For example, subsection 355-5(4) of Schedule 1 of the *Taxation Administration Act 1953*.

<sup>4</sup> PS CM 2003/02 Corporate Management: Risk and Issues Management

## **Reciprocal arrangements**

32. The ATO will only provide relevant indirect tax information in response to a requirement imposed by another Commonwealth or foreign agency where the circumstances are expressly contemplated by section 355-5 to Schedule 1 of the *Taxation Administration Act 1953*, or by another provision of that Act.
33. Any requests for indirect tax information from a foreign agency must be referred to a GST EOI contact. The request will be recorded on the Indirect Tax Information Request Register and a decision to provide the information will be made in consultation with the Legal Services Branch.

## **Aim**

34. The approach undertaken in this practice statement should result in:
  - the receipt of information through non-compulsory requests to foreign agencies or sources and voluntary disclosure of that information by the foreign agency or source to assist in the application of domestic indirect tax laws
  - a structured practice to ensure appropriate requests for information that is held in a foreign jurisdiction and is necessary to assist in the application of a domestic indirect tax law;
  - staff access to a specialised contact point within the ATO for informal requests of specific information believed to be held in a foreign jurisdiction
  - corporate assurance on the legitimacy of the request, and
  - greater intelligence gathered on risks to the indirect tax international arena.

### Amendment history

<b>Date of amendment</b>	<b>Part</b>	<b>Comment</b>
20 June 2014	Contact details	Updated.
5 November 2012	Generally	Updated to current corporate publication style.
	Contact details	Updated.
6 August 2008	Contact details	Updated.

Subject references	International Referral of international issues Information gathering Goods and services tax Luxury car tax Wine equalisation tax
Legislative references	Taxation Administration Act 1953 Sch 1 355-5 Taxation Administration Act 1953 Sch 1 355-5(4) Privacy Act 1988 14 Income Tax Assessment Act 1936 264A Income Tax Assessment Act 1997 995-1
Related practice statements	PS LA 2007/13 Exchange of Information with foreign revenue authorities in relation to goods and services tax, under international tax agreements PS CM 2004/07 (G) Secrecy and Privacy Obligations PS CM 2003/02 (G) Corporate Management: Risk and Issues Management
Other references	<a href="#">Our approach to information gathering</a> <a href="#">CEI 2014/06/06 Privacy and Taxpayer Confidentiality (link available internally only)</a> (link available internally only) <a href="#">List of Access Specialists</a> (link available internally only)
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