PS LA 2007/5 - Settlements

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Australian Government
Australian Taxation Office

Practice Statement Law Administration

PS LA 2007/5

FOI status: may be released

This 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. It must be followed by Tax office staff unless doing so creates unintended consequences or is considered incorrect. Where this occurs Tax office staff must follow their business line's escalation process.

SUBJECT: **Settlements**

PURPOSE: **To prescribe mandatory use of the *Code of Settlement Practice* by all Tax Office staff in the settlement of taxation disputes.**

BACKGROUND

1. A basic duty of the Commissioner of Taxation is to administer revenue laws including superannuation. This duty includes assessing and collecting taxes and determining entitlements arising under taxation law. The general rule therefore is that the Commissioner does not forego tax[1] properly payable and will, with minimal delay, seek to collect as near as practicable that tax.

2. In determining the amount of tax payable or refund due under the law the Commissioner will have regard to the facts and circumstances of a case, and the strength of any different views as to the application of the law to the facts. There are occasions where the Commissioner's preliminary views are changed prior to assessment, for example, in the light of new evidence or where the Commissioner is persuaded to accept a different view of the law. These do not generally constitute settlements but the application of the law to the particular facts. Our processes to ensure proper and sound decision making in these cases are contained in a range of corporately endorsed policies and work procedures for the conduct of an audit. These procedures are made available to staff through the corporate case management system as part of the support process when a case is referred to a case officer.

[1] Tax includes any tax, levy, charge, duty or excise imposed under a law administered by the Commissioner of Taxation.

3. Settlements involve taking into account a range of factors, such as the costs of further enquiries and the risks of litigation and determining that it is in the best interests of the Commonwealth to accept a certain amount in finalising the dispute. The Courts have recognised that settlement of a dispute about the amount of tax payable is an appropriate approach to particular circumstances and at times highly desirable. Nevertheless, it is important to settle only in appropriate circumstances and when settling, officers must be aware of the importance of transparency and accountability in the decision-making process and in the outcomes of that process.

STATEMENT

4. The *Code of Settlement Practice* (the Code) provides guidelines on settlement of taxation disputes. The Code is directed at circumstances where, for reasons of good management of the tax system, a decision is taken to settle a disputed liability to tax. The Code is designed to provide assurance about the appropriateness of settlement decisions. A link to the Code is provided in the other references section at the conclusion of this practice statement.

5. Tax Office staff who make settlement decisions must follow the Code.

6. The power to settle taxation liabilities has been given only to a strictly limited range of senior officers. Tax Office staff must check the Register of Delegations and Authorisations and the Taxation Authorisations Guidelines (links available at the conclusion of this practice statement) to ensure they are properly delegated or authorised to settle a taxation dispute.

7. A distinction should be drawn between ***settling*** the amount of the liability and ***compromising*** a debt. The settlement process aims to establish an agreed tax liability where the taxpayer and Tax Office do not initially agree on the tax liability. Compromise occurs when the Tax Office and taxpayer agree on the amount of the tax liability but the Tax Office agrees to accept less than the agreed amount in finalisation of the debt. The delegation to compromise a debt rests with very few Senior Executive Service (SES) officers and an agreement to compromise is extremely rare.

8. Senior officers approving settlements are required to sign a Statement of Compliance (link available at the conclusion of this practice statement) in accordance with paragraph 67 of the Code.

EXPLANATION

Documentation and Registration

9. Settlement procedures outlined in the Code make it clear that:

- generally, settlements need to be approved by an SES officer
- there should be no unilateral decision making
- where external counsel has been engaged and understands the substantive issues, the normal expectation is that the advice of counsel would be obtained on the merits of the Commissioner's position and the reasonableness of the proposed settlement.
- in relation to a Priority Technical Issue (PTI), the issue should not be settled without the agreement of the PTI owner. In accordance with Law

Administration Practice Statement PS LA 2003/10, the PTI owner is an officer from the Tax Counsel Network or a Centre of Expertise, and

- at least two officers should be present during settlement negotiations.

10. Settlements are to be properly documented and included in a register of settlements.

Register of settlements

11. Details of each finalised settlement, including the justification or underlying reasoning for the settlement, must be recorded on the ATO Settlement Register (Register). The ATO Settlement Register User Guide explains how to access the Register and the requirements of the input fields. A link to this User Guide is available in the other references section at the conclusion of this practice statement.

12. Details of each settlement must also be recorded on the Tax Office case management systems.

Currency of the Code

13. Prior to entering into any settlement negotiations with taxpayers, Tax Office staff must be familiar with the principles embedded in the Code and must ensure that the taxpayer's circumstances are appropriate for settlement.

14. The online version of the Code is the only current version of the Code. Tax Office staff must check the online version for updates before finalising a settlement.

15. Tax Office staff who have any concerns about the guidance provided by the Code should contact the Settlement Process team in Law and Practice (L&P).

Settlement home page and other resources

16. Tax Office staff should refer to the settlement home page on the Intranet (link available in the other references section at the conclusion of this practice statement) which provides resources that will help when entering into settlements.

17. The resources available on the settlement home page include Settlement Procedures and a Settlement Process Map. These documents provide help to staff with settlement issues, but are not a substitute for the Code. Tax Office staff must refer to the Code for complete guidelines to the settlement process.

Business Line procedures

18. Business Lines may have their own additional settlement procedures provided they are consistent with the corporate settlement procedures and the Code. In addition, every Business Line must:

    - publish any additional settlement procedures on the Intranet
    - take responsibility for the currency and maintenance of these procedures, and
    - link their Intranet settlement site to the settlement home page.

Outstanding debt

19. Any payment arrangements included as part of a settlement of a taxation dispute must be in accordance with the *ATO Receivables Policy*.

Technical Quality Review

20. The Tax Office's Technical Quality Review (TQR) process in relation to settlements is designed to provide assurance that officers have complied with the Code.

21. The TQR process is detailed in Law Administration Practice Statement PS LA 2001/11. It requires Tax Office business lines to conduct a bi-annual review of the quality of their interpretative decisions, including settlements. TQR Panels are formed and consist of senior technical leaders from the business line, a community representative with relevant experience who is external to the Tax Office, and an officer from Law and Practice.

22. In relation to settlements the TQR examines whether:

- the issue which is the basis of the settlement agreement is related to a disputed tax liability
- the decision to settle is appropriate and in accordance with the Code
- settlement negotiations were appropriately conducted and documented in accordance with the Code, and
- the settlement terms are appropriate and the agreement is clear and appropriately authorised.

Subject references	Settlement Code of Settlement Practice ATO Settlement Register
Legislative references	
Related public rulings	
Related practice statements	PS LA 1998/1 PS LA 2001/11 PS LA 2003/10 PS LA 2007/6
Case references	
Other references	ATO Settlement Register User Guide (link available internally only) Code of Settlement Practice Register of Delegations and Authorisations (link available internally only) Settlement procedures (link available internally only) Settlement home page (link available internally only) Settlement Process Map (link available internally only) Settlement Process contact List (link available internally only) Settlement - Statement of Compliance (link available internally only) Taxation Authorisations Guidelines (link available internally only) **ATO Receivables Policy** ATO Receivables Policy (link available internally only)
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Other Business Lines consulted	CS&C, Debt, Excise, GST, LB&I, MEI, S&ME, SNC, SPR
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