PS LA 2009/2 - The priority ruling process

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Australian Government
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Practice Statement Law Administration

PS LA 2009/2

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.

SUBJECT: **The priority ruling process**

PURPOSE: **To advise the process that supports the operation of the priority ruling process**

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INTRODUCTION

1. The priority ruling process has been put in place to assist corporate Boards to manage the taxation risks associated with significant transactions. Ruling applications that satisfy the eligibility criteria specified in paragraph 5 of this practice statement ordinarily require input from a range of ATO specialists and/or involve issues that do not have a precedent.

2. This practice statement provides advice on the operation of the priority ruling process. This practice statement:

   - outlines the process to have a Private Ruling application or a Class Ruling application considered for acceptance into the priority ruling process
   - outlines the factors to take into account when deciding if a Private Ruling application or a Class Ruling application is accepted into the priority ruling process, and
   - provides directions for ATO personnel to ensure that a Private Ruling application or a Class Ruling application once accepted into the priority ruling process is delivered in timeframes consistent with the applicant's business needs.

3. Unless otherwise indicated in this practice statement, existing practice statements, business rules and systems will also continue to apply.

STATEMENT

4. The key principles of the priority ruling process are:

   - centralised point of reference in the ATO (Process Owner and Case Manager) responsible for marshalling resources and taking remedial action to ensure that rulings are not delayed
   - alignment of entity and ATO priorities
   - early engagement of all required expertise to avoid sequential processing, and
   - entities and the ATO working together to clarify the arrangement to be ruled on and the issues to be addressed in the ruling.

Criteria

5. A Private Ruling application or a Class Ruling application may be accepted into the priority ruling process where it is associated with a transaction that has the following characteristics:

   - time sensitive
   - prospective
   - of major commercial significance and requiring consideration at corporate Board level
   - tax outcome is a critical element of the transaction
   - complex law and/or facts need to be analysed

   and where the entity:

   - notifies the ATO as soon as practicable after the transaction is first seriously contemplated
   - agrees to provide an application incorporating a full brief with:
     - all relevant information
     - all issues identified
     - position for and against fully argued, and
     - timeframes identified.

   The entity must also:

   - nominate a Taxpayer Representative who will be responsible for all interaction with the ATO and meeting any information requests quickly, and
   - agree to provide the ATO with an overview of the proposed transaction, including any high level tax analysis, prior to the pre-lodgment meeting outlined in paragraphs 27, 28 and 29 of this practice statement. The overview should be provided no later than 3 working days prior to the pre-lodgment meeting.

6. Where the Commissioner is to be requested to rule on the possible application of anti-avoidance provisions, there is no onus on the entity to make a full submission concerning the application of these provisions. However, the submission should identify the key features that the entity thinks might be relevant to the identification of a scheme, tax benefits and dominant purpose.

The role of the Process Owner

7. A separate unit in the Large Business & International business line undertakes the role of corporate process owner for the priority ruling process. The Process Owner:

   - is the central point of contact on matters relating to the process for the Taxpayer Representative and ATO personnel
   - determines what matters are accepted into the priority ruling process
   - has authority to marshal all necessary resources across business lines, and
   - has authority to take remedial action if delays occur or are expected to occur.

The process

8. An entity who:

   - considers that they have a Private Ruling application or a Class Ruling application that satisfies the eligibility requirements outlined in paragraph 5 of this practice statement, and
   - wishes to have the application processed under the priority ruling process,

   must email their contact details to LBIAdvice@ato.gov.au. The Process Owner will make phone contact within 24 hours from receipt of this email to discuss the operation of the priority ruling process and request a brief outline of why it is considered that the potential ruling application qualifies for the process.

   Note: entities or their representatives sometimes make early contact with ATO personnel who they have dealt with in the past and who they know have expertise in the relevant issues. Regardless of such conversations, entities seeking to access the priority ruling process must contact the Process Owner at the earliest possible time as outlined above.

9. If, following the discussion outlined in paragraph 8 of this practice statement, the Process Owner considers that the matter does not meet the criteria for inclusion in the priority ruling process the potential ruling application will be referred to the relevant business line for appropriate action.

10. Where, following the discussion outlined in paragraph 8 of this practice statement, the Process Owner considers that a matter potentially qualifies for inclusion into the priority ruling process, the entity will provide the Process Owner with a request that:

    - identifies the applicant and/or the entity
    - confirms that the appropriate authorisations are in place in relation to the ruling request under consideration
    - briefly describes the transaction and the relevant areas of tax law to be covered by the ruling request
    - indicates the preferred timing and location of the pre-lodgment meeting
    - confirms that the entity will, if the matter is accepted into the priority ruling process, ensure that the process requirements on the entity, including those criteria outlined in paragraph 5 of this practice statement, are satisfied, and
    - briefly outlines why the entity considers that the transaction satisfies each of the eligibility criteria identified in paragraph 5 of this practice statement.

Guidelines for assessing requests

11. When assessing applications for inclusion into the priority ruling process against the eligibility criteria outlined in paragraph 5 of this practice statement the Process Owner will apply the following guidelines. The Process Owner's decision to accept or reject a matter into the process will be based on this assessment and any other relevant factors.

Time sensitive

12. Potentially any transaction is time sensitive to the entity. When assessing a transaction against this criterion it is the extent to which the timeframe for a particular transaction is determined by factors outside the control of the entity that is taken into account. A ruling associated with transactions that can be seen as having deadlines made significantly shorter or more inflexible by external factors has the strongest case for inclusion into the priority ruling process.

Prospective

13. If implementation of a transaction has already commenced any ruling associated with that transaction cannot be accepted into the priority rulings process. The process is designed to be responsive where the ruling is significant to whether and when a transaction proceeds.

Major commercial significance and requiring consideration at corporate Board level

14. Factors taken into account when assessing transactions against this criterion include:

- The size of the transaction, both in terms of scale and the number of taxpayers likely to be impacted. High value transactions and transactions that potentially impact on large numbers of taxpayers give more support for inclusion.
- The potential impact of the transaction on the industry sector to which the transaction relates. Greater impact gives more support for inclusion.
- The need for the transaction to be endorsed at the shareholder/investor level before it is undertaken. The more shareholder/investor endorsement that is required, the greater the support for inclusion.
- The nature of the transaction. Is the transaction one that falls outside 'business as usual' for the particular entity or similar entities? The less the transaction is 'business as usual', the greater the support for inclusion.
- The characteristics of the transaction. Are there significant features or elements of the transaction that can be regarded as novel, innovative or unique? That is, are there features that distinguish it from similar transactions undertaken by either the same entity in the past or other entities for similar purposes. The more this is so, the greater the support for inclusion.
- The manner in which the corporate Board evaluates the tax risks associated with the transaction. Has the Board specifically identified a need to obtain a higher degree of certainty around the tax treatment of the transaction or in relation to certain aspects of the tax treatment before it will give approval for the transaction to proceed? The higher the degree of certainty required before approval to proceed, the greater the support for inclusion.

Tax outcome is a critical element of the transaction

15. Factors taken into account when assessing transactions against this criterion include:

    - The impact of an adverse ruling on the proposed transaction. Would the transaction proceed in substance, and proceed in substantially its current form, even if an adverse ruling was received? The less this is so, the greater the support for inclusion.
    - The impact on the timing of the transaction of the ruling not being provided within the requested timeframe. Would implementation of the transaction be delayed until the ruling is received? If so, this increases support for inclusion.

Complex law and facts need to be analysed

16. Factors taken into account when assessing transactions against this criterion include the likelihood that:

    - the ruling will raise issues for which no precedential ATO view exists. The greater the likelihood, the greater the support for inclusion, and
    - the nature of, and the risk inherent in the issues raised will require the involvement of the officers in the Tax Counsel Network.[1] The greater the likelihood, the greater the support for inclusion.

Entity notifies the ATO as soon as practicable after the transaction is first seriously contemplated

17. Early notification is assessed with reference to the time that the entity first seriously contemplated:

    - the transaction, not the possibly later time that the entity first approached their accounting or legal advisors in relation to the transaction
    - entering into the transaction, not the possibly later time that the entity first seriously contemplated the particular structure now proposed for the transaction, and
    - the transaction under consideration, not the possibly later time that tax issues relating to the proposed transaction are first identified.

    However, a transaction is not seriously contemplated merely because it was one of a range of different transactions very generally viewed.

18. Where the Process Owner is satisfied that the transaction meets the criteria for inclusion into the priority ruling process, they will consult with the relevant Business Line Officer to identify and appoint a Case Manager for the transaction. The Case Manager must be a senior officer, generally at the Executive Level 2 level, who is experienced in interpretative assistance work.

19. Where the Process Owner determines that the transaction does not meet the criteria for inclusion into the priority ruling process, he or she will refer the potential ruling application to the relevant business line for action.

[1] See PS LA 2012/1 *Management of high risk technical issues and the engagement of technical officers in the Tax Counsel Network*.

Early engagement of all contributors

20. The priority ruling process is designed to avoid sequential processing of issues involved in a ruling by engaging at the outset all expertise that will be required to deal with the application. The Case Manager will identify and engage any other ATO business line expertise that will be required to contribute. The Process Owner will, in accordance with paragraphs 23 and 24 of this practice statement, work with staff from the Work allocation, reporting and monitoring team in Law and Practice to identify and engage any required officers in the Tax Counsel Network.

21. As far as possible the Case Manager, business line experts and Law officers, if engaged, must all be identified as available to work on the ruling until the expected completion date. It is important to engage expertise in a way that minimises the potential need to reallocate at a later date, as this may hinder the timely completion of the ruling.

22. While the Case Manager will have primary responsibility for contact with the Taxpayer Representative, they may arrange for direct contact by the Taxpayer Representative by other officers involved in the case where and when appropriate. Even where this is necessary, the Case Manager will remain actively involved and must be kept informed by other participants of all developments. It is expected that all parties will act collaboratively in progressing the ruling to finalisation. The Case Manager has responsibility for managing the ruling to completion, including obtaining all required authorisations and sign-off in the relevant business line.

Engagement of technical expertise

23. In recognition of the complexity and other characteristics of matters accepted into the priority ruling process, expert assistance must be engaged at the outset to identify or create the relevant precedential ATO view or views. The Process Owner will arrange for business line experts, and if the level of risk warrants[2], officers in the Tax Counsel Network to be allocated to the ruling.

24. These officers will work with the Case Manager to identify issues for resolution and will assist in determining the information required from the entity. In addition, they will assist in identifying any precedential ATO view or to create one where none exists.

Roles and responsibilities

25. Acceptance of a matter into the priority ruling process does not alter the respective roles and responsibilities of officers from the business line and Law and Practice. These roles are documented in the *Guide for managing high risk technical issues.*

26. *The Public Rulings Manual*, in particular Chapter 16 of that Manual, applies to the management of Class Rulings including those accepted into the priority ruling process. ATO personnel involved in authorising or approving Class Rulings must refer to the *Public Rulings Manual*.

[2] See PS LA 2012/1.

Pre-lodgment meeting

27. The Case Manager must arrange with the Taxpayer Representative for a pre-lodgment meeting. The purpose of a pre-lodgment meeting is to facilitate the lodgment of a valid ruling application that accurately describes the transaction to be ruled upon, the issues the ruling must address and, as far as practicable, identifies all information that is likely to be required.

28. The pre-lodgment meeting should be arranged as soon as possible after the Case Manager is appointed. While the entity's (or Taxpayer Representative's) location will be one of the factors taken into account in deciding which ATO personnel should be allocated to the ruling, other factors will often mean that these officers will be based in different sites. Practical alternatives to face to face conferences, including the use of video-conferencing, should be considered for these meetings. Such alternatives may provide the opportunity for earlier contact than face to face meetings would provide, which will be preferred where possible.

29. All technical experts and other ATO stakeholders contributing to the ruling may participate in the pre-lodgment meeting. ATO personnel at the meeting should outline any particular areas of concern to enable these to be addressed in the proposed application. They may discuss the ATO's general view in relation to the relevant area of law, but should take care not to give verbal assurances or other indications of what the ATO's view may be in relation to the particular arrangement or the proposed application – refer to paragraphs 194 to 204 of Law Administration Practice Statement PS LA 2008/3 *Provision of advice and guidance by the ATO*.

Records of meetings

30. It is important to ensure that key issues, substantive outcomes and action items from meetings involving the Taxpayer Representative and ATO personnel are accurately recorded and agreed. To avoid confusion and duplication of effort the Case Manager and the Taxpayer Representative should agree on who will undertake this task prior to the commencement of the meeting.

31. Where it is agreed that a record of the meeting is to be made by the Taxpayer Representative, he or she must provide a draft record of the meeting to the Case Manager. The Case Manager, after consultation with other ATO attendees, must provide the Taxpayer Representative with comments that indicate whether the ATO agrees that the record accurately reflects the key issues discussed, substantive outcomes and action items. These comments must, where necessary, indicate in what respects the record should be updated to accurately reflect the meeting.

32. Similarly, where it is agreed that the ATO will act as record taker, the Case Manager must provide the Taxpayer Representative with a draft record of the meeting. The Taxpayer Representative must be given the opportunity to comment on the record of the meeting including whether he or she agrees that the record accurately reflects the key issues discussed, substantive outcomes and action items. These comments should also, where necessary, indicate in what respects the record should be updated to accurately reflect the meeting.

Case plan

33. As soon as possible after the pre-lodgment meeting the Case Manager will consult with all contributors and prepare a case plan outlining each of the steps in the process and the dates on which those steps are to be completed to achieve the anticipated ruling issue date. As the plan will include steps to be taken by the entity, it needs to be negotiated with the Taxpayer Representative who must ensure that steps are taken by the entity in accordance with the plan.

34. The Case Manager will outline the plan to the Taxpayer Representative and the Process Owner. The Case Manager will notify the Process Owner immediately any obstacles are encountered to achieving the steps set out in the plan by their required dates. The Case Manager will notify the Taxpayer Representative of any consequent change to the ruling issue date as soon as dates need to be changed.

35. Similarly, the Taxpayer Representative will notify the Case Manager (who will inform the Process Owner) immediately any obstacles are encountered to achieving the steps to be taken by the entity by their required dates. After discussing the impact of the delay with other ATO personnel involved in the ruling, the Case Manager will advise the Taxpayer Representative of any consequent change to the anticipated ruling issue date.

36. If the Case Manager and the Taxpayer Representative cannot agree on the anticipated issue date (whether initially or after encountering obstacles to steps set out in the plan), the Process Owner must discuss the date with them and will set the anticipated ruling issue date.

Further information requests

37. Information further to that identified at the pre-lodgment meeting may be required in some instances. For example additional facts about the transaction or more detailed submissions on specific points may be required. The information should be requested from the Taxpayer Representative by the most effective method. In certain circumstances requests for information made after lodgment of the application may be escalated for approval by the Process Owner. This may occur when, for example, there is a disagreement about whether or not the information to be requested is necessary to address a particular issue.

ATO Interpretative Decisions

38. An ATO Interpretative Decision (ATO ID) does not need to be published before the issue of a ruling to which the priority ruling process applies. Where an ATO ID needs to be prepared for the decision in accordance with Law Administration Practice Statement PS LA 2001/8 *ATO Interpretative Decisions*, the ATO ID may be prepared after the priority ruling is issued.

Agreement on arrangement

39. As soon as the arrangement to be ruled on is established, it should be documented and the documentation agreed with the Taxpayer Representative.

Transferring matters to business as usual processing

40. Where it becomes apparent that the circumstances that resulted in a matter being accepted into the priority ruling process have significantly altered, the Process Owner may elect to have the matter finalised using business as usual processes. The Process Owner will make this decision after discussions with the Case Manager, other ATO personnel involved in the ruling and the Taxpayer Representative. The decision will be made on a case by case basis.

41. If the Process Owner makes a determination to transfer a ruling to business as usual processing, case ownership will not change. However, this practice statement will no longer apply to how that ruling application is dealt with. Ruling applications dealt with as business as usual processing must also be managed to achieve corporate service standards and within reasonable timeframes expected by the taxpayer.

Entities who have entered into Annual Compliance Arrangements

42. Certain entities from the large market may enter into an Annual Compliance Arrangement (ACA) with the ATO. ACAs require entities to have sound tax risk management processes and operate on the basis of full and true disclosure. They involve joint risk assessment processes and aim to provide taxpayers with a level of practical certainty.

43. Entities who have entered into an ACA with the ATO may apply to have certain matters accepted into the priority ruling process where they consider that these matters satisfy the criteria listed in paragraph 5 of this practice statement. Contact with the Process Owner should be made using the process outlined in paragraph 8 of this practice statement.

Evaluation and appraisal

44. A formal feedback mechanism is available that allows participants to comment on the priority ruling process and the contributions of all other participants. Feedback may be sought during and at the conclusion of rulings completed using the priority ruling process. Feedback received from this mechanism is used to make adjustments to the process as necessary and to assist participants to maintain and improve the quality of their contribution.

Previous practice statement

45. This practice statement replaces Law Administration Practice Statement PS LA 2005/10 *Priority private binding rulings*, which applied before the date of effect of this practice statement.

Amendment history

Date of amendment	Paragraph	Comment
13 May 2014	Contact details	Updated.
28 June 2012	Various	Updated to reflect the withdrawal of PS LA 2003/10 and PS LA 2004/4, publication of PS LA 2012/1, and the new procedures for the engagement of Law officers. Removed references to TCN, CoEs and priority technical issues.
	Paragraph 8	Updated contact details for Process Owner.
	Paragraph 18	Removed reference to industry Segment Leader.
	Paragraph 38	Updated reference to PS LA 2001/8.
	Paragraph 45	Corrected reference to previous practice statement.
	Related practice statements	Removed PS LA 2003/10 and PS LA 2004/4; added PS LA 2012/1.
	Other references	Removed Relationship between Business Lines, Tax Counsel Network and Centres of Expertise document. Added Guide for managing high risk technical issues.

Subject references	Private rulings; Class Rulings; Precedential ATO views; ATO Interpretive Decisions; written binding advice
Related public rulings	CR 2001/1
Related practice statements	PS LA 1998/1 PS LA 2001/8 PS LA 2002/13 PS LA 2003/3 PS CM 2003/02 PS LA 2008/3 PS LA 2008/4 PS LA 2008/5 PS LA 2012/1
Other references	Public Rulings Manual (internal link only) Guide for managing high risk technical issues (internal link only)
File references	08/13284
Date issued	9 April 2009
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Other business lines consulted	LB&I, S&ME, GST, Law, ME&I, OCOM, Super, Excise