

# **Review into the ATO's administration of class rulings**

**Terms of Reference &  
Submission Guidelines**



## **BACKGROUND**

1.1 The ATO has a process under which it will issue advice about the tax consequences of a particular arrangement to a class of taxpayers. This type of advice is known as a class ruling.

1.2 The ATO also issues product rulings. However, these differ from class rulings as they deal with particular investment products and have a marketing or promotion element.

1.3 Class rulings are public rulings. This means that they are published and are accessible to all taxpayers. Class rulings are also legally binding on the ATO. This means that if members of the class referred to in the class ruling follow the advice contained in the class ruling, the ATO cannot levy tax, penalties or interest if the class ruling proves to be incorrect at law.

1.4 The purpose of a class ruling is to provide certainty to participants, provided the arrangement is carried out as described in the class ruling. A class ruling also means that individual participants need not seek private rulings on the relevant arrangement.

1.5 Class rulings are issued in a number of different circumstances. These include when:

- An employer seeks advice for a class of employees about the tax consequences of certain arrangements (such as employee share acquisition plans or bona fide redundancy plans);
- Where a company seeks advice for its shareholders about the tax consequences of certain arrangements (such as a restructure of the company or the application of the scrip for scrip rollover provisions); and
- Where a Commonwealth, state or territory government or one of their authorities seeks advice about a proposed transaction – for example, an industry restructure that has consequences for participants in that industry.

1.6 During consultations on the IGT's work program, which occurred early in 2009, representatives of businesses and the tax profession repeatedly raised concerns that class rulings sometimes take too long to issue and sometimes are not issued at all. They asserted that ATO processes for dealing with class rulings are not well known to potential applicants and can involve poorly targeted requests for information. They also asserted that there can be communication issues between the ATO and applicants during the class rulings process. For example, applicants asserted that the ATO can be reluctant to communicate early in the class ruling process that it has changed its view on the application of the law to arrangements of the kind being considered in the class ruling. Applicants also pointed to ATO delays in establishing agreed facts or in establishing the correct view of the law that is to be applied to those facts.

1.7 These concerns about class rulings were also raised in a number of the submissions that were made to the IGT's current review of the ATO's administration of private rulings. However, the IGT was not able to consider these concerns about class rulings during this other review, as class rulings are not issued as private rulings, but as public rulings.

1.8 This review will seek to establish whether taxpayer concerns such as the above are justified. It will examine the management of selected class rulings with a focus on important milestone events and the underlying issues and behaviours. It will consider if ATO behaviours and decision-making processes are leading to extended timeframes. This will provide a basis for conclusions to be drawn and recommendations of best practice in the handling of class rulings.

1.9 The Government currently proposes to amend the law to include indirect tax laws (GST, luxury car tax (LCT), wine equalisation tax (WET) and excise laws) in the public and private rulings regimes from 1 July 2010. This inclusion will provide scope for class rulings to be provided on indirect tax matters under the ATO's class rulings framework. However, as these changes are not yet legislated, this review will focus primarily on class rulings issued for income tax and fringe benefits tax matters rather than those which involve GST, LCT, WET and excise matters.

#### Terms of reference

1.10 In accordance with subsection 8(1) of the *Inspector-General of Taxation Act 2003* (IGT Act), the IGT on his own initiative will conduct the following review:

***The IGT will examine aspects of the ATO's management of class rulings with a focus on:***

- whether the process for obtaining a class ruling is sufficiently clear and transparent to potential applicants and their advisors;***
- whether class rulings are finalised within appropriate timeframes;***
- the ATO's information gathering processes during class rulings applications;***
- the expectations of taxpayers and their advisers around how class rulings should be managed so as to promote their finalisation in a timely and efficient manner; and***
- whether the design and management of the class rulings process is achieving its intended purpose of providing certainty to taxpayers with respect to the tax treatment of particular arrangements.***

#### Aim of the review

1.11 The IGT will investigate whether there are issues with the administration of class rulings and make any necessary recommendations which, when addressed, will improve the ATO's class rulings framework. This will include the identification of practices that promote the early finalisation of these rulings and minimise the costs of compliance.

#### Consultation Processes

1.12 The IGT will:

- publish a copy of the terms of reference for this review on his website;
- take submissions on this review from members of the public generally, or from particular people or organisations, within the time frame set out below; and
- request the Commissioner of Taxation to provide information and/or documents relevant to this review.

## Submissions

1.13 The IGT invites written submissions to assist with this review. Submissions should address the terms of reference set out above and the issues and questions outlined in the attached submission guidelines. It is not expected that each submission will necessarily address all of the issues and questions raised.

1.14 The closing date for submissions is 30 April 2010. Submissions can be sent by:

Post to:           Inspector-General of Taxation  
                      GPO Box 551  
                      SYDNEY NSW 2001

Fax to:            02 8239 2100

Email to:         [classrulings@igt.gov.au](mailto:classrulings@igt.gov.au)

## Confidentiality

1.15 The IGT is seeking detailed accounts of applicants' experiences in dealing with the ATO on class ruling matters. This would greatly assist the IGT in identifying potential systemic issues and allow for the more efficient and effective examination of these issues. If necessary, submissions may be provided to the IGT in confidence, in which case the information contained in such submissions will not be made available to any other persons including the ATO.

## **SUBMISSION GUIDELINES**

1.16 These guidelines envisage that, broadly, your submissions will be divided into a number of parts.

1.17 At the outset of your submission, it is important to provide a detailed account of specific ATO practices and behaviours that, in your view, impact (either positively or negatively) upon the timely, efficient and effective finalisation of a class ruling application. The IGT is also seeking examples of both positive and negative ATO practices in relation to class ruling applications.

1.18 In investigating the ATO's class ruling practices and related behaviours, it may be useful to provide a timeline of events outlining your key interactions with the ATO including information requests, key meetings and the issuing of a draft class ruling (if relevant).

1.19 Any adverse or detrimental impacts of the ATO's practices and behaviours on class rulings should be set out and described. These might include increased compliance costs in dealing with the ATO directly during the class ruling application or increased ongoing compliance costs thereafter and potential restructuring of significant commercial arrangements.

1.20 The submission should list alternative actions, practices or behaviours which, in your view, could have minimised any adverse effects.

1.21 The following is provided to assist you in developing these parts of your submission. It includes a range of questions to assist you in considering issues that have been raised during community consultations.

### **ATO'S PROCESSES AND BEHAVIOURS FOR CLASS RULINGS**

1.22 This review will consider the following:

- whether the process for obtaining a class ruling is sufficiently clear and transparent to potential applicants and their advisors;
- whether the ATO handles and completes class rulings within the appropriate timeframes;
- the ATO's information gathering processes during class ruling applications;
- the expectations of taxpayers and their advisers around how class rulings should be managed so as to promote their finalisation in a timely and efficient manner; and
- whether the design and management of the class rulings process is achieving its intended purpose of providing certainty to taxpayers with respect to the tax treatment of particular arrangements.

## Transparency of the class rulings process

1.23 Concerns were raised that the class rulings process is not sufficiently transparent and clear to potential applicants and their advisors.

1.24 One of the aims of the review will be to examine these concerns. The methodology may include examining the material that is made available to applicants for class rulings.

### QUESTIONS FOR CONSIDERATION IN YOUR SUBMISSION

- During a class ruling application, what material was made available to you to help you to understand the process? How was this information provided?
- Did this information help you understand the class rulings process?
- Did this information help you to assess whether your application should be for a class ruling, as opposed to another type of ruling (such as a product ruling or a private ruling)?
- How could this information be improved?

## ATO's timeframe for completing class rulings

1.25 Concerns were raised that the ATO spends a great deal of time gathering facts and developing its view before issuing a draft class ruling to the applicant. Applicants and their advisors only become aware of the facts relied upon when the proposed draft class ruling is issued and it can rely on incorrect or irrelevant facts or omit important facts altogether. It was also alleged that the ATO does not carry out its processes for developing a class ruling with the same sense of urgency as applicants for class rulings in cases where the development of a class ruling is time-sensitive.

1.26 Some have suggested that the ATO, during the initial stages of an application for a class ruling, should determine which facts are relevant to the issues in question and ensure that the facts are tested before applying the law to the facts and developing its technical view with the applicant.

1.27 It has also been suggested that the ATO does not seek to narrow any issues in contention early in the class ruling process. Applicants and their advisors believe that such practices and behaviours do not contribute to the timely finalisation of class rulings.

1.28 One of the aims of this review is to investigate the above allegations and to determine whether the ATO is satisfactorily completing class rulings within appropriate time frames.

1.29 The methodology for this review may include:

- selecting a sample of representative class rulings cases (including those that resulted in the issue of a class ruling and those that did not);
- examining the timeframes for critical milestone events (dialogue, the issuing of a draft class ruling and the time allowed for applicant response); and

- seeing whether these variables influenced the likelihood of early finalisation.

**1.30** The review will consider whether there is any pattern in the type of class ruling applications that lead to a dispute. This will then provide a basis for conclusions to be drawn and recommendations of best practice in the handling of class rulings.

## **QUESTIONS FOR CONSIDERATION IN YOUR SUBMISSION**

### **General**

- What aspects of the current class rulings process work well? Why do those processes work well and how have they contributed to the timely resolution of a class ruling application?
- What aspects of the current class rulings processes do not work well? Why and how could these be improved?

### **The quality and timeliness of ATO draft class rulings**

- Do you believe that ATO draft class rulings accurately and succinctly set out the facts and evidence and issues involved in the class ruling?
- Does the ATO adequately test the facts and evidence set out in its draft class ruling with applicants?
- At what stage in the class rulings application process has the ATO issued you with a draft ruling?
- What is the usual period of time that the ATO has allowed for you to respond to any draft class ruling? Do you believe that the ATO provides you with sufficient time to respond?
- Do you believe that the ATO adequately considers your responses to its draft class ruling? Has the ATO changed its view or approach after considering your responses to its draft class ruling?
- How could draft class rulings be improved?

### **The quality and timeliness of ATO final class rulings**

- Do you believe that ATO final class rulings accurately and succinctly set out the facts and evidence and issues involved in the class ruling?
- Does the ATO adequately test the facts and evidence set out in its final class rulings with applicants?
- How could final class rulings be improved?

### **Level of engagement and interaction**

- Did you feel that there was an appropriate level of engagement during the class rulings process?
- Did you encounter delays caused by a change in ATO personnel dealing with the class ruling?
- Did the ATO provide you with updates at key stages of the class ruling process?
- If problems arose in the course of the class ruling, did you have clear information on the escalation processes? Did you ever have to escalate

concerns with the progress of a class ruling?

- Could the level of engagement and interaction be improved to promote the more timely finalisation of class rulings? If so, how?
- It has been suggested by some tax practitioners that the top 50 companies receive disproportionately better ATO service and access to decision-makers than other applicants for class rulings. Have you found that the ATO's practices, behaviours and level of engagement differ dependent upon the size of the applicant or taxpayer? If so, do you believe that this difference was justified in the particular circumstances?

### **ATO's information gathering processes during class ruling applications**

1.31 During the consultation process, and in submissions to the IGT's review of private rulings that referred to class rulings, it was asserted that the ATO's information requests during the class rulings process are often not well targeted, with a prevailing culture of asking questions about everything, even on issues which are not relevant to the class ruling. Some stakeholders commented that the associated applicant costs of compliance and stress with information requests can be enormous, resulting in a reconsideration of whether to proceed with the class ruling application. Calls have been made for greater accountability around how the ATO undertakes its information gathering activities during the class rulings process.

1.32 The review will include an examination of whether the ATO undertakes its information-gathering activities in the context of class ruling applications in a manner that does not result in the application process becoming unduly lengthy. It will also examine the subsequent use of that information and how the ATO assesses the effectiveness of its information requests in finalising class rulings.

## **QUESTIONS FOR CONSIDERATION IN YOUR SUBMISSION**

- During a class ruling application, has the ATO requested you to provide information or documents that were in addition to those provided in your original application for a class ruling? If so, was the information-gathering process explained to you?
- Was it made clear how the requested information or documents related to the risks and issues in the class ruling?
- Did you believe that the ATO's information requests were well targeted and relevant to the issues under consideration? Please explain your situation.
- Did the ATO properly explain how information and documents requested would be or were used in forming its final view?
- Where a class ruling issue went to further dispute, did the ATO make further requests for information or documents?
- Did the ATO seek to minimise compliance costs associated with information requests? What discussions did you have?
- In relation to information requests, what were the associated compliance costs? What impact did it have on your business? What is the size of your business and what was the scale of the arrangement involved?
- What steps could the ATO take to minimise applicants' compliance costs associated with information requests yet still obtain the necessary information and documents it requires for its class rulings?