



BUILDING A GROWTH-FRIENDLY TAX ENVIRONMENT

# Raising Tax Certainty Virtual Seminar

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BUILDING A GROWTH-FRIENDLY TAX ENVIRONMENT

# An Australian perspective on tax certainty

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*This presentation draws heavily upon material extracted from the ATO website*



# CONTENTS

01 / What is tax certainty?

02 / ATO advice & guidance



# Part 01

## **What is tax certainty?**



## BUILDING A GROWTH-FRIENDLY TAX ENVIRONMENT

### Adam Smith, 1776

*“The tax which each individual is bound to pay ought to be certain, and not arbitrary. The time of payment, the manner of payment, the quantity to be paid, ought all to be **clear and plain to the contributor, and to every other person.** Where it is otherwise, every person subject to the tax is put more or less in the power of the tax-gatherer, who can either aggravate the tax upon any obnoxious contributor, or extort, by the terror of such aggravation, some present or perquisite to himself.”*

### OECD principles

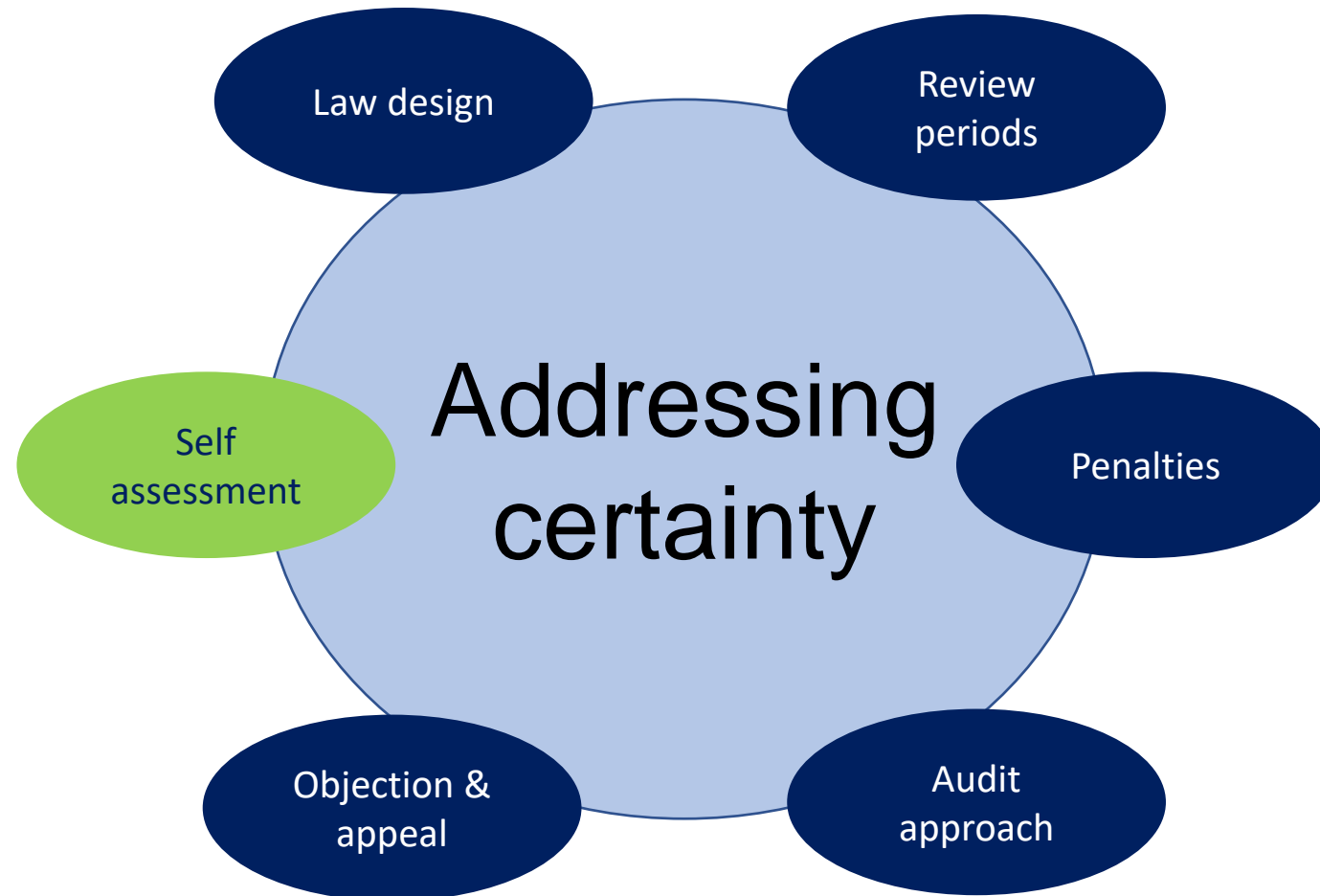
*“Tax certainty calls for clear and simple rules and regulations that minimise disputes”*

### ATO

*“...ensuring the tax and superannuation laws are informed, understood, administered, and applied with confidence and integrity... We provide certainty through interpretation of the law and publication of guidance, supporting our clients in getting it right the first time”*



# Certainty: a part of the tax system





# Australia: self-assessment

***Importantly, tax certainty needs to be considered in Australia in a self-assessment environment***

## **How the self-assessment system works**

Australia's income tax system works on self-assessment. This means, we accept the information you give us is complete and accurate. We will review the information you provide if we have reason to think otherwise.

The self-assessment system places the responsibility on you to ensure your tax return and other tax forms comply with taxation laws. You must report all your assessable income and only claim deductions and offsets to which you are entitled.

We assume you complete your tax return and other forms in good faith and accept the information you provide as being true and correct. To ensure the integrity of the tax system, the law provides us with a period where we may review a return and may increase or decrease the amount of tax payable.

This period of review depends on a number of factors, including whether or not you are in business and whether tax was avoided as a result of a scheme or fraud.



# Part 02

## **ATO advice & guidance**





# Australia: legislative basis

Introduced in 2005

## Part 5-5 Rulings

### 357-5 Object of this Part

- (1) The object of this Part is to provide a way for you to find out the Commissioner's view about how certain laws administered by the Commissioner apply to you **so that the risks to you of uncertainty when you are self-assessing or working out your tax obligations or entitlements are reduced.**
- (2) This object is achieved by:
  - a) making advice in the form of rulings by the Commissioner available on a wide range of matters and to many taxpayers; and
  - b) ensuring that the Commissioner provides rulings in a timely manner; and
  - c) enabling the Commissioner to obtain, and make rulings based on, relevant information; and
  - d) protecting you from increases in tax and from penalties and interest where you rely on rulings; and
  - e) protecting you from decreases in entitlements where you rely on rulings; and
  - f) limiting the ways the Commissioner can alter rulings to your detriment; and
  - g) giving you protection from interest charges where you rely on other advice from the Commissioner, or on the Commissioner's general administrative practice.



# Australia: legislative basis

## Explanatory Memorandum

“The broad policy objective is to reduce the level of uncertainty for taxpayers and the risks and costs associated with self-assessment, while preserving the capacity of the ATO to collect legitimate tax liabilities.”

Self-assessment relieved the ATO of the obligation to examine returns lodged by taxpayers and allowed the ATO to amend errors of calculation, mistakes of fact and mistakes of law after processing the initial assessment and collecting the tax payable or paying a refund. In some circumstances, returns may be re-opened many years after the original assessment. In this way, the introduction of self-assessment shifted the balance of risk and uncertainty towards taxpayers. The change to self-assessment meant that the ATO’s resources could be used more efficiently, allowing more revenue to be collected for the same administrative cost.

Under self-assessment, taxpayers may be uncertain about how the law applies to their circumstances. Uncertainty exposes taxpayers to costs (such as a requirement to pay additional tax, penalties and interest, or the costs of professional advice and litigation) if a shortfall is detected by the ATO. Uncertainty may have implications for taxpayer perceptions about the fairness of the tax system and consequently may affect the level of voluntary compliance by taxpayers. Finally, uncertainty about the tax consequences of a proposed transaction may have adverse economic implications, as taxpayers may be unwilling to enter into economically beneficial transactions if they are not able to obtain assurance about their taxation consequences.”



# Types of ATO advice and guidance

## Two key issues

1. What are the various ATO advice and guidance products?
2. What reliance can a taxpayer / tax adviser place on ATO advice and guidance?

### Technical positions

### Administration of the law

#### Types of public rulings

- Taxation Ruling
- Taxation Determination (short form ruling)
- Class Ruling
- Product Ruling
- Law Companion Ruling

#### Practical compliance guidelines

PCGs set out how the ATO assesses tax compliance risk across a range of activities or arrangements – whether the ATO would consider a matter to be low risk (unlikely to require scrutiny) or high risk (likely to attract scrutiny)

### Private rulings

### Taxpayer Alerts



# Reliance on a ruling?

## **Relying on this Ruling**

This publication is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.



## **Class ruling: Relying on this Ruling**

This publication (excluding appendix) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

## **Product ruling: Relying on this Ruling:**

This publication (excluding appendix) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

## **Terms of use of this Ruling**

This Ruling has been given on the basis that the entity who applied for the Ruling, and their associates, will abide by strict terms of use. Any failure to comply with the terms of use may lead to the withdrawal of this Ruling.

## **Changes in the law**

Product Rulings were introduced for the purpose of providing certainty about tax consequences for entities in schemes such as this. In keeping with that intention, the Commissioner suggests promoters and advisers ensure that participants are fully informed of any legislative changes after the Ruling has issued. Similarly, entities that are considering participating in the Project are advised to confirm with their taxation adviser that changes in the law have not affected this Ruling since it was issued.

## **No guarantee of commercial success**

The Commissioner does not sanction or guarantee this product. Further, the Commissioner gives no assurance that the product is commercially viable, that charges are reasonable, appropriate or represent industry norms, or that projected returns will be achieved or are reasonably based.

Potential participants must form their own view about the commercial and financial viability of the product. The Commissioner recommends a financial (or other) adviser be consulted for such information.



# Retrospective or prospective? Devote compliance resources?

## TR 2021/1

### Date of effect

34. This Ruling applies to years of income commencing both before and after its date of issue. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10 *Public Rulings*).

## TR 2018/5

### Date of effect

39. This Ruling applies from 15 March 2017.

40. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

### Date of effect

11. Subject to paragraph 12 of this Determination, this Determination applies to arrangements entered into before and after its issue. However, the Determination will not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 75 to 76 of Taxation Ruling TR 2006/10 *Public Rulings*).

12. For the 2018–19 and earlier income years, the Commissioner will not devote compliance resources to identify arrangements which would give rise to adjustments solely on the basis of this Determination, but if the Commissioner is presented with the issue and asked to provide advice or otherwise becomes aware of an arrangement in the course of compliance activities, the Commissioner will apply the law consistently with the views expressed in the Determination.



# Private binding rulings

## Private ruling



A private ruling legally binds the ATO if it applies to you and you rely on it.

If you rely on a private ruling that benefits you – for example, if your tax liability is less, or your grant or benefit amount is greater than it would otherwise have been – we're bound by the ruling even if it is later proved to be incorrect. If the private ruling is incorrect, we can only apply the law correctly if this would give a more favourable result for you.

The effect of a binding ruling is that it protects you against liability for tax shortfall even if the ruling is incorrect. The false and misleading statement penalty and interest charges are also not applied in these circumstances.

If you choose not to rely on a private ruling and the position you adopt is shown to be incorrect, you'll be required to pay any underpaid tax or repay overpaid grants or benefits. Interest will generally also be payable on that amount. You may also be required to pay a penalty on the underpaid tax or overpaid grant or benefit if you don't have a reasonably arguable position, or have not taken reasonable care.





# Practical compliance guidelines

## “What are practical compliance guidelines?”

4. The ATO is committed to providing clear and practical public advice and guidance on which taxpayers can rely to manage their tax affairs. Public rulings are a key form of public advice, enabling the ATO to express views on how tax laws apply to entities, or classes of entity, in relation to classes of scheme or particular schemes.

5. In addition to public rulings, taxpayers may also benefit from broader law administration guidance that conveys the ATO's assessment of relative levels of tax compliance risk across a spectrum of behaviours or arrangements. Such guidance may, for example, enable taxpayers to position themselves within a range of behaviours, activities or transaction structures that the ATO describes as low risk and unlikely to require scrutiny - to safely 'swim between the flags'.

6. Broader guidance can also enable the ATO to communicate how it will sensibly apply its audit resources or provide practical compliance solutions where tax laws are uncertain in their application or are found to be creating unsustainable administrative or compliance burdens in light of, for example, evolving commercial practices.

7. Guidance of the kind described in paragraphs 5 and 6 of this Guideline (compliance guidance) can provide useful insights into the practical implications of tax laws and ATO administrative approaches, going beyond views on how particular provisions apply and the matters ancillary to that interpretation.

8. The provision of compliance guidance can be seen as consistent with the duty of good management stemming from the Commissioner's general powers of administration of the taxation laws. Balanced against the duty to assess and collect the revenue properly payable under the law, the duty of good management involves efficient resource allocation decisions to achieve optimal, though not necessarily maximum, revenue collection. Practical compliance guidelines will transparently communicate the ATO's assessment of risk in relation to tax law compliance issues and consequential resource allocation intentions.

9. Practical compliance guidelines are the identifiable, coherent, principal source of the type of broad compliance guidance described above in respect of significant law administration issues.”



# PCGs & Taxpayer Alerts

## Relying on this Guideline

This Practical Compliance Guideline sets out a practical administration approach to assist taxpayers in complying with relevant tax laws. Provided you follow this Guideline in good faith, the Commissioner will administer the law in accordance with this approach.

This Practical Compliance Guideline describes how the Commissioner will provide practical guidance and assurance through practical compliance guidelines to assist taxpayers in complying with tax laws. Provided you follow such Guidelines in good faith, the Commissioner will administer the law in accordance with the approaches set out.

24. The ATO's related party financing arrangement risk framework is made up of six risk zones.

Risk zone	Risk level
White	arrangements already reviewed and concluded
Green	low risk
Blue	low to moderate risk
Yellow	moderate risk
Amber	high risk
Red zone	very high risk

## About Taxpayer Alerts

Alerts provide a summary of ATO concerns about new or emerging higher risk tax or superannuation arrangements or issues that the ATO has under risk assessment.

While an Alert describes a type of arrangement, it is not possible to cover every potential variation of the arrangement. The absence of an Alert on an arrangement or a variation of an arrangement does not mean that the ATO accepts or endorses the arrangement or variation, or the underlying tax consequences.





# Other Australian approaches

## Test Case litigation program

- Allows taxpayers to get financial help for litigation likely to be important to Australia's tax laws
- For a case to be approved for funding, the case must:
  - involve issues where there is uncertainty or contention about how the law operates; and
  - be in the public interest to be litigated

## New Investment Engagement Service (NIES)

- An investor-initiated service for businesses planning significant new investments in Australia to commence early engagement with the ATO.



# Other Australian approaches

## Foreign Investment Review Board

### Tax conditions

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Last updated: 18 August 2023

We consider the effects of foreign investment on the tax system as part of the national interest test.

This includes the potential impact of an action on Australian tax revenues and the integrity of the tax system.

Therefore, your foreign investment may be subject to conditions, including tax conditions.

The principles for establishing these conditions are set out in [Guide 11-Principles for developing conditions](#).

If we consider that tax conditions need to be applied to an investment to protect the national interest, standard tax conditions may be imposed.

If a proposed investment is considered to have a significant or particular tax risk, then additional tax conditions may also be imposed.

You may agree in advance to accept the standard tax conditions.

However, this does not mean that these conditions will be applied, and it does not impede your right to comment on any other condition(s) that may be imposed, including the additional tax conditions.



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**THANKS**