

JOINT SUBMISSION BY

**Chartered Accountants Australia and New Zealand, The Tax Institute,
Institute of Public Accountants, CPA Australia
and Taxpayers Australia**

***Law Companion Guideline LCG 2015/D - Law Companion Guidelines: purpose,
nature and role in ATO's public advice and guidance.***

Date due: 15 April 2016

Thank you for the opportunity to comment on Law Companion Guideline 2015/D1 which deals with the purpose and nature of Law Companion Guidelines.

GENERAL COMMENTS

The ATO are to be congratulated on this initiative. There are two delineations of the past for which the LCG provides a bridge.

The first is the “not yet law” - “now law” delineation. This demarcation is a clear one. In the past the ATO have often refused to acknowledge a change in tax law until a Bill received Royal Assent. This was frustrating for the tax community and not at all conducive to good practical implementation for business. The LCG is a welcome move away from those times.

The second is the “policy” – “administration” delineation. Notwithstanding the desire of many for there to be clear demarcation, the reality is that policy and administration often intersect, creating a Venn diagram.¹ Again a frustration of the tax community, now hopefully receding into the past, arises when there is an issue in the overlapping component which is seen by policy as administration or vice versa or that there are conflicting approaches within the overlap.

As the LCG recognises, integrated law design should allow for the proper development of a “common understanding” of the policy intent of the change of law and have thought through its practical implications. There needs to be consistency between the law itself, the Explanatory Memorandum and the practical understanding of how it will be implemented. Treasury, the ATO and the tax community need to be on the “same page”, to use the vernacular expression.

The LCG process does not ignore or override these two delineations, which must necessarily be part of the tax system, but acknowledges them and in a sensible way ensures that the delineations are not used as impediments to good taxation law and administration.

SPECIFIC COMMENTS

Given this overall endorsement, a few points are made.

1. It would be useful if a compendium of comments were made on any future draft LCGs which outline the key issues raised, the rejected positions and the reasons for the rejection. This “lifts” the debate and reduces the potential “re-litigation” of issues.
2. LCGs should be “debriefed” through an implementation review after a period of time. This should involve Treasury, the Office of Parliamentary Counsel, the ATO and the

¹ The ATO could consider whether inclusion of an illustrative example of the Venn diagram in the LCG would be useful to readers.

Professional Associations. . It could also be conducted in conjunction with other reviews that may be underway, for example a post implementation review by the Board of Taxation. The review of the LCG should look at what went well and what could have been better in a spirit of continuous improvement. Often nothing will need to be changed, but there can be significant learnings for the future in what was done well and what could be improved.

3. Paragraph 26 notes a Guideline may be issued in final in 'appropriate circumstances'. We request the ATO provide details regarding what may be appropriate circumstances for a Guideline to automatically be issued in final and not first be issued in draft for consultation.
4. Example 4, which involves reliance on an LCG where the word "not" has been inadvertently been excluded, is an interesting one. For a very obvious circumstance (which the example contemplates), few would have difficulty with the notion that acting in reliance of something which is clearly wrong and inadvertent is not in good faith. For complex arrangements where an unintended meaning was conveyed, the position may be less clear. In our view the "good faith - bad faith" divide needs to be limited to very clear circumstances and should never enter the realm of "on balance" decision-making. It would be helpful to make this clear.