

PS LA 2005/1 (Withdrawn) - Referral of Work to International Strategy and Operations

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! This Practice Statement is withdrawn from 1 March 2006 It has been replaced by [PS LA 2006/9](#).

! This document has changed over time. This version was published on *1 March 2006*



PS LA 2005/1

This Practice Statement is withdrawn from 1 March 2006. The International Centre of Expertise has been transferred from International Strategy and Operations (ISO) to the Office of the Chief Tax Counsel and the referral of provision of advice work has changed. The referral of other international work is also being updated but will largely remain the same as outlined in PS LA 2005/1. The following link (available to ATO staff only) will provide guidance as to the referral procedures until a new Practice Statement can be finalised:
<http://intranet/content.asp?doc=/content/69/69976.htm>.

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 ATO officers unless doing so creates unintended consequences. Where this occurs ATO officers must follow their Business Line's escalation process.

SUBJECT: Referral of Work to International Strategy and Operations

PURPOSE: To advise on the type of work which is to be referred to International Strategy and Operations and the method of referral.

STATEMENT

1. The table below summarises specific international issues which require International Strategy and Operations (ISO) involvement and the level of that involvement.

<u>Topic</u>	<u>Level of <i>initial</i> engagement</u>	<u>Paragraph</u>
'International' technical issues where there is no ATO view	Follow corporate procedures (Law Administration Practice Statement PS LA 2004/4)	12
'International' priority technical issues	Follow corporate procedures (Law Administration Practice	13 – 14

	Statement PS LA 2003/10)	
Policy Proposals	Refer to Assistant Commissioner, International New Measures Team and Taxation of Residents Practice; or Assistant Commissioner, International Relations	16-18
<u>Topic</u>	<u>Level of <i>initial</i> engagement</u>	<u>Paragraph</u>
Potential and actual litigation cases on 'international' issues	Notify relevant ISO Client Manager	19 – 21
Technical clearance of the international tax aspects of publications, training packages etc	Refer to Co-ordinator for Clearance of Publications	22
Transfer Pricing and Thin Capitalisation products and issues	Refer to relevant ISO Client Manager	23 – 24
Bilateral and Multilateral Advance Pricing Arrangements Mutual Agreement Procedure cases	Refer to Transfer Pricing Practice	25
Mutual Agreement Procedure cases	Refer to Transfer Pricing Practice	26
Exchange of Information (EOI)	Refer to EOI unit of International Relations Practice for co-ordination of requests and responses	27 – 30
Discussions and Meetings involving Staff of Foreign Tax Administrations with whom Australia has a Tax Treaty	Refer to EOI unit of International Relations Practice	31
Non-technical requests from other jurisdictions	Refer to International Visitors Unit of International Relations Practice for co-ordination of responses.	32 – 35
Any other technical issue	Refer to relevant ISO Client Manager	36

2. Other issues not covered by the above list may be referred to ISO. In these circumstances the referring officer should contact the relevant ISO Client Manager to discuss the issue. ([Link to list of ISO Client Managers – available to Tax Office staff only](#))

3. This practice statement does not cover the referral of work to the Field Economists Practice.

EXPLANATION

Background

4. ISO's objective is to shape international strategic direction and management together with associated compliance strategies, and to provide the Tax Office with the assurance that the international tax system is being managed effectively and efficiently. ISO works collaboratively with the business lines and aims to establish good working relationships with all our stakeholders. ISO co-designs, manages and shapes our strategies in a systemic manner to produce real-time responses.
5. ISO is part of the Large Business and International business line, but incorporates a subject-based Centre of Expertise (the International Centre of Expertise) and has cross-business line responsibilities.
6. Therefore the nature of the work to be referred to ISO and the procedures relating to the referral is a mix of the rules and guidelines developed by both the Office of the Chief Tax Counsel and Large Business and International, whilst reflecting the role of ISO.
7. Primary responsibility for the management of international issues of a technical and administrative nature referred by the business lines and Large Business Industry Segments to ISO lies with the ISO Client Managers. As such, the ISO Client Managers are generally the first point of contact across all business lines and industry segments¹. [\(Link to further information about ISO – available to Tax Office staff only\)](#)

What is an 'international' issue

8. An international issue is one which relates to cross border dealings, trade, investment and consumption and the migration of people.
9. For the purpose of referring work to ISO, issues not directly falling within the primary responsibility of ISO include²:
 - issues which are the responsibility of the Tax Office Operations Business Line
 - foreign exchange gains and losses
 - GST
10. In some circumstances ISO may require a formal referral of the issue (or the case). In others, ISO may only require to be notified of the issue with the level of consequent involvement to be determined according to guidelines detailed below.

¹ Exceptions are: policy proposals (paragraphs 16-17), certain matters relating to transfer pricing (paragraphs 24-26) and dealings with other taxation administrations (paragraphs 27-35).

² ISO will consider these matters if requested – see paragraph 36.

Mandatory corporate processes

11. In determining what issues are to be referred to ISO, officers must first consider whether the referral is mandatory under corporate processes.

Precedential issues

12. All international issues where there is no ATO view are to be referred to the International Centre of Expertise according to the Online Research Centre for Law Administration and Law Administration Practice Statement PS LA 2004/4.

Priority technical issues

13. The term 'priority technical issue' (PTI) is defined in Law Administration Practice Statement PS LA 2003/10.
14. Following the procedures outlined in PS LA 2003/10, precedential priority technical issues are to be referred to the International Centre of Expertise, and non-precedential priority technical issues are to be referred to Tax Counsel. ([Link to ISO PTI Processes \(refer to point 16 at bottom of page\) – available to Tax Office staff only](#))

Other referrals

15. International issues which are not precedential or priority technical issues should be referred to ISO under the rules set out in the following paragraphs. The referring business line is responsible for ensuring that the issue is referred to ISO via the appropriate recording system.

Policy proposals

16. ISO receives policy proposals from a variety of sources, both internal and external. For example, proposals could come to ISO from Treasury or via the Policy Management Division. Any proposals coming to ISO from Treasury should be copied to First Assistant Commissioner, Policy Management Division. When ISO is a stakeholder in the development of a policy proposal or proposed legislation, the proposal or legislation (at whatever stage of development) should be directed to the Assistant Commissioner, International New Measures Team and Taxation of Residents Practice. ([Link to ISO Contact List – available to Tax Office staff only](#))
17. If the proposed policy or legislation relates to a Tax Information Exchange Agreement it should be referred to the Assistant Commissioner, International Relations Practice. ([Link to ISO Contact List – available to Tax Office staff only](#))
18. Any formal advice from the Tax Office to Treasury should be provided in accordance with Corporate Management Practice Statement PS CM 2003/14.

Litigation cases and potential litigation cases

19. In order for ISO to shape the strategic direction and management of the international taxation system, ISO must be notified of all litigation that may involve international issues. This will allow ISO to pursue a strategic litigation policy and to assess the level of involvement required in the conduct of the international issue in dispute. Initial notification is to be made to the relevant ISO Client Manager.

20. For the purposes of this document, 'litigation' encompasses objections, AAT reviews and Federal Court appeals; all further appeals; and any other proceedings requiring the appearance of the Commissioner or his representatives in either a Court or Tribunal [for example reviews under the *Administrative Decisions (Judicial Review) Act 1977* or proceedings under section 39B of the *Judiciary Act 1903*].
21. Where the case involves the potential disclosure of information that has been provided to the Tax Office under the exchange of information provisions of Australia's tax treaties, the EOI unit within International Relations Practice must be informed. EOI will write to the competent authority of the providing country to inform them that the Australian Taxation Office intends to tender such EOI material as evidence.

Technical clearance of publications

22. The corporate guidelines for the technical clearance of publications must be followed. All requests for clearances can be referred to ISO via the relevant ISO Client Manager or directly to the Co-ordinator for Clearance of Publications. ([Link to ISO Contact List – available to Tax Office staff only](#))

Transfer pricing and thin capitalisation issues

23. The term 'transfer pricing' encompasses issues relating to Division 13 of the *Income Tax Assessment Act 1936* (ITAA 1936) the Business Profits and Associated Enterprises Articles of Australia's double taxation agreements and the relevant transfer pricing provisions of the Timor Sea Treaty.
24. In addition to issues that are to be referred under corporate processes in relation to precedential and priority technical issues, ISO's level of involvement in transfer pricing related cases is set out below:

Topic	ISO Engagement
Division 13 determinations (in accordance with paragraph 2 of PS LA 2003/5).	Refer to relevant ISO Client Manager (for referral to Transfer Pricing Practice)
Thin capitalisation arm's length debt test	Refer to relevant ISO Client Manager
Unilateral advance pricing arrangements	Refer to relevant ISO Client Manager
Bilateral and multilateral Advance Pricing Arrangements	Refer to Transfer Pricing Practice – see paragraph 25
Mutual agreement procedure on transfer pricing issues	Refer to Transfer Pricing Practice – see paragraph 26
All other transfer pricing issues	Notify relevant ISO Client Manager

This approach provides a Tax Office wide perspective on transfer pricing issues and risks, and seeks to ensure an overall high standard of technical quality and consistency of decision making.

Bilateral and Multilateral Advance Pricing cases

25. Bilateral and multilateral Advance Pricing Arrangements should be referred directly to the Transfer Pricing Practice which will take the lead role, including in negotiations with the other revenue administration(s). ([Link to ISO Contact List – available to Tax Office staff only](#))

Mutual Agreement Procedure cases

26. Any correspondence requesting a mutual agreement procedure (MAP) with another competent authority under one of Australia's tax treaties (other than transfer pricing cases) should be referred to the EOI unit within International Relations Practice together with a position paper prepared by the relevant business line. Should the case warrant a MAP, ISO takes ownership of the case and will enter into competent authority negotiations with the other tax administration. The business line will be notified of the outcome. Transfer pricing MAP cases should be referred directly to the Transfer Pricing Practice ([Link to ISO Contact List – available to Tax Office staff only](#)) who will take ownership of the case. These cases include cases under Part IIIB of the ITAA 1936 (Australian branches of foreign banks).

Exchange of information

27. Where Australia has a tax treaty with another country or jurisdiction, Tax Office staff can request taxpayer or industry specific information from that other tax administration. This must be carried out via the 'Competent Authority'. The Tax Office competent authority function is co-ordinated nationally by the EOI unit located within the International Relations Practice of ISO. The request for information has to be within the terms of the relevant tax treaty, and can only be in regard to the taxes covered by that treaty. In the majority of cases, this will be income tax and substantially similar taxes.
28. The following table sets out the way in which Tax Office staff can contact the EOI Unit:

Area	Contact arrangements
Small Business	Contact with the EOI unit is via 'International and Foreign Owned' Cluster (Link to contact list and email address – available to Tax Office staff only)
All other areas in the Tax Office	Direct contact with the EOI unit via the generic email address ' Australian Competent Authority ' or by contacting an EOI Officer (Link to ISO Contact List – available to Tax Office staff only)

29. The request process is a bilateral one and similar requests for information are received by the Australian Competent Authority. Should a request for information from another tax administration, government agency or a foreign government be received by areas outside ISO the EOI unit is to be consulted to determine whether a response needs to be provided via the formal competent authority channels.
30. Should a Freedom of Information request be lodged in respect of information previously provided by a tax treaty partner, the EOI unit is to be immediately informed.

Discussions and meetings involving staff of foreign tax administrations with whom Australia has a tax treaty

31. Under Australia's tax treaties Tax Office staff are not permitted to discuss taxpayer or industry specific matters with foreign tax officials unless the relevant officer(s) holds a delegation of competent authority power. In complex cases, the Australian competent authority may authorise senior Tax

Office personnel to directly liaise with similarly authorised representatives of the foreign tax administration. Tax Office staff who do not hold a delegation of competent authority power but wish to contact officers of another tax administration should first contact the EOI unit within International Relations Practice to discuss their needs. Should the relevant delegated competent authority agree to the request, the EOI unit will provide the necessary letter of introduction to the foreign competent authority ensuring the EOI tax treaty rules are observed.

General information requests from other jurisdictions

32. Any request for non-technical information received from other revenue authorities and overseas organisations is to be referred to the 'International Visitors and OECD Outreach Program Unit' of the International Relations Practice (the International Visitors Unit). ([Link to ISO Contact List – available to Tax Office staff only](#)) Such exchanges improve international goodwill and cooperation, and assist the International Visitors Unit to develop a network of contacts in the international arena.
33. The International Visitors Unit, working collaboratively and in consultation with all relevant areas, will determine whether the request should be accepted based on factors such as the nature of the request, reason for the request, amount of research already undertaken and whether the information is available from other sources. The request will then be despatched to the relevant business or service line's international contact. The contact officer will be responsible for responding to the request and ensuring all relevant procedures are followed.
34. Responses to requests must be within Taxpayer Charter timeframes (currently 28 days). Business and service lines responding to the request will be notified of the date responses are due, and will be sent reminders by the International Visitors Unit at the 21 day point if a response is yet to be issued. Where a response is not expected to be completed in time, the business line will need to advise the originator of the request and the International Visitors Unit of the date when a response will be issued and the reason for the delay.
35. The business line is to respond directly and forward a copy of the response to the International Visitors Unit. This will allow the unit to monitor ongoing requests, timeliness of responses and identify patterns and trends. Any feedback supplied to the International Visitors Unit from the originator of the request will be referred on to the business line which responded to the request.

Other Issues

36. Referral of any other international issues must be made through the relevant ISO Client Manager. The ISO Client Manager or other relevant ISO officer will negotiate whether the issue will be accepted and, if so, negotiate how the work is to be undertaken, allocate a case officer and determine a mutually acceptable time frame. As a general rule it would be expected that a detailed analysis of the issue would be provided by the referring area.

subject references International
referral of international issues
priority technical issues
precedential ATO views
transfer pricing
exchange of information

legislative references Div 13 of Pt III of *Income Tax Assessment Act 1936*
Pt IIIB of *Income Tax Assessment Act 1936*

related public rulings

related practice statements PS LA 2003/3, 2003/5, 2003/10, 2004/4 and PS CM
2003/14

case references

file references 04/4924

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Other Business Lines consulted **Small Business, Personal Tax, Operations,
Superannuation, GST, OCTC, PMD**