



PS LA 2006/9 - Referral of work to International Strategy and Operations

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Practice Statement Law Administration

PS LA 2006/9

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 Tax office staff unless doing so creates unintended consequences or is considered incorrect. Where this occurs Tax office staff 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 to be referred to International Strategy and Operations.

STATEMENT

1. The objective of International Strategy and Operations (ISO) is to shape international strategic direction and management together with associated compliance strategies. ISO provides assurance that the international tax system is being managed effectively and efficiently. The primary focus of ISO is on the strategic risks identified in the Compliance Program and through Tax Office processes. It is within this context that work is undertaken on specific international issues.
2. This practice statement does not cover the referral of work to the International Centre of Expertise (part of Law and Practice). All international issues where there is no ATO view are to be referred to the International Centre of Expertise in accordance with business rules outlined in Law Administration Practice Statement PS LA 2004/4 Referral of issues to Centres of Expertise for the creation of precedential ATO view. If your referral is in relation to precedential priority technical issues, please refer to PS LA 2003/10 The Management of 'Priority Technical Issues'. Non-precedential priority technical issues are to be referred directly to Tax Counsel.
3. The table below summarises specific international issues which require ISO involvement. Any ISO contact point referred to in this practice statement can be located in the list of ISO teams and Contacts available on the ATO intranet. A link to the contact list is provided at the end of this practice statement. .

| <u>Topic</u> | <u>Referral Point</u> | <u>Paragraph</u> |
|------------------|---|------------------|
| Policy proposals | Refer to Assistant Commissioner, Compliance Assurance and New Measures Practice | 8-10 |

| | | |
|--|---|-------|
| Arrangements that involve tax havens | Notify the Tax Haven Practice via the Tax Haven Taskforce Mailbox or via the reporting officer's Tax Havens Advisory Group member | 11-12 |
| Transfer pricing products and issues | Refer to the Transfer Pricing Gatekeeper | 13-14 |
| Unilateral, bilateral and multilateral Advance Pricing Arrangements | Refer to Transfer Pricing Gatekeeper | 15 |
| Mutual Agreement Procedure cases involving Transfer Pricing | Refer to Transfer Pricing Gatekeeper | 16-17 |
| Exchange of Information (EOI) under an Australian tax treaty and non TP MAPs | Refer to EOI Unit of International Relations Practice for co-ordination of requests and responses | 18-24 |
| Discussions and meetings involving staff of foreign tax administrations with whom Australia has a tax treaty and where taxpayer specific information or sensitive issues are to be discussed | Refer to EOI Unit of International Relations Practice | 25 |
| General information requests from other jurisdictions | Refer to International Relations Practice for co-ordination of responses | 26-29 |
| Requests to visit the Tax Office from other jurisdictions | Refer to International Relations Practice for co-ordination of responses | 30-32 |
| Any other complex technical issues, including requests for attendance at CRR's or Workshops | Refer to International Risk Gatekeeper. | 33-36 |

EXPLANATION

What is an 'international' tax issue

4. An international tax issue is one which relates to cross border dealings (including arrangements involving tax havens), trade, investment and consumption, and the migration of people.

5. ISO does not deal with the following issues as part of their primary responsibility but will consider these issues if requested (refer to paragraph 38):
 - issues which are the responsibility of the Tax Office Client Account Services (CAS) business line
 - foreign exchange gains and losses¹
 - GST.
6. 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 the guidelines detailed below.

Referrals to ISO

7. International issues which are not either precedential or priority technical issues as discussed in paragraph 4, can 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

8. 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 by Treasury to the First Assistant Commissioner, Policy Management Division. Where this has not occurred, ISO will do so. When ISO is a stakeholder in the development of a policy proposal or proposed legislation, the proposal or legislation (at whatever stage of development) must be directed to the Assistant Commissioner, Compliance Assurance and New Measures Practice.
9. For the purposes of this document policy proposals include treaties, Tax Information Exchange Agreements and law proposals internally generated.
10. Any formal advice from the Tax Office to Treasury should be provided in accordance with Corporate Management Practice Statement PS CM 2003/14 Provision of formal Tax Office advice to Treasury.

Tax havens

11. Tax haven issues encompass arrangements, structures and transactions involving tax havens. Tax Havens are countries with secretive tax or financial systems, and lack transparency and effective exchange of information. They also have minimal or low taxes for non-residents. All such issues must be reported to the Tax Haven Practice via the Offshore Compliance Program Mailbox..
12. The term 'tax haven' for the purposes of this practice statement means the jurisdictions listed on page 8 of the publication: 'Tax Havens and Tax Administrations'. Australia has a comprehensive program to negotiate Tax Information Exchange Agreements (TIEA) with a number of countries. We

¹ Functional Currency (Subdivision 960-D of the *Income Tax Assessment Act 1997*) issues are international issues that can be referred to ISO subject to paragraph 2 of this practice statement.

will continue to review this list and will remove a country once a TIEA is in place or there is an agreement to sign one. A link to this publication is provided at the end of this practice statement. ‘

Transfer pricing

13. The term ‘transfer pricing’ encompasses issues relating to Division 13 of Part III of the *Income Tax Assessment Act 1936* (ITAA 1936), the Business Profits and Associated Enterprises Articles of Australia’s tax treaties and the relevant transfer pricing provisions of the Timor Sea Treaty.
14. 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 International Transfer Pricing - Making a determination under Division 13 of Part III of the <i>Income Tax Assessment Act 1936</i> and applying the Business Profits Article or Associated Enterprises Article of Australia's Tax Treaties) | Refer to Transfer Pricing Gatekeeper The TP Referral Template and outlook address is located on the ISO intranet site |
| Unilateral, bilateral and multilateral Advance Pricing Arrangements | Refer to Transfer Pricing Gatekeeper - see paragraph 15 |
| Mutual agreement procedure on transfer pricing issues | Refer to Transfer Pricing Gatekeeper - see paragraph 16 |

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.

Unilateral, bilateral and multilateral Advance Pricing Arrangements

15. Bilateral Multilateral and Unilateral Advance Pricing Arrangements (“APAs”) should be referred directly to the Transfer Pricing Gatekeeper who will then allocate the case to the relevant area within the ATO (see paragraph 26). The Transfer Pricing Practice will take the lead role in the bilateral and multilateral APAs, including negotiations with the other revenue administration(s) and in complex unilateral APAs. The lead role in other unilateral APAs may, after appropriate negotiation, be allocated to a segment in LB&I or team in S&ME.

Transfer pricing Mutual Agreement Procedure cases

16. Transfer pricing MAP cases should be referred directly to the Transfer Pricing Gatekeeper who will then forward them to the Transfer Pricing Practice who will take ownership of the case. These cases include cases under Part IIIB of the ITAA 1936 (Australian branches of foreign banks).

Non-transfer pricing Mutual Agreement Procedure cases

17. 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.

Exchange of information

18. Where Australia has a tax treaty with another 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. However, other taxes administered by the Commissioner of Taxation (such as GST) are now coming within the scope of the relevant EOI articles as Australia's tax treaties are updated from time to time. Similarly, international debt collection cooperation will be possible as Australia's tax treaties are updated to include Assistance in Collection Articles. Where a new or revised Australian tax treaty includes one or both of these new features, the EOI Unit will also need to perform the competent authority function on behalf of other areas of the Tax Office.
19. Where a litigation case involves the potential disclosure of information that has been provided to the Tax Office under the exchange of information provisions of any of Australia's tax treaties, the EOI Unit within International Relations Practice must be informed. The EOI Unit will write to the competent authority of the providing jurisdiction to inform them that the Australian Taxation Office intends to tender such EOI material as evidence.
20. The following table sets out the way in which Tax Office staff can contact the EOI Unit:

| Business Line | Contact arrangements |
|-----------------------------------|--|
| Small and Medium Enterprises | Contact with the EOI Unit is via 'SME International' team |
| Excise and Operations | For New Zealand Wine Equalization Tax rebate matters, contact with the EOI Unit is set out in the <i>Arrangement between the Australian Taxation Office and Inland Revenue of New Zealand in relation to the administration of the extension of the Australian wine producer rebate to New Zealand wine producers</i> . A link (available to Tax Office staff only) to this Arrangement is provided at the end of this document. |
| GST | Contact with the EO Unit is via the 'GST EOI Section' |
| All other areas in the Tax Office | Direct contact with the EOI Unit via the email address AustralianCompetentAuthority@ato.gov.au or by contacting an EOI officer |

21. The request process is a bilateral one and similar requests for information are received by the Australian Competent Authority. Accordingly, the EOI Unit may need to request assistance from other Tax Office staff in preparing the response which the Australian Competent Authority is legally bound to provide under Australia's tax treaty obligations. 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.
22. In aggressive tax planning cases involving the Joint International Tax Shelter Information Centre (JITSIC) treaty partners (Canada, Japan, the United Kingdom and the United States of America), it is appropriate for Tax Office staff to directly consult with the Tax Office's JITSIC representatives based in Washington D.C. or London as appropriate, to determine whether the proposed EOI exchange should be performed under the JITSIC arrangements, rather than through the EOI Unit on behalf of the Tax Office. All JITSIC exchanges made by the JITSIC representative will be relayed to the EOI Unit for that unit's information.
23. In the case of exchanges of information involving cross border financing arbitrage arrangements, the chair of the Cross Border Financing Arbitrage Working Group has been authorised to be a specialist Competent Authority for the purposes of discussing those issues with tax treaty partners. Tax Office staff should contact the Chair of this Working Group in the first instance should they wish to obtain information from our tax treaty partners involving Cross Border Financing Arbitrage. All such exchanges made by the Working Group Chair will be relayed to the EOI unit for that unit's information.
24. 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

25. 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

26. Any request for non-technical information received from other revenue authorities and overseas organisations is to be referred to the International Relations Practice. Such exchanges improve international goodwill and cooperation, and maintain details of overseas contacts.
27. The International Relations Practice, 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, extent of research already undertaken and whether the information is available from other sources. The request will then be despatched to the relevant business line's international contact. That contact officer will be responsible for responding to the request and ensuring all relevant procedures are followed.

28. Requests must be responded to within 28 days. Business lines responding to requests will be notified of the date responses are due, and will be sent reminders by the International Relations Practice 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 Relations Practice of the date when a response will be issued and the reason for the delay.
29. The business line is to respond directly to the other revenue authority or overseas organisation and forward a copy of the response to the International Relations Practice. This will allow the Unit to monitor ongoing requests, timeliness of responses and identify patterns and trends. Any feedback supplied to the International Relations Practice from the originator of the request will be referred on to the business line which responded to the request.

Requests to visit the Tax Office from other jurisdictions

30. Any request to visit the Tax Office received from other revenue authorities and overseas organisations is to be referred to the International Relations Practice. Such visits improve international goodwill and cooperation, and maintain details of overseas contacts.
31. It is important that all visits are notified to International Relations Practice to ensure consistency of approach in dealing with requests and for completeness of reporting on international visits.
32. The International Relations Practice, working collaboratively and in consultation with all relevant areas, will determine whether the request should be accepted based on the policy for visitors to the Tax Office as outlined in the International Visitors Program and who should be responsible for arrangements for the visit. A link to the Program is provided at the end of this Practice Statement.

Other issues

33. Officers engaged in provision of written advice work for large market clients or engaged in active compliance or provision of written advice work for clients in other markets can also request specialist technical assistance from ISO on complex non-precedential international issues. These requests should be accompanied by the ISO Referral Sheet and referred to ISO via the International Risk Gatekeeper..
34. The referral form (called Request for advice template) is located within the ISO Intranet site. Completion of this document will assist ISO in considering the request for assistance. The form should be sent via email to the International Risk Gatekeeper in the first instance. If it is decided that ISO officers will provide internal advice then the Gatekeeper may contact you to ask that a formal referral be sent across via Siebel. Once a referral is

accepted ISO will endeavour to respond within 28 days. Staff should indicate if an earlier response is required.

35. Requests for officers to attend client risk review (or other) workshops must be made through the International Risk Gatekeeper mailbox on outlook. The email request should include all relevant background information along with comments which outline why an ISO presence is required.
36. The level of assistance provided and timelines for providing that assistance will be negotiated on a case-by-case basis

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|--------------------------------|---|
| subject references | <p>exchange of information</p> <p>International</p> <p>referral of international issues</p> <p>tax havens</p> <p>transfer pricing</p> <p>International Strategy and Operations</p> |
| legislative references | <p>ITAA 1936 Pt III Div 13</p> <p>ITAA 1936 Pt IIIB</p> <p>ITAA 1997 Subdiv 960-D</p> <p>TAA 1953 Pt IVC</p> <p>AD(JR)A 1977</p> <p><i>Judiciary Act 1903</i> 39B</p> |
| related public rulings | |
| related practice statements | <p>PS LA 2003/3, 2003/5, 2003/10, 2004/4, 2005/1 (withdrawn), and PS CM 2003/14</p> |
| other references and links | <p>Large Market Initiatives</p> <p>Tax Havens and Tax Administrations</p> <p>Arrangement between the Australian Taxation Office and Inland Revenue of New Zealand in relation to the administration of the extension of the Australian wine producer rebate to New Zealand wine producers</p> <p>Referral of work to ISO</p> <p>TP Gatekeeper Mailbox – “TPgatekeeper@ato.gov.au</p> <p>International Risk Gatekeeper Mailbox – ISOGatekeeper@ato.gov.au</p> <p>Tax Haven Taskforce Mailbox</p> <p>Tax Havens and Tax Administrations Booklet</p> <p>International Relations Practice Mailbox</p> <p>International Visitors Program</p> |
| case references | |
| file references | 06/3658 |
| Date issued | 31 August 2006 |
| Date of effect | 31 August 2006 |
| Other Business Lines consulted | All business lines |
| Amendment history | <p>9 October 2009</p> <p>Minor revisions throughout the practice statement to update naming conventions and incorporate procedural</p> |

changes due to Siebel deployment.

6 August 2008

References to litigation have been removed (including to the Table at para 3 & deletion of para's 12 & 13)

Para 14 moved to under EOI heading (now para 20)

Other minor amendments to para's 2, 34 & 36 (references to OCTC & CATS amended)

Contact details updated

21 May 2008:

Paragraph 3 – Table updated with correct para numbers

Paragraph 6 – Amend 'Operations' to 'CAS'

Paragraph 21 & 22 - Amendments to contacts for Tax Havens

Paragraph 24 – Replace table with updates

Paragraph 25, 26 & 27 – Amended descriptions of Advanced Pricing Arrangements and Mutual Agreement procedures.

Paragraph 32 – New para on cross border financing arbitration arrangements.

Paragraph 35 – Remove reference to visits to Tax Office.

Paragraphs 39, 40 & 41 – New paragraphs describing responsibilities for request to visit the Tax Office from overseas.

4 July 2007:

Paragraph 29 – include GST contact details

Paragraph 31 – change reference from Minister Counsellor (Taxation) to JITSIC representative