

# ***PS LA 2012/1 - Management of high risk technical issues and engagement of tax technical officers in Law and Practice***



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# Practice Statement Law Administration

**PS LA 2012/1**

**FOI status:** may be released

*This practice statement is issued under the authority of the Commissioner of Taxation and must be read in conjunction with Law Administration Practice Statement PS LA 1998/1. It must be followed by tax officers unless doing so creates unintended consequences or where it is considered incorrect. Where this occurs, tax officers must follow their business line's escalation process.*

|                 |                                                                                                                                                                               |
|-----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>SUBJECT:</b> | <b>Management of high risk technical issues and engagement of tax technical officers in Law and Practice</b>                                                                  |
| <b>PURPOSE:</b> | <b>To outline the principles guiding the management of high risk technical issues, including the engagement of tax technical officers in Law and Practice on those issues</b> |

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## **STATEMENT**

1. This practice statement sets out the guiding principles behind the management of high risk<sup>1</sup> technical issues and the appropriate level of engagement of tax technical officers in Law and Practice<sup>2</sup> on those issues.

### **Guiding principles**

2. A group of high level tax technical experts are located within Law and Practice to support business lines in making technical decisions and to help the ATO in managing its highest risk technical issues.
3. Management of technical issues across the ATO is subject to the Enterprise Risk Management Framework.<sup>3</sup>
4. Correct application of the Enterprise Risk Management Framework ensures that technical issues are managed appropriately. This includes ensuring our

<sup>1</sup> In this practice statement, 'high risk' is used in a generic sense, not as a reference to a particular risk matrix level. How this practice statement applies across specific risk matrix levels is explained in the Guide to managing high risk technical issues – see paragraph 5 of this practice statement.

<sup>2</sup> Note: the principles in this practice statement do not apply to the involvement of Legal Services Branch officers on legal issues. Refer to *PS LA 2009/9 Conduct of ATO litigation*.

<sup>3</sup> As outlined in *Corporate Management Practice Statement PS CM 2003/02 Risk and issues management*

high level tax technical expertise within Law and Practice is applied to those issues which have been assessed to be of the highest risk for the ATO. Application of the Enterprise Risk Management Framework also helps determine the appropriate level of engagement by tax technical officers in Law and Practice on those issues.

5. To assist in the effective application of the Enterprise Risk Management Framework to high risk technical issues, a Guide to managing high risk technical issues has been developed. This Guide should be used by all business lines when risk emerges from a technical issue, to help:
  - identify those issues on which tax technical officers in Law and Practice should be engaged – by focussing risk assessment of an issue on particular criteria
  - determine the extent to which tax technical officers in Law and Practice should be engaged, and the appropriate form of that engagement – based on the interaction between the level of risk, the nature of the issue, and other relevant factors such as time considerations.

A link to the Guide is contained in the Other References section at the end of this practice statement.

6. The principles underlying the responsibilities of business lines and tax technical officers in Law and Practice, and the manner in which they should work together in prioritising and resolving issues are also outlined out in the Guide. This will include ensuring early engagement of technical specialists from Law and Practice when appropriate to the technical decision making process.
7. There should be a joint commitment by all business line and tax technical officers in Law and Practice involved to ensuring we continue to meet the commitments we make in the Taxpayers' Charter and any relevant ATO service standards. There must also be a strong commitment to considering the practical implications of the technical decision, and to understand relevant commercial drivers for taxpayers when resolving issues.
8. Four categories of work have been recognised by the ATO Executive as having a level of inherent risk sufficient to require the engagement of Law officers. These categories are:
  - the application of the general anti-avoidance rules
  - strategic litigation
  - public rulings, and
  - law design.

Although it is mandatory that tax technical officers in Law and Practice be engaged on these categories of work, in accordance with the guiding principles in this practice statement, the level of their engagement will be determined having regard to the specific issues and risks involved.

9. Tax technical officers in Law and Practice are engaged to work on technical issues through the Work allocation, reporting and monitoring team in Law and Practice. Links to the procedures for doing so, and to the contacts within the Work allocation, reporting and monitoring team, are located in the Other References section at the end of this practice statement.

10. This practice statement does not preclude the use of informal dialogue and direct engagement between officers in business lines and Law and Practice (such as requests for special assistance by Senior Executive Service (SES) officers where an urgent need arises) in order to aid in analysis of technical issues. However, the Work allocation, reporting and monitoring team should be informed as soon as possible after this occurs where the engagement will involve any ongoing activity by Law and Practice, to confirm the level of risk and ongoing engagement.

#### **Quarterly review process**

11. Strategic oversight of the ATO's highest technical risks – including the technical work performed by Law and Practice – will be through a quarterly review process managed by Law and Practice. This process will provide regular strategic review of:
- the current focus of Law resources
  - business line priorities requiring assistance from Law
  - emerging legal and technical risks and trends in taxpayer behaviour, and
  - present and future capability gaps.
- This review will assist in setting and revising corporate legal and technical priorities, agreeing strategies for addressing those priorities, and committing or re-directing resources to those strategies.
12. Officers involved in the Quarterly review process will include SES Band 2 representatives across Compliance, Operations and Law and Practice.

**Amendment history**

| <b>Date of amendment</b> | <b>Part</b>                              | <b>Comment</b>                                                    |
|--------------------------|------------------------------------------|-------------------------------------------------------------------|
| 3 September 2012         | Paragraphs 9 and 10,<br>Other references | Updated name of Work allocation,<br>reporting and monitoring team |

|                                |                                                                                                                                                                                                                                                                  |
|--------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Subject references             | Enterprise risk management framework; technical issues                                                                                                                                                                                                           |
| Legislative references         |                                                                                                                                                                                                                                                                  |
| Related public rulings         |                                                                                                                                                                                                                                                                  |
| Related practice statements    | PS CM 2003/02                                                                                                                                                                                                                                                    |
| Case references                | 1-3PWASXG                                                                                                                                                                                                                                                        |
| Other references               | Links available internally only<br><a href="#">Guide to managing high risk technical issues</a><br><a href="#">How to engage Law technical expertise</a><br><a href="#">Work allocation reporting and monitoring team within Law and Practice - key contacts</a> |
| File references                | 1-3PWASXG                                                                                                                                                                                                                                                        |
| Date issued                    | 10 April 2012                                                                                                                                                                                                                                                    |
| Date of effect                 | 10 April 2012                                                                                                                                                                                                                                                    |
| Other Business Lines consulted | All                                                                                                                                                                                                                                                              |