PS LA 2012/1 - Engaging Tax Counsel Network on tax technical issues

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PS LA 2012/1
Engaging Tax Counsel Network on tax technical issues

This Law Administration Practice Statement outlines when and how to engage Tax Counsel Network on significant risk tax technical issues.

This Practice Statement is an internal ATO document and an instruction to ATO staff.

1. What this Practice Statement is about

This Practice Statement sets out principles for when you must refer a tax technical issue to Tax Counsel Network (TCN) and how to do so.

A 'tax technical issue' relates to the interpretation of a law administered by the Commissioner.

2. When TCN engagement is mandatory

You must engage TCN as early as possible for:

- the application of the general anti-avoidance provisions – that is, Part IVA or section 45B of the *Income Tax Assessment Act 1936,* or similar provisions in any other tax legislation
- strategic litigation
- all cases where we intend to seek tax technical advice from external counsel or a panel firm (not limited to litigation matters)
- perceived U-turns – that is, matters where it is in issue whether the ATO view should be applied prospectively (see Law Administration Practice Statement PS LA 2011/27 *Determining whether the ATO's view of the law should be applied prospectively only*
- proposed public rulings and practical compliance guidelines or updates to these (except: care and maintenance or annual product updates; and class or product rulings covering moderate or low risk technical issues)
- any technical issue rated with a significant or higher risk (including those arising in case work, non-strategic litigation and in other public advice or guidance (PAG) products, such as web content or Practice Statements).

3. Assessing the risk of an issue

Business lines assess the risk associated with technical issues using the Enterprise Risk Management Framework (ERMF) (link available internally only).

As technical matters may be an enterprise-level risk, the approach should employ the same 6 levels as the ERMF (low, moderate, significant, high, severe and catastrophic). The Guide to assessing technical issues for risk and priority (link available internally only) provides a method to help you to gauge the level of risk using the ERMF.

Where the risk is assessed as 'significant or above', you must engage TCN.

4. How to engage TCN

The standard procedure for engaging TCN is through a Siebel referral, as set out in How to engage Tax Counsel Network (TCN) (link available internally only).

Some work types (usually of lower priority or high volume) may have streamlined engagements. In these cases, referral remains mandatory, but the process for the referral or for completing the engagement is streamlined. Streamlined engagements must be authorised by a Deputy Commissioner in TCN.

For urgent matters, it may be appropriate for you to directly contact someone in TCN before following with a formal referral.

While you may also contact someone in TCN for an informal discussion or assistance, you will need to complete a Siebel referral for any matter that requires more than a nominal investment of TCN time.

5. Terms used and related information

Strategic litigation is defined in Law Administration Practice Statement PS LA 2009/9 *Conduct of ATO litigation and engagement of ATO Dispute Resolution.*

For PAG:

- You will need to follow relevant PAG notification procedures, regardless of whether TCN needs to be engaged.
- Proposed updates to published PAG are care and maintenance when the work will not change any view or position expressed in the product, be it technical or administrative. Any change to an ATO view means the update is not care and maintenance.

TCN involvement in objections must follow Law Administration Practice Statement PS LA 2023/2 *Communication protocols governing ATO objections.*

Date issued: 10 April 2012

Date of effect: 10 April 2012

Amendment history

24 April 2024

Part	Comment
Throughout	Updated links to Law Administration Practice Statements and internal links to public advice and guidance information.
Amendment history table	Updated to new format.

15 July 2016

Part	Comment
All	Updated to new LAPS format and style.
Part 5	Inserted section on how to ensure TCN independence.

11 October 2013

Part	Comment
All	Updated Law and Practice to the Tax Counsel Network.
Paragraph 1	Removed footnote reference to Legal Services Branch.
Paragraph 8	Removed law design from the categories of work that are mandatory to come to TCN.
Paragraph 9	Inserted to acknowledge the role of Integrated Tax Design, and recognise tax design work as having a level of inherent risk sufficient to support engagement of Tax Counsel Network officers.
Paragraphs 11 and 12	Revised content to indicate that oversight of TCN priorities will be through the Law Interpretation Forum.

31 August 2012

Part	Comment
Paragraphs 9 and 10, and other references	Updated name of work allocation, reporting and monitoring team.

References

Legislative references	ITAA 1936 Pt IVA ITAA 1936 45B
Other references	Enterprise Risk Management Framework (ERMF) (link available internally only) Guide to assessing technical issues for risk and priority (link available internally only) How to engage Tax Counsel Network (TCN) (link available internally only)
File references	1-ZT4S8O4
Related Practice Statements	PS LA 2009/9 PS LA 2011/27 PS LA 2023/2

ATO references

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