PS LA 2013/2 - Provision of accredited economic advice

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Australian Government
Australian Taxation Office

Practice Statement Law Administration

PS LA 2013/2

This law administration 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. ATO personnel, including non ongoing staff and relevant contractors, must comply with this law administration practice statement, unless doing so creates unintended consequences or is considered incorrect. Where this occurs, ATO personnel must follow their business line's escalation process.

SUBJECT: **Provision of accredited economic advice**

PURPOSE: **To outline:**

- **the role and function of the Economist Practice**
- **when accredited economic advice should be obtained**
- **the process to obtain accredited economic advice**
- **the process to obtain external economic advice**

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STATEMENT

1. This practice statement outlines the process to:
   - obtain accredited economic advice, and
   - in certain circumstances, to obtain external economic advice.
2. To obtain accreditation of economic advice, all ATO personnel are required to follow the process outlined in this practice statement.

3. The aim is to ensure consistency and quality of economic advice across the ATO, and to develop and connect economist skill sets within the ATO and with other agencies.

What is accredited economic advice

4. Accredited economic advice is advice that has been prepared or assured by the Economist Practice which is intended to be sent outside the ATO and/or relied upon for decisions. For example, advice provided in a dispute with a taxpayer.

5. Economic advice which is completed and/or assured under the process outlined in paragraphs 17 to 30 is considered to be accredited economic advice.

Economics in the ATO

6. Broadly, economics is described as the analysis of the choices made by individuals, firms, governments, and other participants in markets and the economy – in allocating resources (such as capital and labour) and optimising outcomes (such as tax costs).

7. Economists in the ATO provide applied economic advice both at the macro (economy and industry wide) and micro (taxpayer) economic levels.

8. Examples of economic advice on micro-economic issues include:

   (a) analysis of price, profit and other outcomes arising from commercial and business contexts

   (b) identification and analysis of specific economic cause and effect relationships

   (c) analysis of taxpayer decision making, which may include examining internal and external factors such as preferences, available options, market context, regulatory framework and the tax environment.

9. Examples of economic advice on macro-economic issues include:

   (a) analysis of patterns and trends in taxpayer and industry performance in the context of wider market and economic cycles

   (b) risk assessment and case selection

   (c) analysis of the economic impacts and compliance issues arising from tax policy.

Role and function of the Economist Practice

10. The taxation system operates with increasing complexity in the global economy. The ATO recognises the need to engage a variety of skills to effectively address risks and opportunities. The Economist Practice, located in Internationals in the Large Business & International business line, supports international and non-international work across the ATO with a focus on three broad areas:

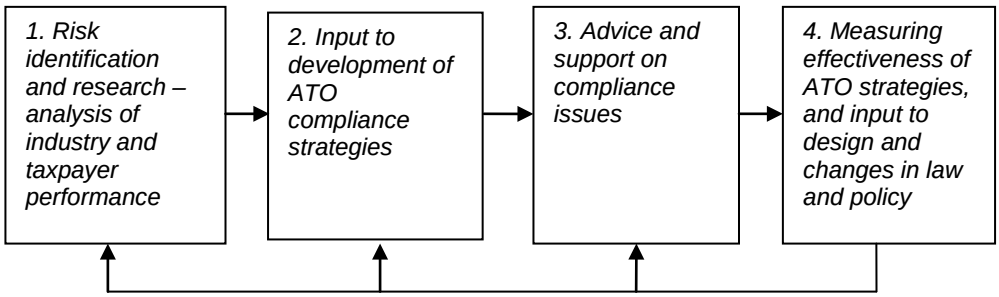
    - building economist skill sets, including through the Economist Network
    - operational advice on cases including active compliance, advisings and litigation, particularly in relation to multinational taxpayers

- strategic research on economic issues which includes support for law reform and effectiveness evaluation.

Links to contacts within the Economist Practice are provided in the 'Other references and links' section at the conclusion of this practice statement.

11. Figure 1 outlines the Economist Practice input into the ATO risk management process.

Figure 1. Economist Practice input into the ATO risk management process



Notes to figure 1:

- Box 1 includes analysis of economic and tax performance across businesses, industries and markets
- Box 2 includes input into profit shifting and service trust strategies and publications
- Box 3 includes transfer pricing issues, service trust issues, and advice on General Anti-Avoidance Provisions such as Part IVA of the *Income Tax Assessment Act 1936*
- Box 4 includes evaluation of the Advance Pricing Agreement program, input to design and revenue implications for cross border arbitrage, tax base erosion, transfer pricing, thin capitalisation and other legislation

12. The Economist Practice is the central point of contact for economic advice in the ATO. The Economist Practice:

(a) provides economic advice across the ATO on issues and products particularly those with:

- external communication of the economic elements of the ATO view
- precedential impact in an economic context
- systemic risks.

(b) provides input into:

- legislative developments, interpretive advice, taxation rulings and other taxpayer guidance
- external speeches and publications
- Organisation for Economic Cooperation and Development (OECD) policies and working parties
- international relations via Mutual Agreement Procedure cases, support for ATO multilateral meetings and international training.

(c) manages the processes for obtaining external economic advice and experts as outlined in paragraphs 31 to 33.

(d) manages the informal Economist Network which includes:

- Practice Manager role as referrals gatekeeper
- support for the development of economic skill sets across the ATO
- quality assurance processes (QA)
- coordination and support for the engagement of external, expert economists
- maintenance of a register of network members across the ATO.

13. To ensure efficiency and effectiveness, the Economist Practice employs QA protocols. These include regular technical discussions on cases, seeking client feedback and peer review of priority opinions, engagement with external experts and building relationships with other agencies/professional bodies that share our economic analytical expertise.

14. Revenue Analysis Branch is responsible for the measurement of revenue impacts, revenue forecasting and policy costing work that is done in conjunction with Treasury. Revenue Analysis Branch also provides advice to States and Territories on GST matters.

The Economist Network

15. The Economist Network is an informal network and comprises economists in the ATO, including officers from the Economist Practice and other areas of the ATO. The Economist Network aims to enhance the economics capability in the ATO and to provide support to ATO strategy and operations.

16. Membership of the network provides another way to engage economic analytical skills, including assurance of work completed outside the Economist Practice.

The process for obtaining accredited economic advice

When accredited economic advice should be sought

17. All ATO personnel need to consider whether they require preparation or assurance of economic advice. This includes the economic aspects of both international and non-international tax issues.

18. Accreditation of all economic advice is not mandated except where rulings or other practice statements so require. However, all advice from the Economist Practice will be accredited.

19. If there is uncertainty as to whether accredited economic advice is necessary, then ATO personnel should discuss the issue with the Economist Practice Manager.

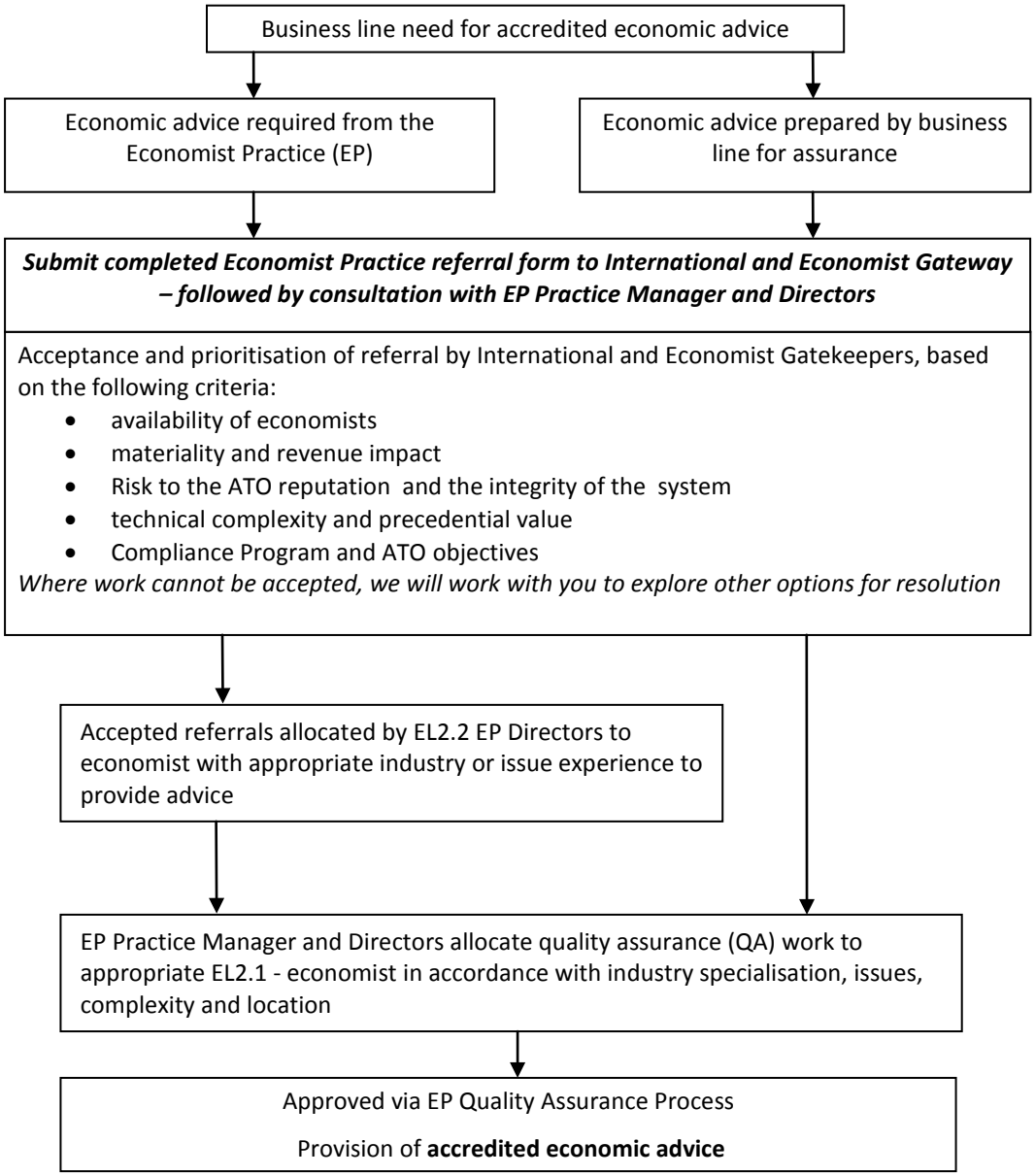
Accessing accredited economic advice

20. ATO personnel may engage the Economist Practice to

- prepare accredited economic advice, or
- assure economic advice that has been prepared by the business line.

21. The process for accessing accredited economic advice is outlined below in Figure 2.

Figure 2. Process for obtaining accredited economic advice



22. The Economist Practice must be engaged through the International and Economist Gateway, using the Economist Practice referral form available on the intranet. A link to the referral form is provided in the 'Other references and links' section at the conclusion of this practice statement.

23. All referrals received at the International and Economist Gateway are subject to review to assist in issue identification, prioritisation and analysis of patterns and trends.

24. The Economist Practice's acceptance and prioritisation of requests for accredited advice will be based on the following criteria (not necessarily in this order):

    (a) availability of economists

    (b) materiality and revenue impact

    (c) risk to the ATO reputation and the integrity of the system

    (d) technical complexity and precedential value

    (e) Compliance Program and ATO objectives.

25. Where the Economist Practice cannot provide appropriate advice or resourcing of a referral, the Economist Practice will discuss options for resolution with the referring officer. Options may include engaging external consultants, or referring to another business line or area which is part of the Economist Network.

Preparation of accredited economic advice

26. Accepted referrals will be allocated to an economist who will work collaboratively with the referring area to develop a plan, outline the scope and action required. This includes participating in taxpayer meetings and resolving the issues. In order to resolve matters efficiently and effectively:

    (a) the type of assistance and the timeframes will be negotiated on a case-by-case basis and will be dependent upon the factors listed at paragraph 24 of this practice statement.

    (b) the economist will determine the economic issues to be examined with the referring area, and will outline the approach to analysing and resolving the economic issues. In a case advice setting, this may include determining:

        (i) the information required

        (ii) characterisation of issues including functional analysis

        (iii) analytical approach

        (iv) choice of method, and

        (v) benchmarking and arm's length range (where applicable).

    (c) the referring area needs to provide support throughout the process to allow the economist to form an appropriate view in a timely manner. This includes:

        (i) including the economist in case planning

        (ii) gathering and documenting facts and evidence

        (iii) collecting the information and data requested by the economist

        (iv) liaising with the taxpayer

        (v) providing the economist with the opportunity to attend relevant meetings

        (vi) providing regular updates and timely notification of material changes in the case, and

        (vii) taking into account the economic advice when making decisions on the case.

27. Timeframes for providing advice and responding to requests are dependent on receiving information that is both timely and relevant. A collaborative approach will ensure that requested advice is both relevant and completed in a timely manner.

Assurance of economic advice

28. Both economic advice completed within the Economist Practice and economic advice received from outside the Economist Practice are subject to a formal quality assurance process.

29. Quality assurance of the work is completed by an EL2.1 economist (generally from interstate) to ensure objectivity and consistency.

30. Work that has passed the Economist Practice quality assurance process will constitute the final accredited economic advice.

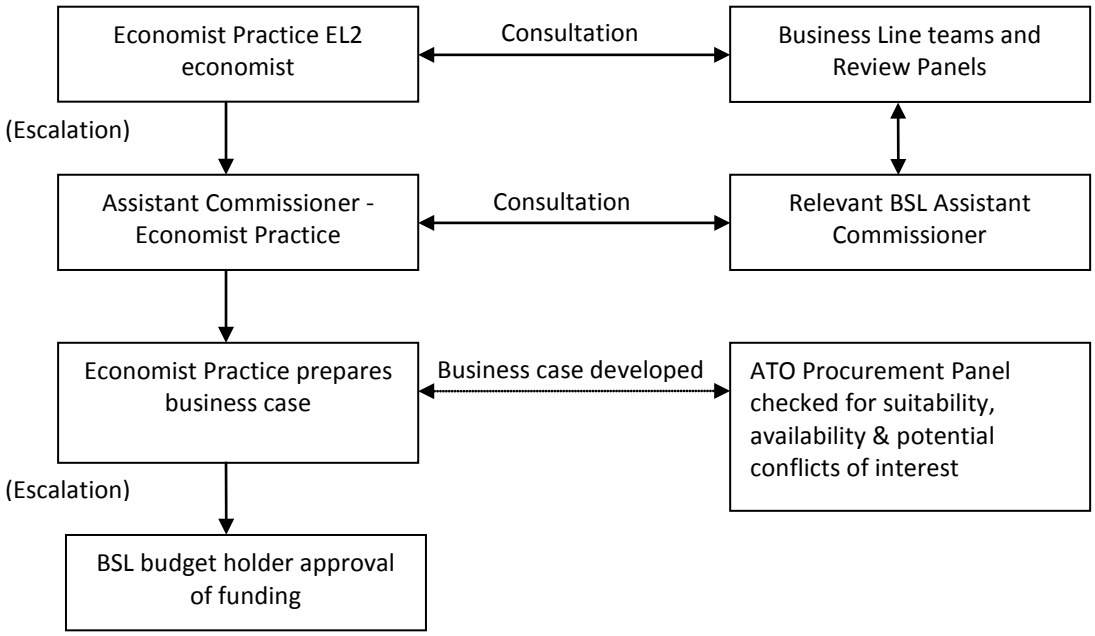
Obtaining external economic advice

31. In certain circumstances where highly specialised expertise or knowledge is required which is not available internally it may be necessary to obtain external economic advice.

32. It is necessary to obtain approval from the Assistant Commissioner – Economist Practice to engage an external economic expert for advice on compliance issues. Business Line teams should discuss the need for external economic advice with the economist in the EP, who will then engage the Assistant Commissioner – Economist Practice. The final approval to engage an external economic expert will rest with the business line budget holder.

33. The process for obtaining external economic advice is outlined in Figure 3 below. For litigation matters, external economic experts are engaged via the Australian Government Solicitor. However, the issue should also be discussed with the Assistant Commissioner – Economist Practice.

Figure 3. ATO process for engagement of external economist experts on compliance issues



Notes to figure 3:

- engagement of external economist experts is based on level of complexity and materiality of the issue, and precedential issues
- the Economist Practice manages expert economist advice and procurement contracts
- for litigation matters, external economic experts are engaged via the Australian Government Solicitor.

Amendment history

Date of amendment	Part	Comment
13 May 2014	Paragraph 12 Paragraph 15	Moved 12(a) after 12(d) and renumbered subparagraphs accordingly. Added coordination and support activities. Clarified that the Economist Network is an informal network.
7 April 2014	Contact details	Updated.

Subject references	Accredited economic advice Compliance Plan Economics Economist Network Economist Practice External economist experts Internationals Macro-economics Micro-economics Minerals Resource Rent Tax Referral of Economic Issues Transfer Pricing
Other references and links	International Intranet Page (link available internally only) Economist Practice Mailbox Economist Practice SharePoint (link available internally only) Economist Practice referral form (link available internally only) Economist Practice contact list (link available internally only)
File references	1-3OF5GNI
Date issued	20 June 2013
Date of effect	14 January 2013
Other business lines consulted	All business lines