# *PS LA 2013/2 - Economic advice and the Economist Practice*

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# PS LA 2013/2
# Economic advice and the Economist Practice

## This Law Administration Practice Statement outlines how economic advice is managed in the ATO.

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

### 1. What is this Practice Statement about?

This Practice Statement outlines the role of the ATO's Economist Practice, the nature of economic advice it provides and the process for obtaining accredited economic advice.

Within the ATO, only the Economist Practice can prepare accredited economic advice pertaining to taxpayers and the operation of all laws that the Commissioner administers. Accredited economic advice may be relied upon by the ATO as expert economic advice for the purposes of determining the ATO's view. ATO staff must follow the process outlined in this Practice Statement to obtain accredited economic advice.

### 2. What is the Economist Practice?

The Economist Practice is the central area within the ATO responsible for the provision of economic advice relating to the laws that the Commissioner administers. This includes economic advice that supports the interpretation of income tax law.[1] Other areas of the ATO also employ economists, but they have different roles.[2]

The Economist Practice is based in the International, Support and Programs business line within the Client Engagement Group. It provides independent economic advice[3], technical leadership and oversight of economic advice within the ATO.

Having a central area to provide quality-controlled expert economic advice improves consistency and enhances the professional reputation of the organisation. The Economist Practice works with stakeholders primarily within the Public Groups, Private Wealth, Objections and Review and Tax Counsel Network business lines when developing economic advice.

### 3. How do economics and economic advice relate to the ATO?

Broadly, economics is the analysis of the choices made by individuals, firms, governments and other participants in markets and the economy. These choices affect the way resources are allocated (such as capital and labour) and outcomes are optimised (such as prices, profits or tax costs).

Within the ATO, there is a significant focus on international tax risk associated with transfer pricing. Transfer pricing requires the application of the arm's length principle, which is an economic concept embedded in Australia's transfer pricing domestic laws[4] and network of tax treaties.[5]

Other parts of income tax law with economic issues include aspects of anti-avoidance[6], the arm's length debt test in the thin capitalisation framework[7] and the non-arm's length income rule applied to managed investment trusts.[8] Economic issues arise in both international and domestic tax arrangements.

Economic advice provided by the Economist Practice varies depending on the advice required and the type of arrangement being analysed. For cross-border transfer pricing matters[9], the Economist Practice may address:

- identifying and analysing the actual conditions that operate (in connection with the commercial and financial relations)

[1] The *Income Tax Assessment Act 1936* (ITAA 1936), *Income Tax Assessment Act 1997* (ITAA 1997) and Australian tax treaties through the *International Tax Agreements Act 1953*.
[2] These areas include Revenue Analysis Branch (RAB) and Tax Gap. RAB prepares revenue forecasts and policy costings in conjunction with Treasury, and other revenue costings and advice to states and territories on GST matters and measurement of revenue impacts. Tax Gap estimates the gap between tax paid and tax that should be paid in the Australian taxation system.
[3] Economic advice is considered independent of the area requesting the advice.
[4] Division 815 of the ITAA 1997 and former Division 13 of Part III of the ITAA 1936 for legacy purposes.
[5] Commonly through Articles 7 and 9 of Australian tax treaties.
[6] In particular, the diverted profits tax within Part IVA of the ITAA 1936.
[7] Division 820 of the ITAA 1997.
[8] Subdivision 275-L of the ITAA 1997.
[9] Within Division 815 of the ITAA 1997.

- identifying and analysing the arm's length conditions that might be expected to operate in comparable circumstances
- identifying and analysing whether circumstances are comparable, by referring to the OECD's 5 factors of comparability
- selecting and applying the most appropriate transfer pricing method or methods to determine arm's length outcomes.

In all instances, economic advice developed by the Economist Practice will inform how the ATO applies the legislative context and answers the statutory question.

## 4. What is accredited economic advice and when should I seek it?

Accredited economic advice is written advice and is prepared or quality assured (and labelled so) by the Economist Practice. You can rely on this expert economic advice to determine the ATO's view. For example, this would include advice provided by the Economist Practice to a decision-maker in a transfer pricing dispute with a taxpayer.

Accredited economic advice is quality assured under the process outlined later in this Practice Statement.

Seek accredited economic advice for matters that deal with complex economic issues. This includes audits, advance pricing arrangements, objections and litigation.[10]

Accreditation of all economic advice is not mandated except where rulings, other practice statements or internal guidance need it. You should consider how any ATO public guidance applies to your risk or issue before engaging the Economist Practice. ATO public guidance is not accredited economic advice.

If you are not sure whether you need accredited economic advice, discuss the issue with a senior staff member from the Economist Practice (EL2 or above).

## 5. What is the process for obtaining accredited economic advice and engaging with the Economist Practice?

The Economist Practice is engaged through Siebel using the referral activity and escalation template (see 'More information' in this Practice Statement for a link to the referral procedure).

The process for obtaining accredited economic advice is:

(1) The business line identifies a need for economic advice.

(2) The case officer completes the Economist Practice referral activity in Siebel. This triggers a triage and the referral is prioritised by the Economist Practice.

(3) Accepted referrals are assigned to an economist with appropriate industry or technical expertise. The economist will consult with the case officer regarding the work priority and what additional information may be required.

(4) The economic advice developed by the economist will be documented and quality assured by an appropriate senior economist (generally located in a different site).

(5) Once approved by the Economist Practice quality assurance process, the accredited economic advice is provided to the referring business line.

All referrals received through Siebel are triaged to identify systemic issues and priorities and analyse patterns and trends.

The Economist Practice works closely with internal stakeholders to align with business lines and corporate priorities. The Economist Practice accepts, prioritises and agrees the scope of work for referrals based on the following (in no particular order):

- strategic priorities of the organisation
- availability of economists
- materiality and revenue impact
- timing constraints
- risk to the ATO reputation and the integrity of the system
- technical complexity and precedential value.

Accepted referrals are allocated to an economist, who works with the referring area to develop an engagement plan, including the scope of work, deliverables and timeframes.

The scope of the Economist Practice's engagement is negotiated case-by-case. It may include preparing written accredited economic advice, participating in workshops and taxpayer meetings, and communicating the ATO's economic position to internal and external stakeholders.

[10] For objection and litigation work, it is likely that qualified external experts will also be engaged by the relevant decision-makers, where required.

If accredited economic advice is not necessary for your case, the Economist Practice will discuss options with you to resolve the issue. Options may include assistance through a case workshop or providing general economic advice and guidance.

This process is designed to:

- ensure the consistency and quality of economic advice across the ATO
- reduce duplication and amplify insights
- manage economic advice strategically
- direct resources to best achieve ATO priorities.

The Economist Practice engages on specific taxpayer matters including:

- assurance reviews
- audits
- advance pricing arrangements
- settlements
- objections
- litigation support.

The Economist Practice also engages on broader issues including risk strategies and clusters, public guidance products and capability development.

## 6. How is accredited economic advice prepared?

The economist working on the referral will discuss how to document facts and evidence relevant to the economic analysis.

Timeframes to deliver advice depends on several factors. These include:

- early engagement with the Economist Practice
- receiving the relevant information
- effectively identifying issues
- the complexity of economic issues to be considered.

By working together, we can efficiently gather information from the taxpayer and complete relevant advice in a timely manner.

Accredited economic advice completed within the Economist Practice is subject to formal quality assurance. An EL2 economist (generally located in a different site to the lead economist) completes quality assurance of the work to ensure objectivity and consistency. Only advice that has been quality assured can be considered accredited economic advice.

## 7. When is it appropriate to obtain external economic advice?

In certain circumstances, the ATO may seek external economic advice. You must first discuss resolution options with the Economist Practice. Generally, external economic advice is sought only where:

- highly specialised expertise or knowledge of complex arrangements is required and is not available within the ATO
- the materiality and precedential nature of the issues warrant further certainty.

This approach allows us to have strategic oversight of economic advice provided within the ATO and best achieves the requirements as set out in this Practice Statement.

Discuss and agree with the Economist Practice the economic expert advice you need and the scope of their advice. The opinion should be restricted to matters within their subject of expertise.

External economic advice may involve a specialist on specific industry issues, the arm's length conditions and pricing, or other issues relevant to economic outcomes. In some instances, more than one expert type may be needed.

The administrative role of the Economist Practice varies, based upon the advice being sought. These engagements require support from the Economist Practice.

For industry and other experts, the Economist Practice supports selecting and engaging the expert to ensure they meet ATO needs.

For all types of external economic experts, final approval to engage rests with the business line budget holder. Economist Practice involvement must be sustained throughout the engagement of an external economic expert. This includes any decisions to rely on the expert advice.

## 8. Can I engage the Economist Practice if a matter has gone to objections and litigation?

Yes, the Economist Practice support extends to matters formally objected to by a taxpayer as provided for under section 175A of the ITAA 1936 and Part IVC of the *Taxation Administration Act 1953*. Use the Siebel referral activity and escalation template.

Where support from the Economist Practice has been sought on these matters, the economist will assist in evaluating the positions of the taxpayer and the Commissioner.

For objections, the economist will prioritise any new evidence or expert opinion the taxpayer has presented.

For objections and litigation, the Economist Practice assists with identifying and briefing suitable experts, reviewing and evaluating any new evidence, and providing other forms of economic advice where required. External economic experts for litigation are engaged through an external panel firm.[11] The Economist Practice directly supports this engagement to ensure they meet ATO needs.

## More information

For more information, see:

- Economist Practice referrals (internal link only).

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| **Date issued** | 20 June 2013 |
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[11] Responsibility for the appointment of independent external experts for objection and litigation cases ultimately rests with the relevant decision-makers.

## Amendment history

| Date of amendment | Part | Comment |
|---|---|---|
| 1 November 2023 | Paragraphs 2 and 7 and link to referral | Updated to reflect changes in business lines and remove requirements in paragraph 7 for approval and replace with support of Economist Practice, updated link to referral process. |
| 24 October 2019 | All | Updated to new LAPS format and style. |
| 13 May 2014 | Paragraph 12 | Moved 12(a) after 12(d) and renumbered subparagraphs accordingly. Added coordination and support activities. |
| 13 May 2014 | Paragraph 15 | Clarified that the Economist Network is an informal network. |
| 7 April 2014 | Contact details | Updated. |
| 20 June 2013 | | First published. |

## References

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| **Legislative references** | ITAA 1936 Pt III former Div 13<br>ITAA 1936 Pt IVA<br>ITAA 1936 175A<br>ITAA 1997 Subdiv 275-L<br>ITAA 1997 Div 815<br>ITAA 1997 Div 820<br>TAA 1953 Pt IVC<br>International Tax Agreements Act 1953 |
| **Other references** | Articles 7 and 9 of Australian tax treaties<br>Economist Practice referrals (internal link only) |
| **File reference** | 1-FF0127M |

## ATO references

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